

ARKANSAS REGISTER



Proposed Rule Cover Sheet

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Name of Department Department of Finance and Administration

Agency or Division Name Alcoholic Beverage Control Division

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

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Name of Rule Definition of Terms in Title 5 - ABC Rule 5.2

Newspaper Name Arkansas Democrat Gazette

Date of Publishing December 22, 2019 thru December 24, 2019

Final Date for Public Comment January 22, 2020

Location and Time of Public Meeting 1515 West 7th Street, 5th Floor, 9:00 a.m.

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Section 5.2 “Barrel” means thirty-one (31) gallons.

SUMMARY OF SUBSTANTIVE CHANGES

Act 681 establishes the microbrewery-restaurant private club permit. It defines “barrel” as noted above. This definition of barrel is consistent throughout Title 3 of the Arkansas Code, but has not yet been included in the ABC Rules.

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Section 5.2 “Barrel” means thirty-one (31) gallons.

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Section 5.8 “Malt Beverage” means liquor brewed from fermented juices of grain and having an alcoholic content of at least five percent (5%) but not more than twenty-one (21%) by weight.

SUMMARY OF SUBSTANTIVE CHANGES

This definition of “malt beverage” is included in Act 681. It also appears in the small brewery act as well as the microbrewery restaurant act. Until this update, the definition did not appear in the ABC Rules.

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Section 5.8 “Malt Beverage” means liquor brewed from fermented juices of grain and having an alcoholic content of at least five percent (5%) but not more than twenty-one (21%) by weight.

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Section 5.14 “Microbrewery” means a brewery that manufactures one (1) or more varieties of beer, malt beverages, or hard cider in an aggregate quantity not to exceed forty-five thousand (45,000) barrels per year from all facilities under common ownership with the microbrewery.

Section 5.15 “Microbrewery-restaurant Private Club” means a nonprofit organization organized and existing under the laws of this state that: is both a microbrewery and a restaurant; has members which are not directly or indirectly benefitted by the entity’s net revenues; exists for some common recreational, social, patriotic, political, national, benevolent, athletic, community hospitality, professional association, entertainment, or other object or purpose other than the consumption of alcoholic beverages; and has existed for at least one (1) year.

SUMMARY OF SUBSTANTIVE CHANGES

These terms are defined in Act 681. Both are included in the Rules to clarify the distinction between a microbrewery and a microbrewery-restaurant private club.

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Section 5.14 “Microbrewery” means a brewery that manufactures one (1) or more varieties of beer, malt beverages, or hard cider in an aggregate quantity not to exceed forty-five thousand (45,000) barrels per year from all facilities under common ownership with the microbrewery.

Section 5.15 “Microbrewery-restaurant Private Club” means a nonprofit organization organized and existing under the laws of this state that: is both a microbrewery and a restaurant; has members which are not directly or indirectly benefitted by the entity’s net revenues; exists for some common recreational, social, patriotic, political, national, benevolent, athletic, community hospitality, professional association, entertainment, or other object or purpose other than the consumption of alcoholic beverages; and has existed for at least one (1) year.

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Section 5.14.220 “Restaurant” means any public place or private place that is primarily engaged in the business of serving a meal for consumption on the premises to a guest, has a seating capacity of at least fifty (50) people, and has a suitable kitchen facility to serve the entire menu approved by the Alcoholic Beverage Control Division. The menu shall contain a selection of food and shall not be limited to sandwiches or salads. The kitchen shall have adequate refrigeration to preserve the food on the menu, shall be kept in a sanitary condition, and shall comply with the ~~regulation~~rules of the Department of Health. Food from the menu shall be available from opening time until (2) hours before closing time. “Meal” means the usual assortment of food commonly ordered at various hours of the day and “guest” means a person who orders and is served a meal inside a restaurant during regular hours. —A microbrewery-restaurant private club must also serve at least one (1) meal per day and be open for business a minimum of five (5) days per week, with the exception of holidays, vacations, and periods of redecorating. (Amended 2020)
(Adopted 8-21-13)

SUMMARY OF SUBSTANTIVE CHANGES

Act 681 establishes a similar definition of “restaurant,” as ABC Rules already describe. However, the final sentence is an additional requirement found in Act 681 that was not already part of the ABC Rules definition.

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Section 5.20 “Restaurant” means any public place or private place that is primarily engaged in the business of serving a meal for consumption on the premises to a guest, has a seating capacity of at least fifty (50) people, and has a suitable kitchen facility to serve the entire menu approved by the Alcoholic Beverage Control Division. The menu shall contain a selection of food and shall not be limited to sandwiches or salads. The kitchen shall have adequate refrigeration to preserve the food on the menu, shall be kept in a sanitary condition, and shall comply with the rules of the Department of Health. Food from the menu shall be available from opening time until (2) hours before closing time. “Meal” means the usual assortment of food commonly ordered at various hours of the day and “guest” means a person who orders and is served a meal inside a restaurant during regular hours. A microbrewery-restaurant private club must also serve at least one (1) meal per day and be open for business a minimum of five (5) days per week, with the exception of holidays, vacations, and periods of redecorating. (Amended 2020)

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT DFA

DIVISION Alcoholic Beverage Control

PERSON COMPLETING THIS STATEMENT Doralee Chandler

TELEPHONE 501-682-2916 **FAX** 501-682-2221 **EMAIL:** Doralee.Chandler@dfa.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Definitions of terms used in Title 5

- | | | |
|---|---|--|
| 1. Does this proposed, amended, or repealed rule have a financial impact? | Yes | No <input checked="" type="checkbox"/> |
| 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost:

(b) The reason for adoption of the more costly rule;

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and:

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following: N/A

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total 0

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total 0

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total 0

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total 0

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ 0

Next Fiscal Year

\$ 0

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 0

Next Fiscal Year

\$ 0

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose;

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

(3) a description of the factual evidence that:

(a) justifies the agency's need for the proposed rule; and

(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.