

NOTICE OF INTENT

Department of Revenue

Office of Alcohol and Tobacco Control

Direct Delivery of Alcohol Public Safety Regulations (LAC 55:VII.801-807)

Under the authority of R.S. 26:153, 26:307(E), 308(I), and in accordance with the provisions of the Administrative Procedure Act. R.S. 49:950, et seq., the Department of Revenue, Office of Alcohol and Tobacco Control, proposes to enact LAC 55:VII.801-807, relative to the regulation of direct delivery of alcoholic beverages within the state of Louisiana.

The proposed enactment of the above-reference rule is offered under the authority delegated in R.S. 26:307(E) and 26:308(I) to allow ATC the ability to properly permit, authorize, and regulate the sale and distribution of alcoholic beverages. The proposed rule will address direct delivery matters not otherwise addressed by existing law or regulations.

Title 55

PUBLIC SAFETY

Part VII. Alcohol and Tobacco Control

Chapter 8. Direct Delivery of Alcohol Public Safety Regulations

§801. General Direct Delivery Requirements

Prior to any alcohol retailer or third party alcohol delivery service engaging in the delivery of alcoholic beverages, same shall obtain an alcoholic beverage delivery permit from the Commissioner of the Office of Alcohol and Tobacco Control and shall adhere to the following requirements:

- A. Only alcoholic beverages intended for personal consumption and delivered in a manufacturer sealed container may be offered for delivery. "Manufacturer sealed container" as used in this chapter shall mean the original sealed container that is filled with the alcoholic beverage at the permitted facility by the manufacturer as defined in R.S. 26:2(12) and 241(10). The delivery of an "open alcoholic beverage container" as defined by R.S. 32:300 is prohibited.
- B. Delivery shall be permitted only in those areas where the sale of alcoholic beverages is permitted. Delivery shall be prohibited in any area where it has been prohibited by a referendum vote or the local governing authority.

C. Delivery by a retailer shall not extend past the boundaries of the parish where the retailer's permitted establishment is located and shall be made only to a residential or commercial address. Third party delivery radius shall be determined by the parish population. For any parish having a population of less than one hundred thousand (100,000) according to the latest federal decennial census, no alcoholic beverages shall be delivered more than twenty-five (25) miles from the place of purchase. For any parish having a population of greater than one hundred thousand (100,000) according to the latest federal decennial census, no alcoholic beverages shall be delivered more than ten (10) miles from the place of purchase.

D. Orders for alcohol delivery of any type may only be accepted and processed if the permitted premises receiving the order has actual physical possession of the alcoholic beverage being ordered on the physical premises at the time the order is accepted and can fulfilled the order from stock on-hand.

E. The alcoholic beverages of all deliveries which are refused by a third party or incapable of being delivered for any reason shall be returned to the place of purchase.

F. Alcohol beverage delivery permit holders must verify that a consumer placing an order for alcohol delivery is of legal drinking age.

G. Alcoholic beverages shall not be delivered:

1. to an address on the campus of any elementary school, secondary school, university, college, technical college, or institute;
2. to any public playground or building used primarily as a church, synagogue, mosque, or public library;
3. outside of the hour that the retailer's physical premises are open to the public;
4. without verifying that the recipient is not visibly intoxicated;
5. without obtaining the signature of the recipient verifying that the receipt of the delivery of alcohol and their age.

H. Alcoholic beverage delivery permit holders shall keep and retain a record of all deliveries of alcoholic beverages for a period of three years from the date of delivery and shall make such records available to the Commissioner of Alcohol and Tobacco Control, and her agents and assigns, upon request. The record of each delivery shall include:

1. The retail dealers name, address, and permit number;
2. The name of the person who placed the order and the date, time, and method of order;

3. The name of the employee or delivery agent making the delivery and the date, time, and address of the delivery;

4. The type, brand, and quantity of each alcoholic beverage delivered; and

5. The name, date of birth, and signature of the person that received the delivery.

I. Parishes and Municipalities may require and issue local direct delivery of alcohol permits similar to those issued by the Commissioner of Alcohol and Tobacco Control.

J. All persons delivering alcoholic beverages under an alcoholic beverage permit shall be twenty-one (21) years of age or older, be the permittee or their employee or agents for which the permittee is required to file an Internal Revenue Service Form W-2 or 1099.

K. Persons delivering alcoholic beverages under an alcoholic beverage delivery permit shall refuse delivery and return the alcoholic beverages to the place of purchase if:

1. The recipient does not produce a valid and current form of identification as identified in section G (5) of this regulation;

2. There is reason to doubt the authenticity or correctness of the recipient's identification;

3. The recipient refuses to sign for the receipt of the delivery; or

4. The recipient is intoxicated.

L. If an alcohol retailer's alcohol permit is revoked, suspended, or lapsed, then that retailer's alcoholic beverage delivery permit shall also be considered to be revoked, suspended, or lapsed and delivery of alcohol beverages shall immediately cease for that particular retailer until permit is deemed valid and current.

M. Third Party delivery company or the third party platform shall maintain a commercial general liability insurance policy with a liquor liability endorsement with a minimum coverage amount of one million (\$1,000,000) dollars for the duration of the alcoholic beverage delivery permit and they shall provide proof of coverage to the retail dealer and Commissioner of Alcohol and Tobacco Control upon request.

N. The permittee shall require all delivery drivers to maintain vehicle general liability insurance on any and all vehicles permittee or its agent may use for deliveries as required by State law for the duration of the alcoholic beverage delivery permit and they shall provide proof of coverage to the Commissioner of the Office of Alcohol and Tobacco Control upon request.

O. Class B or Class AR retailers who engage the services of third party alcohol delivery service to deliver alcohol for them, must notify the Commissioner of the Office of Alcohol and

Tobacco Control in writing within ten (10) days of executing or terminating an agreement with a third party alcohol delivery service to deliver alcohol by providing a copy of the agreement and/or termination notice directly to the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:307(E).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§803. Package Store Retail Alcohol Delivery Permit

Retailers holding a valid class B retail liquor permit, retailers holding a valid class C retail liquor permit, and retailers holding a valid retail liquor permit that allows for off-premises consumption shall be allowed to apply for, obtain, and maintain a class P retail alcohol delivery permit pursuant to this particular regulation (§803) and they shall adhere to the following requirements in addition to the general requirements otherwise enumerated in this Chapter:

- A. The Commissioner of Alcohol and Tobacco shall collect the initial and annual licensure fee for class P retail alcohol delivery permits in the amount of two-hundred and fifty dollars and no cents and same shall expire and be renewable at the same time as the holder's alcohol permit.
- B. Each and every order for the delivery of alcoholic beverages received by a class P retail alcohol delivery permit holder shall include food with each order.
- C. All alcohol delivery transactions initiated by a consumer shall be processed, assembled, packaged, and fulfilled at the retailer's permitted physical premises wherein the order was received. All transactions can be processed, assembled, packaged, and fulfilled by the permittee, a W-2 employee of the permittee, a third party, a third party platform, or an authorized agent.
- D. Deliveries to consumers shall only be made by the permittee, a W-2 employee of the permittee, a third party, a third party platform, or an authorized agent.
- E. Alcoholic beverages shall not be delivered without verifying the identity and age of the recipient by reading a valid state-issued photo identification card, valid military identification card, valid passport of the person, or through the use of a real-time electronic age verification device or application shall be approved by the Commissioner of Alcohol and Tobacco Control.
- F. Notwithstanding any law, rule, or regulation to the contrary, the permittee may use electronic means to market, receive, and process orders for alcohol products.

G. The permittee may market, receive, and process orders for alcohol products using electronic means owned, operated, and maintained by a third party, provided that:

1. The permittee maintains ultimate control and responsibility over the sales transaction, the transfer of the physical possession of the alcoholic beverages, and the collection and remittance of all applicable state and local taxes;
2. The permittee retains the sole discretion to determine whether to accept and complete an order or reject it and the permittee, or a W-2 employee of the permittee, reviews, and accepts or rejects each order;
3. The permittee retains the independence to determine which alcoholic beverages are made available through electronic means and which alcoholic beverages are made available for delivery to the consumer either at their licensed physical premises itself or at another address designated by the consumer;
4. The permittee independently sets the price of alcoholic beverages being offered for delivery;
5. Any credit or debit card information provided by a consumer to the third party for the purpose of transacting a purchase is automatically directed to the permittee such that the transaction takes place between the consumer and the permittee and the permittee appears as the retail dealer at the time of purchase and the receipt;
6. The permittee, or a W-2 employee of the permittee, shall process at the physical premises that accepted the orders and payments initiated by a consumer;
7. The relationship between the permittee and the third party shall be one of independent contractors and neither party shall be deemed the employee, or joint venture of the other party under any circumstances or for any purposes;
8. The third party shall not deal, handle, sell, offer for sale, or possess for sale alcoholic beverages or process payments for the sale of alcoholic beverages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:307(E).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§805. Restaurant Retail Alcohol Delivery Permit

Retailers holding a class AR retail liquor permit shall be allowed to apply for and obtain a class R retail alcohol delivery permit pursuant to this particular regulation (§805) and they shall adhere to the following requirements in addition to the general requirements otherwise enumerated in this chapter:

A. The Commissioner of Alcohol and Tobacco shall collect an initial and annual licensure fee for class R retail alcohol delivery permits in the amount of two-hundred and fifty dollars and no cents and same shall expire and be renewable at the same time as the holder's alcohol permit.

B. Only malt beverages, sparkling wine, and still wine, as defined in R.S. 26:2 and 241 may be offered for delivery. No alcohol beverages shall be offered for curbside pickup unless otherwise authorized under law, a separate rule, or guidance. All deliveries containing alcoholic beverages shall also include food. Alcohol and food purchased from a class AR retailer for delivery shall be included in its gross average monthly sales figures for purposes ensuring that an AR retailer meets its fifty (50%) percent food or food items requirement under R.S. 26:73(C)(1)(a). However, pursuant to R.S. 26:73(C)(2), sparkling or still wine delivered by the bottle in conjunction with food shall not be considered an alcoholic beverage when determining gross revenue for purposes of R.S. 26:73(C)(1)(a).

C. No alcohol shall be delivered more than ten (10) miles from the place of purchased for any parish having a population greater than one hundred thousand (100,000) according to the latest federal decennial census. Additionally, no alcohol shall be delivered more than twenty-five (25) miles from the place of purchase for any parish having a population of less than one hundred thousand (100,000) according to the latest federal decennial census.

D. All alcohol delivery transactions initiated by a consumer shall be processed, assembled, packaged, and fulfilled at the retailer's permitted physical premises wherein the order was received by the permittee or a W-2 employee of the permittee.

E. Deliveries to consumers shall be made by the permittee or agents for which the permittee is required to file an Internal Revenue Service Form W-2 or 1099.

F. At the time of delivery of alcoholic beverages, the permittee shall obtain the recipient's signature and verify the age of the recipient through the use of an electronic age verification device or combination of devices that shall be approved by the Commissioner of Alcohol and Tobacco Control. Such devices shall be capable of all of the following:

1. Verifying proof of age through technology of a magnetic card reader or an alternative technology capable of verifying proof of age;
2. Reading a valid state-issued driver's license, a valid state-issued identification card, a valid military identification card, or a valid passport;
3. Storing the recipient's name, age, date of birth, the expiration date of the identification, and the date and time that the identification was scanned.

G. Notwithstanding any law, rule, or regulation to the contrary, the permittee may use electronic means to market, receive, and process orders for alcohol products.

H. The permittee may market, receive, and process orders for alcohol products using electronic means owned, operated, and maintained by a third party, provided that:

1. The permittee maintains ultimate control and responsibility over the sales transaction, the transfer of the physical possession of the alcoholic beverages, and the collection and remittance of all applicable state and local taxes;
2. The permittee retains the sole discretion to determine whether to accept and complete an order or reject it and the permittee or agents for which the retailer is required to file an Internal Revenue Service Form W-2 or 1099, shall review and accept or reject each order;
3. The permittee retains the independence to determine which alcoholic beverages are made available through electronic means and which alcoholic beverages are made available for delivery to the consumer at the licensed physical premises itself or at another address designated by the consumer;
4. The permittee independently sets the price of alcoholic beverages being offered for delivery;
5. Any credit or debit card information provided by a consumer to the third party for the purpose of transacting a purchase is automatically directed to the permittee such that the

transaction takes place between the consumer and the permittee and the permittee appears as the retail dealer at the time of purchase and a receipt;

6. The permittee, or a W-2 employee of the permittee, processes at the physical premises that accepted the order, all payments initiated by a consumer and assembles, packages, and fulfills each order at the same physical premises;

7. Deliveries to consumers shall be made by the permittee or agents for which the retailer is required to file an Internal Revenue Service Form W-2 or 1099.

8. The relationship between the permittee and the third party shall be one of independent contractors and neither party shall be deemed the employee, or joint venture of the other party under any circumstances or for any purposes;

9. The third party shall not deal, handle, sell, offer or sale, or possess for sale alcoholic beverages or process payments for the sale of alcoholic beverages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:307(E).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§807. Third Party Alcohol Delivery Service Permit

Third party alcohol delivery service companies desiring to deliver alcohol to consumers in connection with a delivery agreement with a retail dealer possessing valid class AR or B retail permits shall first apply for and obtain a class T third party alcohol delivery permit pursuant to this particular regulation (§807) and they shall adhere to the following requirements in addition to the general requirements otherwise enumerated in this chapter:

A. The Commissioner of Alcohol and Tobacco shall collect an initial and annual fee for third party alcohol delivery service permits in the amount of one thousand five-hundred dollars and no cents and same shall expire and be renewable annually from date of first issuance.

B. Third party company or platform may enter into an alcoholic beverage service delivery agreements with retail dealers possessing valid class AR or B retail permits with the Office of Alcohol and Tobacco Control that provide for the use by the retailer of an internet or mobile application or similar technology platform to facilitate the sale of alcoholic beverages for

delivery to consumers for personal consumption and the third party alcohol delivery service permittee may deliver the alcoholic beverages so facilitated to the consumer. C. Only malt beverages, sparkling wine, and still wine, as defined in R.S. 26:2 and 241 may be offered for delivery by third party delivery companies from the licensed premises of a restaurant Class AR permit holder. Alcoholic beverages as defined by R.S. 26:2(1) and 26:241(1)(a) may be offered for delivery by a third party delivery permittee from the licensed premises of package house-Class B permit holder. No alcoholic beverages shall be offered for curbside pickup unless otherwise authorized under the law or a separate rule or guidance. All delivery orders containing alcoholic beverage shall also contain food.

D. No alcohol shall be delivered more than ten (10) miles from the place of purchased for any parish having a population greater than one hundred thousand (100,000) according to the latest federal decennial census. Additionally, no alcohol shall be delivered more than twenty-five (25) miles from the place of purchase for any parish having a population of less than one hundred thousand (100,000) according to the latest federal decennial census.

E. No alcohol shall be purchased or sold by the third party delivery service. The third party delivery service is prohibited from charging a markup price for alcohol sales, however third party delivery service may charge a reasonable delivery fee. All transactions must be completed by the retail dealer.

F. Third party company or platform shall be licensed to do business in the State of Louisiana, use their own employees or agents for which the third party delivery company or the third party platform is required to file an Internal Revenue Service Form W-2 or 1099 for delivery, be able to monitor the routes of their employees during deliveries, and conduct screenings and background checks of all employees that will deliver alcoholic beverages.

G. Third party company or platform shall maintain a general liability insurance policy with a liquor liability endorsement in an amount no less than one million dollars per occurrence for the duration of every agreement maintained with a retail dealer and they shall provide proof of coverage to every retail dealer with whom they have an agreement and notice to the retail dealer and the Commissioner of the Office of Alcohol and Tobacco Control if the coverage lapses or is cancelled.

H. The retail dealer shall manage and control the sale of alcoholic beverages and shall accept or reject all orders placed for alcoholic beverages through the third party delivery service permittee's internet or mobile application or similar technology, collect and remit all applicable state and local taxes, determine the alcoholic beverages offered for sale through the third party delivery service permittee's internet or mobile application or similar technology, and determine the price at which alcoholic beverages are offered for sale or sold through the third party delivery service permittee's internet or mobile application or similar technology.

1. Any credit or debit card information provided by a consumer to the third party permittee for the purpose of transacting a purchase with a retail permittee shall automatically be directed to the retail permittee to ensure that the retail permittee is:

- (a) the retail dealer at the time of purchase;
- (b) is shown on the receipt; and
- (c) receives the payment from the consumer.

2. The retail dealer may pay a third party delivery company or third party platform a fee for its service.

I. The third party alcohol delivery service permittee may not markup the price of alcoholic beverages and may not sell or resell alcoholic beverages. The third party delivery company or platform may charge retailer dealers a reasonable delivery fee for the orders delivered by the third party and may act as an agent for the retail dealer in the collection of payments from the sale of alcoholic beverages, but the full amount of each order must be handled in a manner that gives the retail dealer control over the ultimate receipt of the payment from the consumer.

1. At the time of delivery, alcoholic beverages shall be priced at the same or equal price as if offered for sale by the retailer directly from its licensed location.

2. Alcoholic beverages' prices advertised higher than those offered directly by retailers and/or receipts of alcohol beverages for sale listing prices higher than that offered directly by retailers through third party companies or platforms shall be deemed an impermissible mark-up.

J. The third party alcohol delivery service permittee may receive orders and accept payment via the internet or through a mobile application or similar technology.

K. At the time of delivery of alcoholic beverages, the third party alcohol delivery service permittee shall obtain the recipient's signature and verify the age of the recipient through the use of an electronic age verification device or combination of devices that shall be approved by the Commissioner of Alcohol and Tobacco Control. Such devices shall be capable of all of the following:

1. Verifying proof of age through technology of a magnetic card reader or an alternative technology capable of verifying proof of age;
2. Reading a valid state-issued driver's license, a valid state-issued identification card, a valid military identification card, or a valid passport;
3. Storing the recipient's name, age, date of birth, the expiration date of the identification, and the date and time that the identification was scanned;

L. A third party alcohol delivery service permittee who delivers alcoholic beverages, but fails to comply with the provisions of section I immediately above §801(K) and any other applicable rules contained in this chapter, shall be vicariously liable for damages incurred as a result of the failure to comply.

M. Third party alcohol delivery service permittees must maintain and provide the Commissioner of Alcohol and Tobacco Control with a list of retailers they have entered into agreements with within sixty days of receiving their permit and at each renewal. An up-to-date version of the retailer list shall be made available upon demand by the Commissioner and her agents and assigns.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:307(E).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule has a negligible impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Small Business Analysis

Pursuant to R.S. 49:965.6, methods for reduction of the impact on small business, as defined in the Regulatory Flexibility Act, have been considered when creating this proposed Rule.

This proposed Rule is not anticipated to have an adverse impact on small businesses; therefore, a Small Business Economic Impact Statement has not been prepared.

Poverty Impact Statement

The proposed Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments to R. Danielle Barringer, Office of Alcohol and Tobacco Control, 7979 Independence Blvd., Suite 101, Baton Rouge, Louisiana

70806, no later than Friday, October 23, 2020. She is responsible for responding to inquiries regarding this proposed Rule.

Ernest P. Legier, Jr.
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rules may result in additional marginal expenditures in FY 21 and subsequent FYs by an indeterminable amount associated with the regulation of alcohol delivery, such as permit review and recordkeeping, for the LA Dept. of Revenue, Office of Alcohol and Tobacco Control (ATC) that will be offset in part or in whole by revenues derived from regulation activities (see Part II below). The proposed rules outline the types of permits for alcohol delivery, as well as the requirements of permittees delivering alcohol.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rules will increase SGR collections in FY 21 and subsequent FYs by an indeterminable amount. Included in the proposed rules are fees for Package Store Retail Alcohol Delivery Permits (\$250 annually), Restaurant Retail Alcohol Delivery Permits (\$250 annually), and Third-Party Alcohol Delivery Service Permits (\$1,500 annually). Because permitting of such firms is a new activity, this represents new revenue for ATC. Because it is unknown how many firms will engage in alcohol delivery, as well as the types of permits they will obtain, the revenue increase is indeterminable.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)

The proposed rules will require firms to pay permit fees that are indeterminable in the aggregate, as it is unknown how many firms engage in alcohol delivery and which permits they will acquire. Any fees paid by firms will be equivalent to those outlined in Part II above. Furthermore, the proposed rules outline requirements for firms delivering alcohol, such as recordkeeping, age verification, maintenance of insurance, and limitations on the types of alcohol eligible for delivery. To the extent firms do not already comply with the rules being promulgated, they may incur expenses associated with achieving compliance. The extent of the expenditures firms may incur with achieving compliance is indeterminable and dependent upon the number of firms who are non-compliant, as well the respective cost of remediating their non-compliance.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules will not affect competition or employment.