

DECLARATION OF EMERGENCY

Department of Revenue Office of Alcohol and Tobacco Control

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

The Louisiana Department of Revenue, Office of Alcohol and Tobacco Control, pursuant to the emergency rulemaking authority granted by R.S. 49:953(B) of the Administrative Procedure Act (R.S. 49:950, et seq.) and the specific rule making authority granted by R.S. 26:153(D), R.S. 26:307(E), R.S. 26:271.2(2)(b), R.S. 26:271.4, and 26:309(I), hereby adopts the following Emergency Rule for the protection of public health. The effective date of this Rule is upon signature.

The Louisiana Department of Revenue, Office of Alcohol and Tobacco Control, finds it necessary to make immediate changes to the Louisiana Administrative Code given the need for regulation of the direct delivery of alcohol. The following regulations will give the ATC the ability to properly license and regulate the direct delivery of alcohol, which will affect the health of Louisiana citizens and give the commissioner of the Office of Alcohol and Tobacco Control the ability to make critical decisions that protect human health. This rule creates §801 through §807 to address direct delivery matters not otherwise addressed by existing law or regulation and to resolve differences where the provisions of Act 433 and Act 436 of the 2019 Regular Session either overlap or conflict.

This Rule shall have the force and effect of law upon signature and will remain in effect 120 days, unless renewed by the commissioner of alcohol and tobacco control or until permanent rules are promulgated in accordance with law.

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 are 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 Alcohol Delivery Service permittees shall be allowed to deliver within ten miles from the place of purchase, irrespective of parish boundaries.

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 fulfill 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 hours that the retailers physical premises is open to the public;
4. without verifying that the recipient is not visibly intoxicated;
5. without obtaining the signature of the recipient verifying 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 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 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 delivery permit shall be eighteen years of age or older, be the permittee or a W-2 employee of the delivery permit holder, and possess a valid server permit as provided in R.S. 26:931 et seq.

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 alcoholic beverages shall immediately cease.

M. They shall maintain a commercial general liability insurance policy with a minimum coverage amount of one-hundred thousand dollars 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.

N. They shall require all delivery drivers to maintain vehicle general liability insurance on any and all vehicles they 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 and Class AR retailers who engage the services of a 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 days of executing or terminating an agreement with a third party alcohol delivery service to deliver alcohol by providing her with a copy of the agreement and/or termination notice.

§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 an 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 by the permittee or a W-2 employee of the permittee.

D. Deliveries to consumers shall only be made by the permittee or a W-2 employee of the retailer.

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 that shall be approved by the Commissioner of Alcohol and Tobacco Control; and

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 on the 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 a W-2 employee of the permittee;

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

9. 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.

§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 beer, wine, and sparkling wine alcoholic beverages may be offered for delivery, no alcohol shall be delivered more than ten miles from the place of purchase, no alcoholic beverages shall be offered for curbside pickup, and each and every order for the delivery of alcoholic beverages shall be composed of at least a thirty percent (30%) food as computed from total cost paid. 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 sixty percent food or food items requirement under R.S. 26:73(H). However, pursuant to R.S. 26:73(B)(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(H).

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 by the permittee or a W-2 employee of the permittee.

D. Deliveries to consumers shall only be made by the permittee or a W-2 employee of the retailer.

E. 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.

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, 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 on the 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 a W-2 employee of the permittee;

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

9. 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.

§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 service 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 licensure 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. They may enter into third party 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 beer, wine, and sparkling wine alcoholic beverages provided by the retail dealer may be offered for delivery, no alcohol shall be delivered more than ten miles from the place of purchase, and each and every order for the delivery of alcoholic beverages shall be composed of at least thirty percent (30%) food as computed from total cost paid for each class AR retailer order and each class B retailer order shall contain 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 sixty percent food or food items requirement under R.S. 26:73(H). However, pursuant to R.S. 26:73(B)(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(H).

D. They shall be licensed to do business in the State of Louisiana, use their own W-2 employees for delivery, be able to monitor the routes of their employees during deliveries, and conduct an interview and background check of all employees that will deliver alcoholic beverages.

E. They 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 they maintain 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.

F. 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.

G. The third party alcohol delivery service permittee 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.

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

I. 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.

J. A third party alcohol delivery service permittee who delivers alcoholic beverages, but fails to comply with the provisions of section I immediately above or §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.

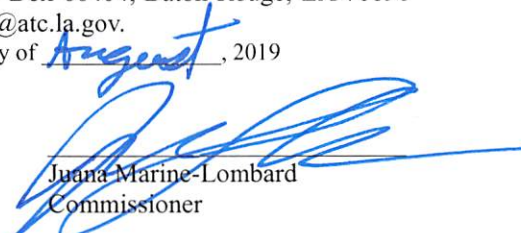
K. Third party alcohol delivery service permittees must maintain and provide the Commissioner of Alcohol and Tobacco Control with a list of retailers they have entered into agreements with within sixty days of receiving their permit and at each renewal. An up-to-date version of the retailer list shall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

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 43:1556 (June 2019).

Interested persons may submit written comments to Commissioner Juana Marine-Lombard, Office of Alcohol and Tobacco Control, P.O. Box 66404, Baton Rouge, LA 70896 or at legal.department@atc.la.gov.

Signed this 30 day of August, 2019


Juana Marine-Lombard
Commissioner