

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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Contact Phone 501-682-1105

Name of Rule Hard Cider Manufacturing Operations - ABC Rule 2.77

Newspaper Name Arkansas Democrat Gazette

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

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

MARKUP COPY

SUBTITLE J – HARD CIDER MANUFACTURER OPERATIONS

Section 2.77 “Hard Cider Manufacturer” means an establishment in Arkansas that does not produce for sale more than forty-five thousand (45,000) barrels per year of hard cider, the alcoholic content of which does not exceed twenty-one percent (21%); manufactures at its licensed facility no less than thirty-five percent (35%) of its hard cider to be sold in the state; and has a permit to manufacture, import, transport, store, and sell to a wholesaler, jobber, distributor, or retailer hard cider to be used and sold for beverage purposes as authorized under this section. In addition, the hard cider manufacturer permittee may include 1 tap room at its facility and may operate a restaurant in conjunction with its tap room, may maintain one (1) separate manufacturing facility, may export hard cider manufactured by the manufacturer out of the state, and may sell for on-premises and off-premises consumption as provided in ACA § 3-4-611.

Section 2.78 Hard Cider Manufacturer Permit Application. An application under this section shall: (1) Be in writing; (2) Be verified; (3) State in detail information concerning the applicant for the permit and the premises to be used by the applicant as required by the director; (4) Be accompanied by a certified check, cash, or postal money order for the amount required in subsection (f) of ACA 3-4-611; and shall be in accordance with all other application requirements found in ABC Rule section 1.20.

Section 2.79 Floor Plan to be Furnished with Application. Each person applying for a hard cider manufacturer permit as authorized by law shall submit with the application a floor plan of the permitted business that will identify the portion of the building that will be operated as the manufacturing facility and the portion that will be operated as the tap room or restaurant, if any. The manufacturing facility portion diagram will also show the size and location of various tanks or other devices that will be used to manufacture and store the products manufactured at such manufacturing facility. In addition, the applicant for the hard cider manufacturer permit must show or declare in his application, to the standards set by the Director as part of the application process, that he has met or will be able to meet the standards for hard cider manufacturing operations as set forth by the applicable Alcohol and Tobacco Tax and Trade Bureau regulations that may apply to the operation of a hard cider manufacturer.

Section 2.80 Separate Hard Cider Manufacturing Facility. A hard cider manufacturer permittee may maintain one (1) separate manufacturing facility for the production or storage of hard cider as needed to meet demand, except that each facility used by the hard cider manufacturer permittee shall not in the aggregate produce more than forty-five thousand (45,000) barrels of hard cider per year. Hard cider manufactured by a separate manufacturing facility of a hard cider manufacturing permittee shall be:

- (i) Sold to a licensed wholesaler; or
- (ii) Transported:
 - (a) From the separate manufacturing facility to a facility commonly owned by the owner of the separate manufacturing facility for retail sale for consumption on or off the licensed premises; and

(b) To the separate manufacturing facility from a facility commonly owned by the owner of the separate manufacturing facility for storage, production, or packaging.

Section 2.80.1 Separate Hard Cider Manufacturing Facility - Application. A hard cider manufacturer permittee shall notify the Alcoholic Beverage Control of its intent to operate a separate hard cider manufacturing facility by providing the following documentation:

- (1) A completed Separate Hard Cider Manufacturer Facility application form;
- (2) A floor plan of the proposed premises;
- (3) At least four (4) photographs of the proposed premises, depicting the front, back, and sides of the building;
- (4) Copies of any permits required by the Alcohol and Tobacco Tax and Trade Bureau for production at the location, if applicable; and
- (5) Certification that the proposed facility is in compliance with any local zoning requirements for the location.

Upon receipt of the required documentation, the Alcoholic Beverage Control shall issue an endorsement to the hard cider manufacturer permittee. The endorsement shall be posted on the premises in compliance with the specifications set forth in Section 1.37.

Section 2.81 Hard Cider Manufacturing Tap Room - Application. The hard cider manufacturer permittee may include 1 tap room at its main facility and may operate a restaurant in conjunction with its tap room. The hard cider manufacturer permittee shall complete an application for a hard cider manufacturer tap room. The same posting, publication and notice requirements of applicants for a retail beer permit shall apply to hard cider manufacturer tap room applicants. Hard cider manufacturer permittees shall designate a managing agent for the tap room and permittees shall notify the Alcoholic Beverage Control of any change in the managing agent. The managing agent shall either live in the same county as the location of the tap room or within thirty five (35) miles of the tap room. Upon submission to the ABC of the required application and completion of the posting, publication, and notice requirements, the Director of the ABC may issue an endorsement to the Hard Cider Manufacturer Permittee for the operation of a Hard Cider Manufacturer Tap Room. The endorsement shall be posted on the premises of the tap room in compliance with the specifications set forth in Section 1.37. If the Director refuses to issue the Tap Room endorsement to the hard cider manufacturer permittee, the Director's decision may be appealed to the Alcoholic Beverage Control Board pursuant to Section 1.51.

Section 2.82 Distribution of Hard Cider Manufacturer Products. A Hard Cider Manufacturer may sell, deliver, or transport hard cider manufactured by the hard cider manufacturer to:

- Wholesalers;
- Retail license holders;
- Small brewery license holders;
- Small winery license holders;
- Microbrewery-restaurant license holders; and
- Distillers;

A hard cider manufacturer may only sell, deliver, or transport hard cider produced on the premises of the hard cider manufacturer under this section if the total production of the permitted hard cider manufacturer does not exceed fifteen thousand (15,000) barrels of hard

cider per year from all facilities under common ownership with the hard cider manufacturer. Each permitted hard cider manufacturer shall submit documentation of production each year to renew the permit with the Alcoholic Beverage Control Division.

A hard cider manufacturer may distribute no more than fifteen thousand (15,000) barrels per year.

To sell and transport hard cider to the permittees listed above under this section, the hard cider manufacturing permit holder shall obtain a hard cider manufacturing wholesale permit.

Section 2.83 Disposition of Hard Cider Manufacturer Products.

(1) A hard cider manufacturer permittee may sell for on-premises or off-premises consumption by the drink or by the package hard cider manufactured by the hard cider manufacturer if the manufacturer provides tours through its facility; and if during all legal operating hours in which business is normally and legally conducted on the premises. Only sealed containers may be removed from the premises.

(2) A hard cider manufacturer permittee may also sell for on-premises consumption hard cider purchased from wholesalers licensed by the state, wine, beer, and malt beverages purchased from wholesalers;

(3) If a hard cider manufacturer permittee has an endorsed taproom, it may sell for on-premises consumption spirituous liquors (authorized and effective only in cities and counties, or portions of cities and counties, in which the manufacture or sale of intoxicating liquor is not prohibited as a result of a local option election held under Initiated Act No. 1 of 1942, §§ 3-8-201 — 3-8-203 and 3-8-205 — 3-8-209, and in which the sale of alcoholic beverages for on-premises consumption has been approved by a majority vote at a referendum election as provided).

(4) A hard cider manufacturer permittee may donate hard cider it manufactures to a charitable or non-profit corporation on the same basis as a manufacturer under the provisions of Section 2.28(6) of these Regulations or the hard cider manufacturer may sell for resale the products that it manufactures to charitable or non-profit organizations holding valid temporary permits as provided for by the Alcoholic Beverage Control Division, except they may not sell to non-profit organizations holding private club licenses except as provided in subparagraph number 5 below of this Section. The sale of said products shall be limited to the duration of the particular temporary permitted activity

(5) A hard cider manufacturer permittee may sell at retail hard cider manufactured by the manufacturer at fairs and festivals with the permission and the consent of the management of the events if the sale occurs in a wet area.

Section 2.84 Samples and Tasting Events May be Offered. The hard cider manufacturer permittee may serve on its premises complimentary samples of hard cider manufactured by the manufacturer and may conduct hard cider-tasting events for educational or promotional purposes. Before an authorization for a tasting event is issued, the manufacturer shall provide written notice of the hard cider-tasting event at least two (2) weeks before the event. A hard cider-tasting event shall be held in any facility licensed by the division in a wet territory of this state.

SUMMARY OF SUBSTANTIVE CHANGES

Subtitle J is a new addition resulting from Act 691 of 2019. The Act establishes the hard cider manufacturing permit and operations, and this subtitle reflects those legislative changes.

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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 Hard Cider Manufacturer Operations (Title J, Rules 2.77- 2.84)

- | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|----------------------------------------|
| 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;
NA

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

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

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

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	<u> </u>
Federal Funds	<u> </u>
Cash Funds	<u> </u>
Special Revenue	<u> </u>
Other (Identify)	<u> </u>
Total	<u>0</u>

Next Fiscal Year

General Revenue	<u> </u>
Federal Funds	<u> </u>
Cash Funds	<u> </u>
Special Revenue	<u> </u>
Other (Identify)	<u> </u>
Total	<u>0</u>

(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?

No x

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.