

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 Title 2 Permits to Manufacture and Wholesale

Newspaper Name Arkansas Democrat Gazette

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

TITLE 2

REGULATIONS ~~RULES~~ APPLICABLE TO PERMITS TO MANUFACTURE AND WHOLESALE

SUBTITLE A – SCOPE

Section 2.10.2 “Casino licensee” means any individual, corporation, partnership, association, trust, or other entity holding a license issued by the Arkansas Racing Commission to conduct casino gaming at a casino. (Adopted 12-18-2019)

SUBTITLE C – CONDUCT OF BUSINESS OF MANUFACTURING OR WHOLESALEING CONTROLLED BEVERAGES

Section 2.13 *Wholesalers to Sell Only to Retailers; Hours of Sale for Wholesalers.* Any person holding a permit to sell controlled beverages at wholesale under any alcoholic beverage control law of the State of Arkansas shall sell such beverages only to a person holding a permit to sell such beverages at retail or to a casino licensee.

Wholesalers may sell controlled beverages to retailers and casino licensees on all days that retail liquor stores and casino licensees may sell controlled beverages to consumers, except that wholesalers shall not sell or deliver controlled beverages to or service retailers or casino licensees on Sundays or Christmas Day. The hours of sale shall be from 5:00 a.m. until the closing hours prescribed by state law or local ordinance for retail liquor stores. ~~Wholesalers may not, on Sundays, sell or deliver controlled beverages to or service those retail accounts that hold permits to sell controlled beverages on Sundays.~~ (Amended 128-187-201905)

Section 2.13.1 *Three-Tier System of Alcohol Distribution Defined; Violations of Prohibitions Subject to Penalty.*

- (2) The three-tier system of alcohol distribution consists of the three broad categories of the marketing chain. Alcoholic beverage manufacturers, including distilleries, breweries, importers or rectifiers, whether or not they hold a permit issued by the Arkansas Alcoholic Beverage Control Division, are considered the first tier of the distribution system. Alcoholic beverage wholesalers, licensed by the State of Arkansas, are considered the second tier of distribution. Alcoholic beverage retailers and casino licensees, licensed by the State of Arkansas, are considered the third tier of distribution.

**SUBTITLE E – PROHIBITED CONDUCT AND ACTIVITIES;
CANCELLATION, SUSPENSION AND REVOCATION
OF PERMITS TO MANUFACTURE AND WHOLESALE
CONTROLLED BEVERAGES.**

Section 2.28 Grounds for Cancellation, Suspension or Revocation of Permit.

Any permit issued pursuant to the authority of any alcoholic beverage control law of the State of Arkansas to manufacture or wholesale controlled beverages may be cancelled, revoked or suspended by the Director for any of the following reasons:

- (4) ***Gifts and Services to Retailers Prohibited.*** That the manufacturer or wholesaler gave an article or articles away of any value or use whatsoever, or provided any services for the use or benefit of any person holding a permit to sell controlled beverages at retail. It is specifically provided that the practice of pricing alcoholic beverages for a retail permit holder by a manufacturer or wholesaler is not considered a prohibited service under this Regulation.

In addition, the following practices are not prohibited gifts or services under this Regulation: manufacturers and wholesalers may provide point of sale advertising items and related services to retailers in conformity with current federal regulations as long as the furnished item does not constitute a real or secondary gift to the retailer receiving it; notwithstanding any other Regulation to the contrary, wholesalers may as a permitted service deliver product, provide keg-tapping and cooling equipment, delivery lines, and keg hook-up service to holders of temporary beer permits and temporary restaurant wine permits on any day such permits are in effect; wholesalers may provide keg-tapping and cooling equipment, delivery lines, and keg hook-up service to consumers at the request of and as a permitted service to retail permit holders in any area where the sale of alcoholic beverages is legal. ***Provided,*** a wholesaler may not deliver any alcoholic beverages to a consumer, and a wholesaler's employees may not be involved in any way with the dispensing of alcoholic beverages and serving such beverages to consumers.

Product Display means any alcoholic beverage racks, bins, barrels, casks, shelving or similar items the primary function of which is to hold and display consumer products.

A wholesaler may give or sell a "product display" to a retailer so long as:

- (1) the total value of all product displays provided by the wholesaler does not exceed three hundred dollars (\$300.00) per brand at any one time in any one retail outlet;

- (2) the display bears conspicuous and substantial advertising matter on the product. The name and address of the retailer may appear on the displays;
- (3) the giving or selling may be conditioned upon the purchase of the distilled spirits, wine, or malt beverages advertised on those displays in a quantity necessary for the initial completion of such display. No other condition can be imposed by the wholesaler on the retailer in order for the retailer to receive or obtain the product display.

A wholesaler may give or sell the following to a retailer or casino licensee:

Point of Sale Advertising Materials are items designed to be used within a retail establishment to attract consumer attention to the products of the industry member. Such materials include, but are not limited to: posters, placards, designs, inside signs (electrical, mechanical, or otherwise), window decorations, trays, coasters, mats, menu cards, foam scrapers, back bar mats, thermometers, clocks, calendars, and alcoholic beverage lists or menus.

Beer wholesalers may give, loan or sell inside signs (electrical, mechanical, or otherwise). Inside signs for spirits, wines or malt liquors shall not be loaned.

Consumer Advertising Specialties are items designed to be carried away by the consumer, such as trading stamps, non-alcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, and pencils. Umbrellas, caps, shirts, and visors shall be sold, not given, by the wholesalers to the retailer. The minimum value of umbrellas, caps, shirts and visors shall be the price paid by the industry member who first acquired the merchandise.

All point of sale advertising materials and consumer advertising specialties must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed. The name, logo, address and web site of the retailer may appear on the point of sale advertising material. Any non-promotional item that the business would buy in the normal course of business must be sold, not given, by a wholesaler to a retailer.

A wholesaler may, without violating the provisions of these Regulations, and subject to approval by the Director on such form provided by the Agency, no less than five (5) working days prior to the qualified event, rent for fifty dollars (\$50.00) per tap and associated cooling equipment or fair market value, whichever is greater, cooling and keg-tapping equipment, keg hook-up service

Section 2.31 Time Within Which Checks to be Deposited; Post-Dated Checks Prohibited; Insufficient Funds Checks. All checks given in payment for controlled beverages by a retailer or casino licensee to a wholesaler shall be deposited for payment by the wholesaler not later than the second banking day after the receipt of such check by the wholesaler. The failure of the wholesaler to deposit any such check for payment by the end of said banking day after receipt thereof shall be deemed a voluntary extension of credit by said wholesaler to the retailer or casino licensee and in violation of these Regulations. No wholesaler shall accept from any retailer or casino licensee a post-dated check. (Amended 12-18-2019)

Any retail permittee or private club permittee who has paid for alcoholic beverages purchased from any wholesaler with an insufficient funds check may be deemed delinquent.

Each wholesaler may report all delinquencies to the Administrator of the Division of Alcoholic Beverage Control in writing, including by electronic mail or facsimile transmission, within two (2) business days after such delinquencies occur. Such reports shall set forth the name, business address, and permit number of the permittee in default, the date of sale and delivery of such alcoholic beverages on account of which report is made, the amount of such delinquency, and the name, business address and permit number of the reporting wholesaler.

After receiving such delinquency report the Administrator shall notify all wholesalers by publishing a delinquent list which specifies an effective date for the list, and after said effective date no sales or deliveries of alcoholic beverages shall be made to any retail permittee or private club permittee whose name appears upon said delinquent list until such time as a notice of removal from such list has been given by the Administrator. After receiving notice of the delinquent list on which their name appears, no retail permittee or private club permittee may purchase or accept delivery of any alcoholic beverages from any wholesaler until the Administrator has given notice of removal from such list. After the effective date of the delinquent list, any retail permittee or private club permittee whose name appears on such list must pay the delinquency by cash, US Postal money order, postal note, express money order, cashier's check, certified check or bank exchange. Within twenty-four (24) hours of receipt of full payment the wholesaler shall report to the Administrator that payment in full has been made of any account previously reported delinquent. (Amended 8-19-09)

If a retail permittee or private club permittee contends that he or she has been placed on the delinquent list as the result of a dispute involving the quality or quantity of the alcoholic beverages, or any other factor involved in the sale of or purchase of same, the wholesaler, retail permittee or private club permittee may file a statement in writing setting forth in detail any reason why a delinquency should or should not be deemed to exist. The Administrator shall thereupon determine whether the retailer shall be removed from the delinquent list. (Amended 8-19-09)

Article 2 – TRANSPORTATION OF CONTROLLED BEVERAGES

Section 2.40 *Transportation of Controlled Beverages Except Beer Within Arkansas by Manufacturer or Liquor Wholesaler.* Any person holding a manufacturer's permit may transport controlled beverages within Arkansas from his premises or other warehouse in his own truck to the premises or other warehouse of a person holding a wholesaler's permit, but only pursuant to the sale of such controlled beverages to such wholesaler.

Any person holding a liquor wholesaler's permit may transport controlled beverages within Arkansas from his premises or other warehouse in his own truck to the premises of a person holding a retailer's permit or casino licensee, but only pursuant to a sale of such controlled beverages to such retailer or casino licensee.

When transporting controlled beverages pursuant to this Regulation, the manufacturer or liquor wholesaler shall comply with the requirements of Section 2.38 of these Regulations in regard to the issuance and possession of a bill of lading, invoice, or other memorandum of shipment. A copy of such bill of lading, invoice, or other memorandum of shipment shall be retained by the manufacturer or wholesaler transporting the controlled beverages and by the person to whom such beverages are sold and delivered for a period of three (3) years.

In addition, a manufacturer or liquor wholesaler may transport in his own truck controlled beverages owned by such manufacturer or liquor wholesaler from a freight depot to the premises or other warehouse of such manufacturer or liquor wholesaler, from one place of business for which such manufacturer or liquor wholesaler holds a permit to another, and upon the premises described in his permit.

Section 2.41 *Transportation of Controlled Beverages Within Arkansas by Contract Carrier or Private Carrier.* A contract carrier or private carrier as defined in Title 49 Section 303 of the United States Code holding an annual transportation permit may transport controlled beverages within the State of Arkansas from the premises or other warehouse of a manufacturer to the premises or other warehouse of a wholesaler, or from the premises or other warehouse of a wholesaler to the premises of a retailer or casino licensee pursuant to a sale by such manufacturer to a wholesaler, or a sale by such wholesaler to a retailer or casino licensee.

Such contract carrier or private carrier shall have a transportation -permit as provided in these Regulations and shall comply fully with Section 2.39 of these Regulations. All contract carriers or private carriers and the wholesaler or retailer to whom delivery is made shall retain a copy of the bill of lading, invoice, or other memorandum of shipment required by Section 2.39 of these Regulations for a period of three (3) years.

SUMMARY OF SUBSTANTIVE CHANGES

Amendment 100 to the Arkansas Constitution (“the Arkansas Casino Gaming Amendment of 2018”) established four potential Casino licensees under which controlled beverages may be sold or provided under a Casino permit and these Rules reflect the establishment and operation of a Casino permit.

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TITLE 2

RULES APPLICABLE TO PERMITS TO MANUFACTURE AND WHOLESALE

SUBTITLE A – SCOPE

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SUBTITLE C – CONDUCT OF BUSINESS OF MANUFACTURING OR WHOLESALE CONTROLLED BEVERAGES

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SUBTITLE F – CREDIT BY MANUFACTURERS OR WHOLESALERS

Section 2.29 Sales by Wholesaler to Retailer for Cash or Check Only. *No person holding a wholesale permit, under any alcoholic beverage control law of the State of Arkansas shall sell or offer to sell or deliver any controlled beverages to any person holding a retail permit or casino license except for cash or check to be paid at the time of delivery. (Amended 12-17-80)*

Section 2.30 Delivery of Controlled Beverages Must be Pursuant to Invoice.

Each delivery of controlled beverages by a wholesaler shall be accompanied by an invoice of sale bearing the name of the retailer or casino licensee together with a full description of the controlled beverages delivered, the price and terms of sale and the place and date of actual delivery. One (1) copy of such invoice shall be signed by the retailer, casino licensee or his agent, showing receipt of the merchandise and shall be retained by the wholesaler. Another copy shall be retained by the retailer. The wholesaler and retailer shall maintain a file of such copies for a period of three (3) years following the date of delivery.

Section 2.31 Time Within Which Checks to be Deposited; Post-Dated Checks Prohibited; Insufficient Funds Checks. All checks given in payment for controlled beverages by a retailer or casino licensee to a wholesaler shall be deposited for payment by the wholesaler not later than the second banking day after the receipt of such check by the wholesaler. The failure of the wholesaler to deposit any such check for payment by the end of said banking day after receipt thereof shall be deemed a voluntary extension of credit by said wholesaler to the retailer or casino licensee and in violation of these Regulations. No wholesaler shall accept from any retailer or casino licensee a post-dated check. (Amended 12-18-2019)

Any retail permittee or private club permittee who has paid for alcoholic beverages purchased from any wholesaler with an insufficient funds check may be deemed delinquent.

Each wholesaler may report all delinquencies to the Administrator of the Division of Alcoholic Beverage Control in writing, including by electronic mail or facsimile transmission, within two (2) business days after such delinquencies occur. Such reports shall set forth the name, business address, and permit number of the permittee in default, the date of sale and delivery of such alcoholic beverages on account of which report is made, the amount of such delinquency, and the name, business address and permit number of the reporting wholesaler.

After receiving such delinquency report the Administrator shall notify all wholesalers by publishing a delinquent list which specifies an effective date for the list, and after said effective date no sales or deliveries of alcoholic beverages shall be made to any retail permittee or private club permittee whose name appears upon said delinquent list until such time as a notice of removal from such list has been given by the Administrator. After receiving notice of the delinquent list on which their name appears, no retail permittee or private club

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 Title 2 Rules Applicable to Permits to Manufacture and Wholesale

- | | | |
|---|---|--|
| 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;
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.

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?

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.