ARKANSAS REGISTER

Proposed Rule Cover Sheet

Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov

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: ______

Contact Person: Doralee Chandler

Contact E-mail: Doralee.chandler@dfa.arkansas.gov

Contact Phone: 501-682-1105

Name of Rule: Rules 2.85 Distiller or Liquor Manufacturing

Newspaper Name: Arkansas Democrat Gazette

Date of Publishing: July 18, 2020, through July 20, 2020

Final Date for Public Comment: August 19, 2020

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

MARKUP COPY

SUBTITLE K – DISTILLERS OR MANUFACTURERS

Section 2.85 Disposition of Distiller or Liquor Manufacturer Products. Subject to all other product disposition rules, unless specifically allowed under this rule section, a distiller or liquor manufacturer is permitted to sell, serve, or otherwise dispose of controlled beverage product it produces or otherwise procures as follows:

(1) A distiller or manufacturer may sell, deliver, and transport any liquor product to a wholesaler or rectifier;

(2) A distiller or manufacturer may export any liquor product from this state;

(3) A distiller or manufacturer may sell for off-premises consumption on any day of the week, including Sunday, its own spiritous or vinous liquor product produced either at its in-state premises or its out-of-state premises;

(4) A distiller or manufacturer may sell for on-premises consumption its own liquor, wine, beer, or malt liquor product produced either at its in-state premises or its out-of-state premises;

(5) A distiller or manufacturer may sell for on-premises consumption any liquor product it purchases from an in-state permitted wholesaler;

(6) A distiller or manufacturer may serve for on-premises consumption complimentary samples of any liquor product it produces either in-state or out-of-state;

(7) If a distiller's or manufacturer's permitted location is in a wet territory, that distiller or manufacturer may sell by the drink or by the retail package any spiritous or vinous liquor product produced on the premises, provided that only sealed containers may be removed from the premises;

(8) A distiller or manufacturer may donate its liquor product 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;

(9) A distiller or manufacturer may sell for resale its liquor product to charitable or non-profit organizations holding valid temporary permits as provided for by the Alcoholic Beverage Control Division, except that a distiller or manufacturer may sell to non-profit organizations holding private club licenses only as provided in subparagraph number 5 below of this Section. Sales of a distiller's or manufacturer's liquor products to a temporary permitted location shall be limited to the duration of the temporary permitted activity.

SUMMARY OF SUBSTANTIVE CHANGES

Subtitle K is a new addition resulting from Act 740 of 2019. The Act amends the Distiller or Liquor Manufacturer permit and defines operations, and specifically authorizes off-premises and on-premises sales of vinous liquor and authorizes vinous liquor tasting events, 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 Distiller or Liquor Manufacturer Operations (Title K, Rule 2.85)

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No x☐

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 x No ☐

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes x No ☐

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		**Next Fiscal Year**	
General Revenue		General Revenue	
Federal Funds		Federal Funds	
Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)		Other (Identify)	
Total	0	Total	0

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

Current Fiscal Year		Next Fiscal Year	
General Revenue		General Revenue	
Federal Funds		Federal Funds	
Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)		Other (Identify)	
Total	0	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	Next Fiscal Year
$ 0	$ 0

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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	Next Fiscal Year
$ 0	$ 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.

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Other Subdivision or Department, If Applicable:

Previous Agency Name, If Applicable:

Contact Person: Doralee Chandler

Contact E-mail: Doralee.chandler@dfa.arkansas.gov

Contact Phone: 501-682-1105

Name of Rule: Title 2 Permits to Manufacture and Wholesale

Newspaper Name: Arkansas Democrat Gazette

Date of Publishing: July 18, 2020, through July 20, 2020

Final Date for Public Comment: August 19, 2020

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

PUBLIC NOTICE

In compliance with the Administrative Procedure Act of the State of Arkansas (Act 434 of 1967), notice is hereby given that the Alcoholic Beverage Control Board proposes to promulgate rules concerning the alcoholic beverage industry and medical marijuana industry in the state of Arkansas.

The Board will consider rules in the following areas: distiller or liquor manufacturer operations; permits to manufacture and wholesale alcoholic beverages; and medical marijuana transportation operational rules.

The public comment hearing will be held on August 19, 2020, at the hour of 9:00 a.m., in the fifth floor conference room, 1515 West Seventh Street, Little Rock, Arkansas. All interested parties will be afforded an opportunity to present their views at the hearing. The proposed rule is available on our website at: https://www.dfa.arkansas.gov/alcoholic-beverage-control

The Alcoholic Beverage Control Division will accept written comments on the proposed rule from July 18, 2020 to August 19, 2020. Please send comments to: The Alcoholic Beverage Control Division, 1515 WEST 7th, SUITE 503, LITTLE ROCK, AR 72201

All inquiries concerning the public comment hearing should be directed to Michael Lewis, Staff Attorney, ABC Division, 1515 West Seventh Street, Suite 503, Little Rock, Arkansas, 72201.

Doralee Chandler

DORALEE CHANDLER, DIRECTOR
ALCOHOLIC BEVERAGE CONTROL DIVISION
DEPARTMENT OF FINANCE & ADMINISTRATION

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 WHOLESALING 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 12~~8~~-18~~7~~-2019~~05~~)

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 and delivery lines to a retail permit holder for a special purpose. These provisions shall apply only to events outside of the normal course of the retail permit holder's ordinary course of business, not to exceed ten (10) days in duration.

It is specifically provided that if a manufacturer or wholesaler provides any of the services for a retailer allowable under this Section, he must provide the same service upon request to any other retailer who purchases the product; (Amended 8-16-11)

High Alcoholic Content Beverages – Stocking, Pricing, and Rotating A. Persons holding valid Arkansas wholesale alcoholic beverage permits, their agents, servants or employees, manufacturers' agents, importers and brokers may price, stock and rotate merchandise at retail premises only to the following extent:

(1) Wholesale dealers in spirituous and vinous beverages and malt beverages of more than five (5%) percent alcohol by weight may build stock displays of their product on the premises of retail dealers. Displays may in no way be part of the dealer's regular shelving. Wholesaler dealers may restock displays for a maximum period of one month after the initial display has been installed. They may not price the displays and are prohibited from pricing and stocking shelves on the premises of retail dealers and from affixing security tags. Industry members are granted authority to maintain the quality of their product on retail shelves, provided, that products purchased from other industry members are not altered or disturbed. The act of picking up alcoholic beverages in excess of five (5%) percent alcohol by weight for credit or exchange from a retail dealer by a wholesale dealer is considered a consignment sale and is therefore specifically prohibited.

(2) No wholesale dealer of spirituous and vinous beverages and malt beverages that are more than five (5%) percent alcohol by weight shall handle or move any alcoholic beverages delivered to the premises of a retail dealer by a competing wholesale dealer, nor shall a wholesale dealer reset all or any part of the alcoholic beverages situated on the premises of a retail dealer. A wholesale dealer may engage in the initial setting of products into a new store, previous to the new store opening for business.

(3) A wholesale dealer whose products are situated on the premises of a retail dealer must be given the opportunity to participate in any movement or reset of those products and no retail dealer shall, under any circumstances, exclude a wholesale dealer from such participation. The reset of all or any part of the alcoholic beverages situated on the premises of a retail dealer may not occur more than twice during any

calendar year. The stocking of cold boxes by a wholesale dealer in a retail dealer's premises is permitted.

(4) The stocking of shelves by a wholesale dealer of spirituous and vinous beverages in a retail dealer's premises is prohibited. The act of manually entering delivery or invoice information into the retail dealer's computer system at the time of delivery is prohibited.

(5) Except as authorized herein, employees of a wholesale dealer shall not, in connection with the sale or delivery of alcoholic beverages to a retail dealer, provide any services whatsoever to a retail dealer.

B. The Director of the Alcohol Beverage Control Division may suspend or revoke the permit or permits of a violator and may impose such other penalties or administrative remedies as are prescribed by law for violations of the Alcoholic Beverage Control Law.

Slotting Allowance Prohibited. Slotting allowances, defined as allowances paid by a manufacturer to a grocery store for making room for a product on the grocery store's shelves, are prohibited.
(Adopted 9-20-17)

(13) ***Advertising and Promotion Materials; Exception for Racing and Casino Facilities***. As an exception to Section 2.28(4) of these Regulations, any manufacturer or wholesaler may pay for the display or other presentation of advertising and promotion materials on or about the premises of the holder of a franchise or casino license issued ~~granted~~ by the Arkansas Racing Commission~~;—~~.
(Amended ~~8~~12-18~~5~~-2019)

SUBTITLE F – CREDIT BY MANUFACTURERS OR WHOLESALERS

Section 2.29 ***Sales by Wholesaler to Retailer for Cash or Check Only.*** *No person holding a who*lesale 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 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 license governed by the Racing Commission. Due to the fact wholesalers are only entitled to sell to Alcoholic Beverage Control permit locations, these Rules reflect the necessary changes to allow delivery of alcoholic beverages to casinos since they are not governed by Alcoholic Beverage Control.

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TITLE 2

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 WHOLESALING 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. (Amended 12-18-2019)

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 and delivery lines to a retail permit holder for a special purpose. These provisions shall apply only to events outside of the normal course of the retail permit holder's ordinary course of business, not to exceed ten (10) days in duration.

It is specifically provided that if a manufacturer or wholesaler provides any of the services for a retailer allowable under this Section, he must provide the same service upon request to any other retailer who purchases the product; (Amended 8-16-11)

High Alcoholic Content Beverages – Stocking, Pricing, and Rotating A. Persons holding valid Arkansas wholesale alcoholic beverage permits, their agents, servants or employees, manufacturers' agents, importers and brokers may price, stock and rotate merchandise at retail premises only to the following extent:

(1) Wholesale dealers in spirituous and vinous beverages and malt beverages of more than five (5%) percent alcohol by weight may build stock displays of their product on the premises of retail dealers. Displays may in no way be part of the dealer's regular shelving. Wholesaler dealers may restock displays for a maximum period of one month after the initial display has been installed. They may not price the displays and are prohibited from pricing and stocking shelves on the premises of retail dealers and from affixing security tags. Industry members are granted authority to maintain the quality of their product on retail shelves, provided, that products purchased from other industry members are not altered or disturbed. The act of picking up alcoholic beverages in excess of five (5%) percent alcohol by weight for credit or exchange from a retail dealer by a wholesale dealer is considered a consignment sale and is therefore specifically prohibited.

(2) No wholesale dealer of spirituous and vinous beverages and malt beverages that are more than five (5%) percent alcohol by weight shall handle or move any alcoholic beverages delivered to the premises of a retail dealer by a competing wholesale dealer, nor shall a wholesale dealer reset all or any part of the alcoholic beverages situated on the premises of a retail dealer. A wholesale dealer may engage in the initial setting of products into a new store, previous to the new store opening for business.

(3) A wholesale dealer whose products are situated on the premises of a retail dealer must be given the opportunity to participate in any movement or reset of those products and no retail dealer shall, under any circumstances, exclude a wholesale dealer from such participation. The reset of all or any part of the alcoholic beverages situated on the premises of a retail dealer may not occur more than twice during any calendar year. The stocking of cold boxes by a wholesale dealer in a retail dealer's premises is permitted.

(4) The stocking of shelves by a wholesale dealer of spirituous and vinous beverages in a retail dealer's premises is prohibited. The act of manually entering delivery or invoice information into the retail dealer's computer system at the time of delivery is prohibited.

(5) Except as authorized herein, employees of a wholesale dealer shall not, in connection with the sale or delivery of alcoholic beverages to a retail dealer, provide any services whatsoever to a retail dealer.

B. The Director of the Alcohol Beverage Control Division may suspend or revoke the permit or permits of a violator and may impose such other penalties or administrative remedies as are prescribed by law for violations of the Alcoholic Beverage Control Law.

Slotting Allowance Prohibited. Slotting allowances, defined as allowances paid by a manufacturer to a grocery store for making room for a product on the grocery store's shelves, are prohibited.
(Adopted 9-20-17)

(13) ***Advertising and Promotion Materials; Exception for Racing and Casino Facilities***. As an exception to Section 2.28(4) of these Regulations, any manufacturer or wholesaler may pay for the display or other presentation of advertising and promotion materials on or about the premises of the holder of a franchise or casino license issued by the Arkansas Racing Commission. (Amended 12-18-2019)

SUBTITLE F – CREDIT BY MANUFACTURERS OR WHOLESALERS

Section 2.29 ***Sales by Wholesaler to Retailer for Cash or Check Only.*** *No person holding a who*lesale 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

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)

SUBTITLE G – TRANSPORTATION AND STORAGE 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.

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 x☐

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 x No ☐

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes x No ☐

   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		**Next Fiscal Year**	
General Revenue		General Revenue	
Federal Funds		Federal Funds	
Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)		Other (Identify)	
Total	0	Total	0

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

Current Fiscal Year		**Next Fiscal Year**	
General Revenue		General Revenue	
Federal Funds		Federal Funds	
Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)		Other (Identify)	
Total	0	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	**Next Fiscal Year**
$ 0	$ 0

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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	**Next Fiscal Year**
$ 0	$ 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.