

State of Arkansas



Alcoholic Beverage Control Division

Rules

Alcoholic Beverage Control Board

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~ 2022-2023 ~



STATE OF ARKANSAS
**Department of Finance
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ALCOHOLIC BEVERAGE CONTROL

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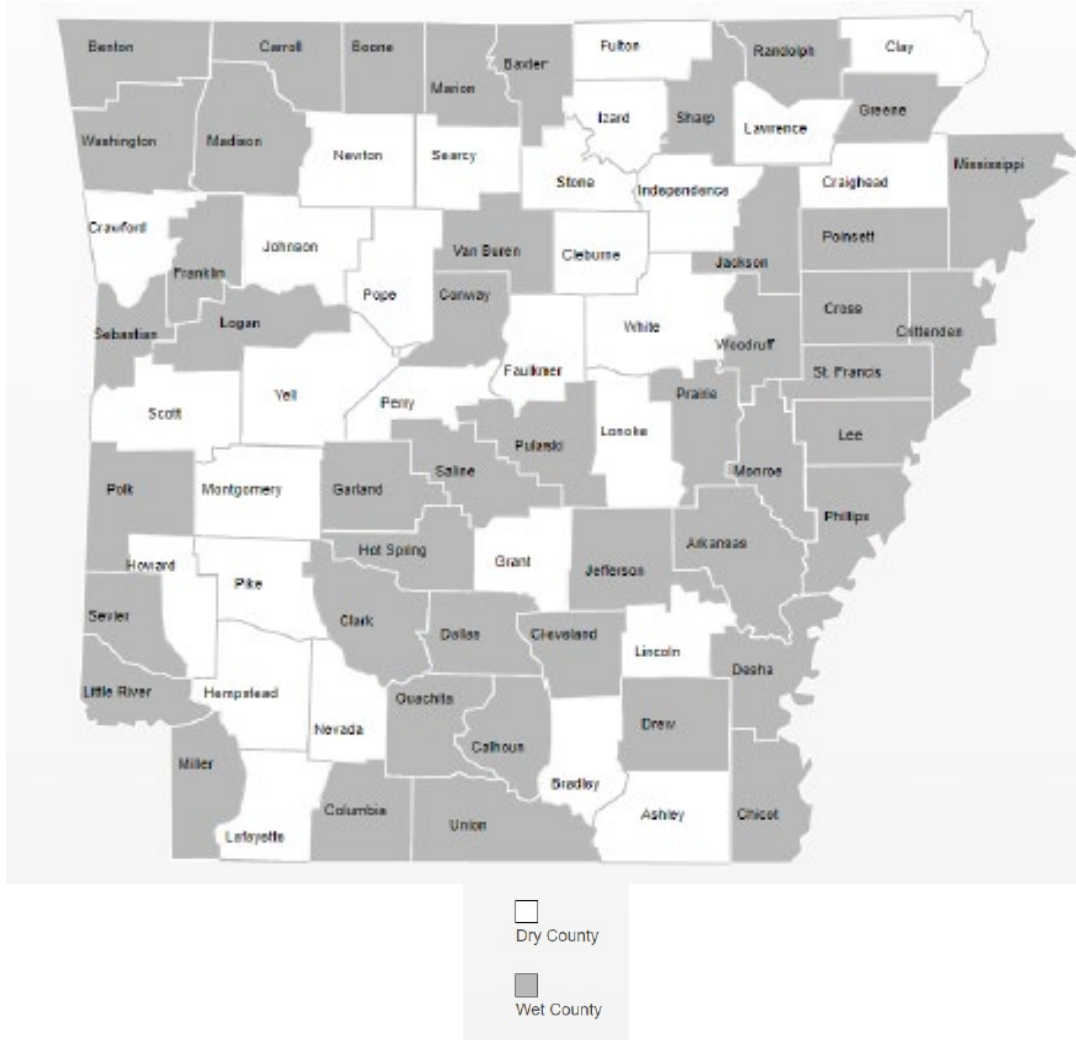
These Rules, having been promulgated by the Director of the Alcoholic Beverage Control Division and adopted by the Alcoholic Beverage Control Board, shall be in full force and effect until they are amended or repealed pursuant to law. All previous Rules adopted and published by the Arkansas Alcoholic Beverage Control Board are hereby superseded and repealed insofar as they may be different from or in conflict with the Rules herein.

It is intended by the Alcoholic Beverage Control Board that these Rules are severable and that if any of these Rules, or any parts thereof, shall be declared invalid, all other unaffected Rules, or parts thereof, shall remain in full force and effect.

An unofficial map, designating the wet and dry areas in the State of Arkansas through the results of the General Election of November 08, 2022, is contained on the following page. Additionally, at the back of the book, we have included the fine schedules, as provided for by law, for violations of Rules contained herein.

Doralee Chandler, Director
Alcoholic Beverage Control Division
January 10, 2023

UNOFFICIAL LOCAL OPTION ELECTION STATUS



The above map represents the unofficial "wet-dry" status of the counties in Arkansas. In a wet county, the retail sale and manufacture of alcoholic beverages is legal. In dry counties, only a private club permit may be issued. Most of the wet counties have dry areas within their borders such as townships or cities. These counties are designated on the map above by the county name being underlined; the respective dry areas in those counties are listed on the following page. Local option elections may be held during November General Elections pursuant to petition. Second and third level elections involving the public sale of liquor by the glass are not shown on this map. The official local option status of an area may be determined by reviewing records at a local County Clerk's office.

WET COUNTIES WITH THEIR RESPECTIVE EXCEPTIONS

Arkansas	No liquor – Town of Humphrey
Calhoun	Except Caswell Township
Carroll	Except Cabanal, Coin, Carrollton, Osage, Omega, Piney, Liberty, Dry Fork, Long Creek, Northeast Prairie, Northwest Prairie, Southwest Prairie, Northwest Hickory, North Yocum, South Yocum and Polo Townships; No liquor – Town of Green Forest
Cleveland	Except Hurricane, Whiteoak, Lee, Rison, Smith, Rowell and Redland Townships
Conway	Except Cedar Falls, Austin and Howard Townships
Crittenden	Except Tyronza Township; No liquor – Jasper Township
Cross	Except Hickory Ridge Township
Dallas	Except Manchester, Nix and Owen Townships
Drew	Except Marion, Bearhouse, Clear Creek, Collins, Cominto, Crook, Franklin, Saline, Spring Hill and Veasey Townships
Franklin	Except Prairie and Alix Townships; No liquor – Town of Branch
Garland	Except Farmer, Lee, Phillips, Baxter and Buckville Townships
Greene	Except Salem, Poland, Bryan and Collier Townships and Ward 4 of the City of Paragould
Jackson	Except Barren and Cow Lake Townships
Jefferson	Except Washington Township; No liquor – Town of Humphrey
Logan	Wet for Beer & Native Wine Only – Except Southern Judicial District (consisting of Barber, Blue Mountain, Boone, Cauthron, Petit Jean, Reveille, Sugar Creek, Tomlinson and Washburn Townships), Delaware, Ellsworth Townships and City of Caulksville
Mississippi	Except Town of Dell, City of Bassett and Dyess Township
Monroe	Except Roc Roe Township
Ouachita	Except Marion, Washington and Red Hill Townships and Bearden City
Poinsett	Except Towns of Tyronza, Fisher and Weiner, Greenwood Township (except City of Lepanto) and Willis Township (except City of Trumann)
Prairie	Except Des Arc Township
Pulaski	Except Gray and Union Townships, and North Little Rock Precincts Ward 4, 157 (4D, 4E, 4K), 156 (4M), 158 (4P & 4Q), and Precinct 614 (old Bayou Meto area)
St. Francis	Except City of Wheatley and City of Colt
Sebastian	DRY except City of Fort Smith (Upper Township)
Union	Except Henderson, Johnson, Norphlet and Jackson Townships; City of Strong; Union Precinct of Franklin Township and Three Creeks Precinct of Cornie Township, Wesson Township, El Dorado Township Country Box 3 and Box 4

Washington Except Cane Hill, Crawford, Greenland, Price, Starr Hill,
Valley, West Fork, White River, Winslow and Vineyard
Townships, City of Prairie Grove and City of Farmington
Woodruff Town of Augusta Wet for **Beer Only**

CITIES WITH OFF PREMISES SUNDAY SALES
(As of 01/10/23)

- City Limits of Briarcliff (Baxter County)
- City Limits of Mountain Home (Baxter County)
- City Limits of Norfolk (Baxter County)
- City Limits of Salesville (Baxter County)
- City Limits of Avoca (Benton County)
- City Limits of Bentonville (Benton County)
- City Limits of Decatur (Benton County)
- City Limits of Rogers (Benton County)
- City Limits of Diamond City (Boone County)
- City Limits of Lead Hill (Boone County)
- City Limits of Eureka Springs (Carroll County)
- City Limits of Arkansas City (Desha)
- City Limits of Altus (Franklin County)
- City Limits of Ozark (Franklin County)
- City Limits of Wiederkehr Village (Franklin County)
- City Limits of Morrison Bluff (Logan County)
- City Limits of Pyatt (Marion County)
- City Limits of Summit (Marion County)
- City Limits of Springdale (Washington County)
- City Limits of Tontitown (Washington County)

TITLE I

RULES APPLICABLE TO ALL CATEGORIES OF PERMITS

SUBTITLE A – SCOPE

Section 1.1 – *General*

Except where specifically noted, the Rules under this Title apply to all categories of permits issued by authority of the Alcoholic Beverage Control Division of the State of Arkansas. These Rules should be regarded as being supplementary to, and not in replacement of, the laws of this State relating to the matters covered by this Title. The Rules not applying to all categories of permits will be found under one of the more specific Titles that follow. In addition, Rules governing the Alcoholic Beverage Control Division administrative procedures in regard to all hearings and to the suspension or revocation of permits and registrations will be found under this Title.

SUBTITLE B – DEFINITIONS

The following definitions are applicable to all Rules under all of the Titles of these Rules:

Section 1.2 “*Administrator*” means the Administrator of the Division of Alcoholic Beverage Control which may also be referred to in these Rules or other laws as the Department of Alcoholic Beverage Control.

Section 1.3 “*Alcoholic Beverage Control Law of the State of Arkansas*” means any law of this State in regard to any beverage containing more than one-half of one percent (0.5%) alcohol by weight.

Section 1.4 “*Beer*” means any fermented liquor made from malt or any substitute therefor and having an alcohol content of not in excess of five percent (5%) or less than one-half of one percent (0.5%) alcohol by weight.

Section 1.5 “*Board*” means the Alcoholic Beverage Control Board of the State of Arkansas.

Section 1.6 “*Controlled Beverages*” means all beverages of any kind subject to rules under any alcoholic beverage control law of the State of Arkansas.

Section 1.7 “*Director*” means the Director (or Administrator) of the Alcoholic Beverage Control Division (ABC Division) of the State of Arkansas.

Section 1.8 “Invoice” means an invoice of sale bearing name of the seller together with a full description of the controlled beverages sold, the price and terms of sale and the place and date of actual delivery.

Section 1.9 “Light Wine” means the fermented juices of grapes, berries, or fruits and any other mixture containing the fermented juices of grapes, berries, or fruits, having an alcoholic content of between one-half of one percent (0.5%) and five percent (5%) alcohol by weight.

Section 1.10(A) “Malt Liquor” means liquor brewed from the fermented juices of grain.

Section 1.10(B) “Hard Cider” means liquor brewed from the fermented juices of fruit and containing more than three percent (3%) and not more than twenty-one percent (21%) of alcohol by weight.

Section 1.11 “Managing Agent” means the individual on behalf of a corporation who shall actually be in charge of and responsible for the day-to-day operation of the corporate business on the permitted premises. However, an individual permittee who is in actual charge of and responsible for the day-to-day operation of his business shall not be considered a managing agent.

Section 1.12 “Native Beverage” means brandy manufactured in the State of Arkansas from the juices of grapes, berries and other fruits or vegetables grown in the State of Arkansas. (Amended 8-15-07)

Section 1.13 “Permit” means any authorization issued pursuant to any alcoholic beverage control law of the State of Arkansas whether described by law or rule as a permit, license or otherwise.

Section 1.14 “Permittee” means the person to whom the permit to do business is issued.

Section 1.15 “Person” means any natural person, partnership, association, corporation, syndicate, or company.

Section 1.16 “Premises” means any place, building, or structure, which is shown on a floor plan or site plan submitted to and approved by the Alcoholic Beverage Control Division for the sale or consumption of alcoholic beverages. (Amended 8-19-93)

Section 1.17 “Spirituous” means liquor distilled from the fermented juices of grains, fruits or vegetables containing more than twenty-one percent (21%) alcohol by weight, or any other liquids containing more than twenty-one percent (21%) alcohol by weight.

Section 1.18 “Vinous” means the fermented juices of fruits containing more than five percent (5%) and not more than twenty-one percent (21%) alcohol by weight.

SUBTITLE C – PERMIT PROCEDURE

Application for Permits, Issuance of Permits, Sale of Business and Stock of Beverages and Transfer of Permits by Operation of Law.

Article 1 – APPLICATIONS FOR PERMITS AND TRANSFER OF LOCATION

Section 1.19 Types of Permits for Which Application May Be Made. The categories of permits under which controlled beverages may be sold and the controlled beverages which may be sold pursuant to those permits are as follows:

- (1) **Beer On Premises Permit** authorizes the sale of beer or malt liquor containing less than five percent (5%) alcohol by weight for consumption on or off the premises described in the permit;
- (2) **Beer Off Premises Permit** authorizes the sale of beer or malt liquor containing less than five (5%) alcohol by weight for consumption off the premises described in the permit;
- (3) **Beer Wholesale Permit** authorizes the purchase of beer, malt liquor, or spiritous liquor beverages, classified as ready-to-drink products containing spiritous liquor with a final finished product of no greater than fifteen percent (15%) alcohol by weight, from a licensed manufacturer or importer and the sale thereof to persons holding permits to sell such products for consumption on or off the premises.
- (4) **Small Farm Wine Retail Off Premises Permit** authorizes the sale of small farm wines for consumption off the premises described in the permit; (Amended 8-15-07)
- (5) **Wine Restaurant On Premises Permit** authorizes the sale of wine and hard cider containing not more than twenty-one percent (21%) alcohol by weight for consumption on the premises of a restaurant; (Amended 8-17-05)
- (6) **Small Farm Wine Wholesale Permit** authorizes the purchase of small farm wine from a licensed manufacturer and the sale thereof to persons holding permits to sell small farm wine for consumption on or off the premises; (Amended 8-15-07)
- (7) **Small Farm Wine Manufacturer For Sale Permit** authorizes the sale of small farm wine to persons holding a small farm wholesale wine or small farm retail wine permit, or the sale of small farm wine to the consumer sold upon the premises of the winery. In addition, the winery may sell wine by the glass.

It is further provided that such on premises and off premises sales may occur on any day of the week. On Monday through Friday, wine may not

be sold at a winery for either on premises or off premises consumption before 7:00 a.m. or after 1:00 a.m. the next day. On Saturday, the winery may not sell wine as set out above before 7:00 a.m. or after 12:00 midnight Saturday night. On a Sunday, the winery may sell wine as set forth above to consumers between the hours of 12:00 p.m. and 10:00 p.m., or within such lesser period as may be provided by an ordinance by any city or county where the winery is located; (Amended 8-15-07)

- (8) **Wine Manufacturer For Home Use Permit; Repealed 8-20-97**
- (9) **Liquor Off Premises Permit** authorizes the purchase of spirituous and vinous beverages from persons holding a wholesale liquor or a wholesale wine permit and the sale of such beverages to consumers for consumption off the premises; any holder of a liquor off premises permit may also purchase malt liquors containing more than five percent (5%) alcohol by weight from either persons holding a beer wholesale permit or a liquor wholesale permit, and sell such beverages to consumers for consumption off premises;
- (10) **Liquor On Premises Consumption – Hotel or Motel Permit** authorizes the purchase of any controlled beverages from persons holding a wholesale permit and the sale of such beverages for consumption on the premises of the hotel or motel described in the permit;
- (11) **Liquor On Premises Consumption – Restaurant Permit** authorizes the purchase of any controlled beverages from persons holding a wholesale permit and the sale of such beverages for consumption on the premises of the restaurant described in the permit;
- (12) **Liquor On Premises Consumption – Private Club Permit** authorizes the purchase of any controlled beverages from persons holding an off premises retail liquor or beer permit who have been designated by the Director as a private club distributor and the dispensing of such beverages for consumption on the premises of the private club to members and guests only of the private club;
- (13) **Liquor Wholesale Permit** authorizes the purchase from licensed manufacturers or licensed importers of spirituous, vinous beverages or malt liquor containing more than five percent (5%) alcohol by weight, and the sale of such beverages to persons holding off premises liquor permits, or hotel or motel, or restaurant permits. Effective July 1, 2010, under the provisions of Act 294 of 2009, the holder of a wholesale liquor permit is also authorized to sell beer products as defined in the Arkansas Code under this same permit. (Amended 8-19-09)
- (14) **Liquor Manufacturer Permit** authorizes the manufacture of and the sale of spirituous, vinous and malt liquor beverages, under the following circumstances:
 - (1) Sell, deliver, or transport to wholesalers;

- (2) Sell, deliver, or transport to rectifiers;
- (3) Export out of the state; and
- (4) Sell for off premises consumption spirituous liquors the distiller or manufacturer manufactures on any day of the week.
(Amended 8-16-11)
- (15) **Temporary Beer Permit** authorizes the sale of beer containing less than five percent (5%) alcohol by weight for consumption on a defined premises as described in the permit application; (Adopted 8-19-93)
- (16) **Sunday Alcoholic Beverage Permit. Repealed 8-19-09**
- (17) **Temporary Wine Permit** authorizes the sale of wine as defined in Act 120 of 1965 (as amended) and light wine (less than 5% alcohol by weight) for consumption on a defined premises as described in the permit;
(Amended 8-19-93)
- (18) **Microbrewery-Restaurant Permit** authorizes the operation of microbrewery-restaurants as provided in ACA § 3-5-1204.
(Amended 9-16-15)
- (19) **Temporary Expansion of Permitted Premises Permit** authorizes the sale of alcoholic beverages on property adjacent to the permitted premises of hotel or motel outlets with mixed drink permits;
(Adopted 6-13-91)
- (20) **Rectifying Permit** authorizes the rectifying, purifying, mixing, blending, or flavoring of spirituous liquors or the bottling, warehousing, or other handling or distribution of rectified distilled spirits; (Adopted 8-19-93)
- (21) **Large Attendance Facility Permit** authorizes the sale of all types of alcoholic beverages by a facility which houses a convention center activity, or tourism activity where such establishment has a seating capacity of not less than 500 people and which serves alcoholic beverages only on the premises on days that meals and food are served at one or more places on the premises. In addition, a large attendance facility permit may be issued to any facility which otherwise meets the definition of a large attendance facility and in which parimutuel wagering has been authorized by law. Such permits for parimutuel facilities may only be issued in cities of the first class in which the sale of alcoholic beverages is authorized by law; (Adopted 8-19-93)
- (22) **Temporary Spirits Permit** authorizes the sale of spirituous beverages for consumption on a defined premises as described in the permit;
(Amended 8-17-05)

- (23) **Satellite Catering Permit** authorizes any restaurant, hotel or motel which has a mixed drink permit to serve their alcoholic beverages at any place that is licensed by the Alcoholic Beverage Control Division as a large attendance facility (LAF). Service by the hotel, motel or restaurant permittee may occur only pursuant to written permission from the LAF permittee with written notice being given to the Alcoholic Beverage Control Division not less than two (2) working days prior to such use of the LAF. Written permission shall not be granted for a period of more than five days at a time; (Adopted 7-19-95)
- (24) **Parimutuel Mixed Drink Permit** authorizes any restaurant as defined by ACA § 3-9-202(8)(A) to apply for a permit to sell mixed drinks in any county where parimutuel wagering has been authorized by law. Such permits are only allowed in cities of the first class in which the sale of alcoholic beverages is authorized by law. The seating capacity of any such restaurant must be at least 100 seats; (Adopted 7-19-95)
- (25) **Nonresident Beer Seller's Permit** authorizes an out of state manufacturer or supplier of beer and malt liquor products to sell those beverages to Arkansas wholesalers. Arkansas wholesalers may only purchase beer and malt liquor supplies from a person who holds a nonresident beer seller's permit. Said permit is required whether the sale is consummated inside or outside the State of Arkansas; (Adopted 7-19-95)
- (26) **Military Service Club Mixed Drink Permit** authorizes the sale of alcoholic beverages by the drink on the same basis as the liquor on premises consumption restaurant permit and the permit may be issued to service clubs on military reservations owned or controlled by the State of Arkansas. The food service requirements for restaurant mixed drink permits shall not apply and the hours of operation for such military service clubs shall be the same as for new private clubs licensed by the Alcoholic Beverage Control Division; (Adopted 8-20-97)
- (27) **Microbrewery-Restaurant Distribution Permit** authorizes a microbrewery-restaurant licensee to sell beer or malt liquors and hard cider of its own manufacture to a wholesale dealer for the purposes of resale to retail licensees in Arkansas under the three-tier system of distribution. The total aggregate brewing limitation for a Microbrewery-Restaurant shall be in the amount of forty-five thousand (45,000) barrels per calendar year. In addition, any holder of a microbrewery-restaurant distribution permit may transport and ship its beer and malt liquor by appropriate means for delivery outside the State of Arkansas to business entities licensed and qualified to accept such products in their respective states; (Amended 10-29-19)
- (28) **Wholesaler Support Center Permit** authorizes the holder of a nonresident beer seller's permit to store and distribute beer or malt liquor from a wholesale warehouse located in the state. The beer or malt

liquor may then be shipped to Arkansas wholesalers or wholesalers located in other states as directed by the holder of the license; (Adopted 8-18-99)

- (29) **Beer Manufacturing Permit** authorizes a beer manufacturer to manufacture beer products, not in excess of five percent (5%) alcohol by weight, for the purpose of resale to Arkansas licensed beer wholesalers, or to wholesalers outside the State of Arkansas, where lawful, and to also sell the beer for either on premises consumption or off premises consumption at the brewery.

Any Arkansas beer manufacturer that desires to sell beer for off premises consumption to the consumer may sell beer to the consumer Monday through Saturday at the brewery in lots of less than 16 gallons.

Any Arkansas beer brewery that desires to sell beer for on premises consumption at the brewery shall provide certain minimal food service at the brewery tasting room or other facility where beer is sold to the consumer for on premises consumption. When beer is sold at retail for on premises consumption, certain foods identified with the consumption of beer products which are defined to include, at a minimum, items such as hot or cold sandwiches, cheese and crackers, or other types of finger food items must be offered for sale. In addition, the brewery shall provide tours through the brewery facilities on any date that the brewery is engaged in retail sales operations.

It is further provided that no open container of beer product, whether sold for on or off premises consumption, shall be removed from the brewery premises; (Adopted 8-18-99)

- (30) **Wine on Premises Permit** authorizes the sale of wine containing not more than twenty-one percent (21%) alcohol by weight for consumption on the premises; (Amended 8-17-05)
- (31) **Beer Festival Permit** authorizes the sale, on a temporary basis not to exceed three days, of beer and malt and hard cider on festival grounds described in the permit application. Any legal brewery, microbrewery-restaurant, distributor, wholesaler, brewpub, small brewery, hard cider manufacturer, or small brewery tap room, whether or not registered with the Alcoholic Beverage Control Division or located in the State of Arkansas, may participate in the event. A small brewery holding a distribution permit and a beer festival permit may accept and hold beers from out of state breweries and distributors for the purpose of pouring at beer festivals.)
- (32) **Off Premises Caterer's Permit** authorizes an off premises caterer, as licensed under Act 1170 of 1999, to serve and sell alcoholic beverages at private parties and at other private functions to which the off premises caterer transports foods and beverages from the permitted premises to the premises where the private function is being held. The off premises

caterer's permittee purchases alcoholic beverages from a retail liquor outlet for resale to the person holding or sponsoring the catered function. Catered functions may only occur under the provisions of this permit in areas of the state where the sale of alcoholic beverages is lawful; (Adopted 8-18-99)

- (33) **Bed and Breakfast Private Club Permit** authorizes a corporation, partnership, individual or limited liability corporation, whose primary function is to provide overnight accommodations to the public, not exceeding a total of twenty (20) guest rooms on the premises, whether operated by the business owner or not, where the owner or a person representing the owner lives on the premises, and where a breakfast meal is served to the lodging guests and where there is no restaurant on the premises open to the public except for the lodging guests, to serve beer and wine only to registered guests at the establishment; (Adopted 8-15-01)
- (34) **Small Brewery License** authorizes the operation of a small brewery where malt beverage products and hard ciders are manufactured in certain limited quantities as provided in ACA § 3-5-1405; (Amended 9-16-15)
- (35) **Wine Charitable Auction Permit** authorizes qualified temporary permittees to sell sealed bottles of wine at a charitable auction. There is no limit on the amount of wine that may be sold under each separate wine charitable auction permit. The same organization may not obtain more than two such permits during any calendar year. The permit shall have a duration of not more than five days; (Adopted 8-17-05)
- (36) **Sampling Permit** authorizes a retail liquor store to serve at no charge to the customer servings of alcoholic beverages, as authorized by a permit, for on premises consumption at the retail liquor store. Samples may only be offered during the regular hours of operation of liquor stores. If authorized by the permit wine samples shall be limited to a total of three samples not to exceed one half ounce (0.5 oz) per sample per customer each day. No more than two (2) two ounce (2 oz.) beer servings may be offered to each customer per day as authorized by the permit and no more than two (2) one half ounce (.05 oz) samples of spirits may be served to each customer per day if authorized by the permit obtained by the retail liquor store.
- (37) **Post Exchange Package Permit** authorizes the sale of alcoholic beverages at a post exchange facility located upon property owned by the State of Arkansas and operated by the Military Department of Arkansas. (Adopted 8-15-07)
- (38) **Brandy Distilling Permit** authorizes distilling brandy or spirituous liquors for use in fortifying of wines manufactured from the juices of grapes, berries, and other fruits or vegetables grown in Arkansas. (Adopted 8-15-07)

- (39) **Native Brandy Permit** authorizes the manufacture and sale of brandy, cordials or other distillates or component parts thereof manufactured from agricultural or horticultural products produced solely in Arkansas. (Adopted 09-01-2021)
- (40) **Retail Native Beer Permit** authorizes the permit holder to sell at retail beer and malt beverages produced by small brewers licensed under ACA § 3-5-1405 and microbrewery-restaurants licensed under ACA § 3-5-1204. The native beer and native malt liquor may be sold for consumption either on or off the premises. (Amended 9-16-15)
- (41) **Minimum Wholesale Liquor Permit** authorizes the sale of spirituous liquors, wine as defined in the Arkansas Code, and malt liquors at wholesale. A minimum wholesale liquor permit holder shall not sell more than a combined total of twenty thousand (20,000) cases of spirituous liquors, wine, or malt liquors. A case is a container that holds nine (9) liters of beverage. A minimum wholesale liquor permit holder may not sell beer products as defined in the Arkansas Code unless he/she receives a separate wholesale beer permit. (Adopted 8-19-09)
- (42) **Combined Restaurant Beer and Wine Permit** authorizes the on premises sale of beer, hard cider, and wine by establishments that qualify as restaurants per ABC Rule 3.4. (Adopted 8-19-09)
- (43) **Small Restaurant Permit** authorizes a restaurant to purchase and resell five hundred sixty (560) liters of spirituous liquors or less per fiscal year. Under Act 763 of 2009 if the small restaurant permit holder purchases more than 560 liters of spirituous liquors in a fiscal year he/she shall then be required to apply for a permit under the provisions of ACA § 3-9-212. The Small Restaurant shall meet the requirements for a restaurant as set forth in ACA § 3-9-202(8)(A).

The Small Restaurant Permit does not authorize the purchase or resale of wine products or beer products. If the Small Restaurant permit holder desires to sell wine or beer he/she must purchase additional permits for those products. (Adopted 8-19-09)

- (44) **Hotel or Large Event Facility Private Club permit** authorizes the on premises consumption of all types of alcoholic beverages. This permit carries greater privileges than the on premises consumption private club permit described at Arkansas ABC Reg. 1.19(12). This permit may only be issued to a qualified establishment in a “dry” area and the permit will allow expanded service of alcoholic beverages at hotel properties and at a large event facility. Authorization for the new permit is under Act 1194 of 2011. (Adopted 8-16-11)
- (45) **Out of State Supplier Permit** authorizes an out-of-state manufacturer, distiller, rectifier, brewer, importer, or producer of spirituous or vinous

liquor to sell, deliver, transport, or ship to a wholesaler, distributor, or rectifier. A holder of this permit may only sell a spirituous or a vinous liquor to a wholesaler, distributor, or to any other person who is legally authorized by the laws of the State of Arkansas and the rules of the Alcoholic Beverage Control Division to receive, possess, transport, distribute, or sell a spirituous liquor or vinous liquor. (Adopted 8-21-13)

- (46) **Grocery Store Off Premises Wine Permit** authorizes a permittee to purchase and sell wine and hard cider, the alcoholic content of which does not exceed twenty-one percent (21%) alcohol by weight. "Wine" means port, wine, sherry wine, vermouth wine, hard cider or other wines manufactured within or without the State of Arkansas. "Grocery store" means a single physical establishment located in a wet territory that has an inventory of human-consumable items. An order of wine inventory for one (1) location shall not be combined with an order for another location in a manner that would result in a cumulative discount and/or a quantity discount.

A grocery store wine permittee may conduct tasting events for educational and promotional purposes on the permittee's premises after obtaining a wine sampling permit from the Alcoholic Beverage Control Division under ACA § 3-5-104. A grocery store seeking a grocery store wine permit may derive no more than twenty percent (20%) of its gross sales from the sale of alcoholic beverages. However, this requirement does not apply to an otherwise qualifying grocery store that, as of January 1, 2017, derives more than twenty percent (20%) of its gross sales from the sale of alcoholic beverages. A grocery store wine permittee shall offer for sale small farm winery wine as defined in ACA § 3-5-1601 et seq. A grocery store wine permit shall be available for issue only in a county in which the retail sale of alcohol under ACA § 3-4-604 was authorized as of January 1, 2017.

- (47) **Hard Cider Manufacturer Permit** authorizes a permittee to manufacture for sale no 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 the permit authorizes to manufacture, import, transport, store, and sell to a wholesaler, jobber, distributor, or retailer hard cider to be used and sold for beverage purposes. In addition, the hard cider manufacturer permittee may include one (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 1.20 Information, Statements and Documents to be Furnished by Applicant. In addition to such other information as the Director may determine shall be provided, the applicant for any permit issued pursuant to any alcoholic beverage control law of the State of Arkansas shall furnish the following information and make the following statements in the application or affidavits attached thereto:

INFORMATION TO BE FURNISHED IN APPLICATION

- (1) The name, age and address of the applicant, if an individual; the name, age and address of each partner, if the applicant is a partnership; and the name, age and address of each member of the Board of Directors or other governing body and each officer and the managing agent, if the applicant is a partnership, corporation or an association;
- (2) The name and address of each person financially interested in the permitted business for which application is made, together with the nature of such interest, but if such applicant is a corporation, the applicant shall set forth only the name(s) and address(es) of all stockholders holding more than five percent (5%) interest in the permitted business;
- (3) The street and number of the premises to be permitted and such description of the premises, including a floor plan showing the dimensions thereof. When any on premises outlet requests an outdoor service area, the following factors, along with any others deemed relevant, will be considered by the Director or the Board:
 - A. Area location;
 - B. Population density;
 - C. Accessibility to outside traffic (foot or vehicle);
 - D. Visual compatibility of permitted activities with other area business or resident activity;
 - E. Type of permitted business; and
 - F. Potential noise problems.

Such outdoor service area shall be clearly defined by fences, walls or barriers that will constitute a recognized boundary or, in approved rural settings where the need for such barriers is found to be minimal to adequately define the premises, the posting of a 5" X 7" sign, at locations to be determined by the Director or Board, stating **"NO ALCOHOLIC BEVERAGES BEYOND THIS POINT"**. (Amended 8-20-97)

- (4) The name and address of the owner of the premises for which the permit is sought. If the applicant is not the owner of the premises for which the permit is sought, the name of the owner of the premises and the name(s) of any other person(s) holding a leasehold interest in the premises;

STATEMENTS TO BE MADE IN APPLICATION

- (5) That the applicant, if the application is by an individual; each partner, if the application is by a partnership; or the managing agent, if the application is by a partnership, corporation or an association, possesses the following qualifications:

- A. Is a person of good moral character, a citizen or permanent resident alien of the United States, and such person must be a resident of the county in which the permit will be operated, or reside within thirty-five (35) miles of the address of the premises described in the application; (Amended 7-19-95)
- B. Shall be a resident of the State of Arkansas on the date of the application and maintain such residency within the State as a continuing qualification to hold a permit issued by this agency. **Provided**, that any hotel or restaurant, as defined in Sections 4.4 and 4.6 of these Rules, which is owned by a partnership, whether regular or limited, may have a permit issued to a non-partner manager or operator provided that he meets the other qualifications required by this section and the failure of one (1) or more partners to be residents of this state shall not be grounds for denial of the permit; (Adopted 8-20-97)

Provided further, the residency requirement pursuant to Section 1.20(5)A. and B. does not apply to a managing agent of a partnership, corporation, or an association that is an applicant if: (i) the applicant currently holds at least two (2) retail beer permits issued by the Alcoholic Beverage Control Division for the sale of alcoholic beverages; and (ii) the applicant designates with the division a representative who resides within the county of the premises or within thirty-five (35) miles of the address of the premises described in the application.

If a retailer chooses to exercise the exemption to the residency requirements pursuant to Section 1.20(5)A. and B., the retailer, after the issuance of the second permit issued to the permitted retailer by the division may: (i) change the managing agent of each of its permits by completing a form provided by the agency. The managing agent shall be a person of good moral character and a

citizen or resident alien of the United States, but shall not be required to meet the other residency requirements of Section 1.20(5) A. and B.; (ii) designate a representative for each permitted premises who resides within the county of the premises or within thirty-five (35) miles of the address of the premises stated on the permit. (Adopted 9-16-15)

- C. Has never been convicted of a felony, or had a license to sell alcoholic beverages revoked within five (5) years preceding the date of application, whether issued by this state or any other state, and that he or she has not been convicted of violating any laws of this state, or any other state, governing the sale, possession, manufacture, or transportation of alcoholic beverages within five (5) years preceding the date of application; (Amended 8-21-13)
- (6) If the applicant is a corporation or an association, a statement shall be made in the application that all officers and directors, any stockholders holding more than five percent (5%) of the stock of such corporation, and the managing agent(s) possess all of the qualifications required by the laws of the State of Arkansas or by these Rules for an individual permit; **provided**, that the requirements as to residence in or citizenship of the United States shall not apply to officers, directors or stockholders of such corporation or association; and that any application for a hotel, motel or restaurant permit shall meet the qualifications as set forth in ACA §3-9-210; (Amended 8-18-99)
- (7) Every applicant and every managing agent making application for a permit to manufacture, wholesale or retail beer and/or light wine shall make and subscribe to an oath that he or she will not violate any laws of this state or knowingly allow any other person to violate any laws of this state while in or upon the permitted premises;
- (8) Every applicant and every managing agent making application for a permit to sell beer at retail for consumption on the premises shall make and subscribe to an oath that he or she will not allow any intoxicating liquor as defined by ACA § 3-5-202 of any kind or character, including malt liquor or vinous liquor or distilled spirits having an alcohol content in excess of five percent (5%) by weight, to be kept, stored or secreted in or upon the premises described in the permit unless such applicant also holds a permit for the sale and possession of such beverages; (Amended 8-19-93)
- (9) Every applicant for a permit to sell beer at retail for consumption on or off premises shall make and subscribe to an oath that no manufacturer, distributor or wholesale dealer shall have any interest, directly or indirectly, in the business of said applicant or

in the furnishings or fixtures used in the place of business of said applicant or any lien thereon;

- (10) Every applicant for a permit to manufacture, wholesale or distribute beer and/or light wine shall make and subscribe to an oath that such applicant has no interest and shall acquire no interest, directly or indirectly, in the business of any person, firm or corporation applying for and securing or holding a permit as a retail dealer of beer and/or light wine, or the furnishings or fixtures used in the place of business of said retail dealer or hold any lien thereon;
- (11) The designation of the category of permit for which the application is made shall be made in the application and shall be binding on the applicant;

ATTACHMENTS TO APPLICATION

- (12) If the premises is not constructed or completed at the time of application, the applicant shall attach to the application a plot plan of the premises in a form approved by the Director which shall clearly show the construction of the premises, including the dimensions thereof, and the relation of the premises to surrounding structures;
- (13) If the premises is not owned by the applicant or if the applicant does not hold a valid lease to the premises, and application is thereby being made on the basis of a legal buy/sell agreement, an option to lease, or an option to purchase said premises, then a copy of said agreement/option shall accompany the application; (Amended 8-18-99)
- (14) If the applicant is a corporation or association, a copy of the articles of incorporation or other governing charter or document and the by-laws shall be attached to the application;
- (15) Any person applying for a new permit or transfer of location permit shall be required to submit, with the application, three (3) photographs of the proposed building, depicting the front, rear, and a side view. If there is no building in existence, the applicant shall submit photographs which show the proposed building location; (Amended 8-19-93)
- (16) ***Financial Statement Required to Apply for Sunday Mixed Drink Permit; Repealed 8-19-09***
- (17) ***Application for Temporary Sunday Mixed Drink Permit; Repealed 8-19-09***

- (18) Any person, corporation, or business entity making application to replace an existing permittee shall submit with the application a replacement notice from the current permit holder authorizing the replacement applicant to operate under the authority of the currently valid permit(s) while the replacement application is pending before the agency. The replacement authorization must be on the form provided to the applicant by the Alcoholic Beverage Control Division. In no event shall the current permit holder be allowed to withdraw the replacement notice of authorization once the replacement application has been accepted by the agency for processing. Once the replacement application has been acted on by final decision, the replacement notice expires and may not be used for subsequent applications; (Amended 8-15-07)
- (19) Any application for an on premises permit shall be accompanied by an “entertainment form”, provided by the agency, which shall set forth the proposed activities to occur on the permitted premises, the same being subject to the approval of the Director; (Adopted 8-18-99)
- (20) Any person applying for an ABC permit, other than as excepted below, shall prove that they have not been found guilty of or pleaded guilty or nolo contendere to any felony in the State of Arkansas or any similar offense by a court in another state or of any similar offense by a military or federal court.

In order to prove this qualification, there shall be attached to the application at the time it is tendered to the agency, an in-state criminal background check through the Arkansas State Police. The applicant shall also furnish fingerprints to the Arkansas State Police, either in person or at an approved Arkansas State Police fingerprint harvester for electronic submission, for transmission to the United States Federal Bureau of Investigation. If the FBI investigation subsequently shows that the applicant is not qualified, proceedings shall be instituted to cancel the permit if it has already been issued. No fingerprint submission or criminal background check shall be required for any person or company applying for a nonresident beer seller’s permit or for a wholesale support center permit as authorized by ACA § 3-5-1301, et. Seq. Further, no fingerprint submission shall be required for any person applying for any permit which has a stated duration of five days or less. (Adopted 8-17-05)

Section 1.21 Factors Which May be Considered in Determining Public Convenience and Advantage. Any permit issued pursuant to any alcoholic beverage control law of the State of Arkansas shall be issued only for use in any county or political subdivision where authorized by law. In determining whether any such application for a permit would promote the public convenience and advantage or interest, the Director or Board, in the appropriate case, may consider, among other relevant factors, the following:

- (1) The number of existing alcoholic beverage permits in the proposed area and whether such area is adequately served by existing outlets; (Adopted 6-13-91)
- (2) The types of existing alcoholic beverage permits in the proposed area;
- (3) Suitability of location of proposed outlet including such factors as possible traffic hazards or traffic congestion, remoteness of area, degree of law enforcement available, character of surrounding neighborhood and related factors;
- (4) Suitability of proposed building including such factors as type of building, building condition, and building security;
- (5) The potential impact of the proposed outlet on churches or schools in the area; (Amended 9-8-97)
- (6) Input from law enforcement officials or other public officials in proposed area;
- (7) Opposition or support comments from adjacent property owners or nearby area residents to any application. Any group may register their support or opposition to a pending application by submitting petitions to the agency. Petitions submitted must be on 8½ by 11 inch paper and must contain original signatures only. The agency will not accept as evidence any photocopies of signatures. In addition, petitions must refer to a specific application that is on file with the agency. A petition in opposition or support that has been filed on a particular application that has been acted on by the Director may not be used for any other applications. **Provided**, such petitions will be received by the agency only if delivered by mail or hand delivered to the agency. No facsimile or email petitions or letters will be considered by the agency or placed in the application file. (Amended 8-17-05)

Section 1.21.1 Factor Which Shall be Considered in Determining Public Convenience and Advantage. When issuing a permit under Title 3 of the Arkansas Code, the Alcoholic Beverage Control Division shall consider lack of diversity in ownership and financial interest in the geographic area at issue in the permit application. (Adopted 8-17-05)

Section 1.22 Hotel or Motel, Restaurant and Private Club Permits. In addition to the requirements under this Title for all permits, additional requirements for applications for hotel and motel, and restaurant permits will be found under Title 4. Additional requirements for application for private club permits will be found under Title 5 or these Rules. (Amended 8-19-93)

Section 1.22.1 Temporary Beer Permit. Temporary beer permits for the sale of beer at functions sponsored by or for the benefit of non-profit or charitable organizations may be issued for a period of time not to exceed five (5) consecutive days. Applications for such permit shall meet the requirements as established by the Director and set out in the application and attachments thereto. The fee for such permit shall be fifty dollars (\$50.00). The Director shall determine whether an application meets the established requirements and whether the function for which the permit is applied is non-profit or charitable in nature and purpose. Those requirements shall include but not be limited to:

- (1) The location of the event must be in an area which has voted for the sale of intoxicating liquors; and
- (2) The application must be received by the Alcoholic Beverage Control Division at least three (3) weeks prior to the event.
(Amended 8-15-07)

Any action by the Director in granting or denying such application is appealable to the Alcoholic Beverage Control Board pursuant to Section 1.51 of these Rules, provided that any such action on the part of the Director shall be effective immediately without the requirement of such action being ratified by the Alcoholic Beverage Control Board at the next Board meeting.
(Adopted 8-19-93)

Section 1.22.2 Temporary Wine Permit. Temporary wine permits for the sale of wine and light wine by single servings for on premises consumption at functions sponsored by or for the benefit of non-profit or charitable organizations may be issued for a period of time not to exceed five (5) consecutive days. Applications for such permit shall meet the requirements as established by the Director and set out in the application and attachments thereto. The fee for such permit shall be fifty dollars (\$50.00). The Director shall determine whether or not an application meets the established requirements and whether or not the function for which the permit is applied is non-profit or charitable in nature and purpose. Those requirements shall include but not be limited to:

- (1) The location of the event must be in an area which has voted for the sale of intoxicating liquors;
- (2) **Food Service Requirement. Repealed 8-20-97**
- (3) The application must be received by the Alcoholic Beverage Control Division at least three (3) weeks prior to the event.
(Amended 8-15-07)

Any action by the Director in granting or denying such application is appealable to the Alcoholic Beverage Control Board pursuant to Section 1.51 of these Rules, provided that any such action on the part of the Director shall be effective immediately without the requirement of such action being ratified by

the Alcoholic Beverage Control Board at the next Board meeting. (Amended 8-19-93)

Section 1.22.3 Temporary Spirits Permit. Temporary permits for the sale of spirituous alcoholic beverages at functions sponsored by or for the benefit of non-profit or charitable organizations may be issued for a period of time not to exceed five (5) consecutive days. Such permits allow the sale of any such alcoholic beverages authorized to be sold pursuant to applicable local option election that otherwise meet the criteria set forth herein. Applications for such permit shall meet the requirements as established by the Director and set out in the application and attachments thereto. The fee for such permit shall be fifty dollars (\$50.00). The Director shall determine whether an application meets the established requirements and whether the function for which the permit is applied is non-profit or charitable in nature and purpose. Those requirements shall include but not be limited to:

- (1) The location of the event must be in an area which has voted for on premises consumption of spirituous beverages; and
- (2) The application must be received by the Alcoholic Beverage Control Division at least three (3) weeks prior to the event.
(Amended 8-15-07)

Any action by the Director in granting or denying such application is appealable to the Alcoholic Beverage Control Board pursuant to Section 1.51 of these Rules, provided that any such action on the part of the Director shall be effective immediately without the requirement of such action being ratified by the Alcoholic Beverage Control Board at the next Board meeting.

Section 1.22.4 Temporary Hard Cider Permit. Temporary hard cider permits for the sale of hard cider at functions sponsored by or for the benefit of non-profit or charitable organizations may be issued for a period of time not to exceed five (5) consecutive days. Applications for such permit shall meet the requirements as established by the Director and set out in the application and attachments thereto. The fee for such permit shall be fifty dollars (\$50.00). The Director shall determine whether an application meets the established requirements and whether the function for which the permit is applied is non-profit or charitable in nature and purpose. Those requirements shall include but not be limited to:

- (1) The location of the event must be in an area which has voted for the sale of intoxicating liquors; and
- (2) The application must be received by the Alcoholic Beverage Control Division at least three (3) weeks prior to the event.
(Amended 8-15-07)

Any action by the Director in granting or denying such application is appealable to the Alcoholic Beverage Control Board pursuant to Section 1.51 of these Rules, provided that any such action on the part of the Director shall be

effective immediately without the requirement of such action being ratified by the Alcoholic Beverage Control Board at the next Board meeting.

Section 1.22.5 Temporary Permit Holder May Solicit Wholesalers for Sponsorship Money. A person who holds a temporary permit may, under the following conditions, solicit sponsorship money or other items from a wholesaler who sells the temporary permit holder alcoholic beverage supplies. Any such wholesaler which supplies the sponsorship money or promotional items, entertainment events, or other such items to the temporary permit holder in conformance with this Rule, shall be free to do so without it being contemplated as a gift or service in violation of Section 2.28(4) of these Rules or an inducement in violation of Section 2.28(5) of these Rules. However, the giving of sponsorship money remains a prohibited activity pursuant to Sections 2.28(3) and 2.28(5) of these Rules if it is the basis of any exclusive purchase agreement.

In order to solicit sponsorship money, promotional items, or other items from any wholesaler which is supplying beverages to the temporary permit holder, the temporary permit holder shall agree to allow each wholesaler serving the area in which a temporary permit will be used to participate in supplying alcoholic beverages at the event on equal and similar terms.

If the temporary permit holder has determined that it does not wish to offer all wholesale permit holders an equal chance to offer goods at the event, but determines that beverages will be offered on an exclusive basis, then the temporary permit holder may not accept any gift, service, money, or other such items from the wholesaler who is selected to be the supplier of the alcoholic beverages. Acceptance of any gift, service, money, or any other such items from the wholesaler who is selected to be the exclusive supplier of alcoholic beverages shall be in violation of Sections 2.28(3) and 2.28(5) of these Rules.

If the temporary permit holder has determined that for security purposes, as to the purchase of alcoholic beverages, cash substitutes in the form of coupons or similar tender are necessary, the temporary retail permit holder may seek approval from the agency for such arrangement at the time of application for the permit. (Amended 8-19-93)

Section 1.23 Publication of Notice That Application Has Been Made for Permit. After filing an acceptable application with the Director, the applicant shall cause to be published at least once a week for two (2) consecutive weeks in a legal newspaper of general circulation in the city or locality where the business is to be located a notice that the applicant has applied for a permit to sell, manufacture or dispense controlled beverages, as applicable. The newspaper publishing the notice shall have a physical address within the county of the proposed location of the business identified in the application. If the county does not have a newspaper, then the publication shall be placed in a newspaper with the nearest physical address of the location of the business identified in the application. The notice shall be verified and shall give the name of the applicant and the name and address or location of the business, and shall state that the applicant is a resident of Arkansas, that he or she has good moral character, that he or she has never been convicted of a felony or had a

permit revoked within the five (5) years preceding the date of notice. **Provided**, that this requirement shall not apply under the following circumstances: (1) If the applicant holds a restaurant mixed drink permit and subsequently makes application for a beer and/or wine permit at the same location; (2) If the applicant holds a small farm wine retail permit and subsequently makes application for a grocery store wine permit at the same location. **It is further provided** that applicants for a retail liquor permit or a private club permit shall be required to publish at least once a week for four (4) consecutive weeks in a legal newspaper as described above, per the authority of Act 735 of 2007. (Amended 9-20-17)

Section 1.24 Application for Permit to be Verified. Applications for permits issued pursuant to any alcoholic beverage control law of the State of Arkansas shall be verified by the named applicant, if the applicant is an individual; by a general partner of a partnership, if the applicant is a partnership; or by the managing agent, if the applicant is a corporation. (Amended 8-19-93)

Section 1.25 Change of Information or Statements in Application. If there is any change in the facts as presented in the original or any renewal application on file with the Director, written notice thereof must be given to the Director within ten (10) days after such change.

Section 1.26 Notice of Application to be Posted at Premises. Within five (5) days after filing an application for any permit issued by the Alcoholic Beverage Control Division at any premises, a notice of the application in a form approved by the Director shall be posted in a conspicuous place at the front entrance to the premises. The applicant shall notify the Director of the date such notice was first posted. No application may be acted on and no permit issued to any applicant until the application has been in the possession of the agency and proper notice has been so posted on the premises for a period of at least thirty (30) consecutive days. **Provided**, that this requirement shall not apply to an applicant for a permit to conduct business at a premises for which a valid permit of the same type is in existence at the time of said applicant's application nor shall it apply under the following circumstances: (1) If the applicant holds a restaurant mixed drink permit and subsequently makes application for a beer and/or wine permit at the same location; or (2) If the applicant holds a small farm wine retail permit and subsequently makes application for a grocery store wine permit at the same location. (Amended 9-20-17)

Section 1.27 Application for Transfer of Location of Premises. Any person holding a permit issued pursuant to any alcoholic beverage law of the State of Arkansas who desires to transfer the location of the permitted premises shall make application therefor to the Director. In addition to such other information as the Director may determine shall be provided, such application shall include the following:

- (1) Any changes in the information given or statements made in the original application for the permit;

- (2) The street and number of the premises to be permitted and a description of the premises, including a floor plan showing the dimensions thereof. If the premises to which the permit is to be transferred is not constructed or completed at the time of the application, the applicant shall attach to the application a site plan of the property which shall clearly show the construction of the premises, including the dimensions thereof and the relation of the proposed premises to surrounding structures, if any;
(Amended 8-19-93)
- (3) The name and address of the owner of the premises to which the permit is to be transferred. If the applicant is not the owner of the premises to which the permit is to be transferred, the applicant must state the name(s) of all person(s) holding a leasehold interest in the premises and a copy of the lease or other agreement for the use of the premises by the applicant shall be attached to the application.
- (4) Any application to transfer a private club permit, including a large event center private club permit, shall be accompanied by an ordinance of the governing body of the county or municipality into which the private club seeks to transfer approving the transfer of the permit into that municipality or county. The Director shall not accept an application to transfer a private club permit unless a copy of the required ordinance is submitted with the application.
(Adopted 9-20-17)

The application for a transfer of location of the permitted premises shall be verified in the same manner as required for an original application under these Rules.

Under no circumstances shall this Rule authorize the transfer of the old permit to the new premises by endorsement or otherwise. In each case the Director shall issue a new permit upon approval of the transfer of location of permitted premises. Immediately upon receipt of the new permit the permittee shall surrender the old permit to the Director.

Section 1.27.1 *Transfer of Location Application or Request for Inactive Status.* No transfer of location application or request for inactive status may be filed or made with the Alcoholic Beverage Control Division unless the permitted outlet has completed inspection by Alcoholic Beverage Control Enforcement and has been open for business and prepared to sell or dispense alcoholic beverages for at least one full eight hour day. (Adopted 8-21-13)

Section 1.28 *Publication of Notice of Application for Transfer of Location.* A notice of application for a transfer of location of the permitted premises shall be published by the applicant and filed with the Director in the same manner and under the same requirements as required by Section 1.23 of these Rules.
(Amended 8-19-93)

Section 1.29 Notice of Application for Transfer of Location of Premises to be Posted. Within five (5) days after filing an application for transfer of location at a permitted premises, a notice of the application on a form approved by the Director shall be posted in a conspicuous place at the front entrance to the premises to which the permit is to be transferred. The applicant shall notify the Director of the date on which such notice is first posted. No application may be acted on and no permit issued to any applicant until the application has been in the possession of the agency and proper notice has been so posted on the premises for a period of at least thirty (30) consecutive days. **Provided,** that this requirement shall not apply to an applicant for a permit to conduct business at a premises for which a valid permit is in existence for like classification at the time of said applicant's application. (Amended 8-19-93)

Section 1.30 Re-Application for Permit at Same Location Limited Unless Change of Facts. Whenever any application for a permit shall be denied, no application for a permit shall be accepted from the same applicant for a period of one (1) year following the date on which such application is finally acted upon by the Director, or by the Board on appeal, or by the appellate court system, unless the applicant can show a substantial change in the underlying facts which supported the decision to deny the application. **Provided,** that this Rule shall not apply if the application was denied solely because of disapproval of the premises and a new application is for premises other than those described in the original application.

If an application has been made by a private club in an area which does not allow the sale of alcoholic beverages and if that application is denied, by final resolution as set forth above, no application may be made by the same non-profit corporation applicant within a period of two (2) years from the date the application was denied by the Director. If a private club applicant wishes to apply within the two (2) year period, the application shall be accompanied by a certification from the county clerk of the county where the private club is to be located, certifying that the applicant has obtained signatures from not less than twenty-five percent (25%) of the registered voters in the county. The application shall be filed no later than twenty (20) days from the date the county clerk certifies the count. The signatures must be obtained on petitions which clearly state that the purpose of the petition is to obtain an alcoholic beverage permit for a private club in the said dry area and to serve alcoholic beverages.

“Same applicant” or “same non-profit applicant”, as used in this Section, shall be broadly interpreted by the Director or Board to be the real party (or parties) in interest in the original application, notwithstanding the fact that the subsequent application may be made in the name of a family member, business associate or new non-profit corporation. (Amended 8-17-05)

ARTICLE 2 – ISSUANCE AND POSTING OF PERMITS

Section 1.31 *Publication of Notice of Issuance of Permit.* Repealed 7-19-95

Section 1.32 *Persons Not Entitled to Issuance of Permit.* No permit shall be issued to:

- (1) ***Persons Not Qualified.*** Any individual, partnership or corporation if such individual or any member of such partnership or any officer, director, managing agent or stockholder holding more than five percent (5%) of the stock of such corporation does not possess the qualifications required by these Rules or by any alcoholic beverage control law of the State of Arkansas of such individual, partner, officer, director, managing agent or stockholder in making application for a permit;
- (2) ***Persons Giving False Information or Statements in Application or Hearing.*** Any individual, partnership or corporation if such individual or any member of such partnership or any officer, director, managing agent or stockholder holding more than five percent (5%) of the stock in such corporation knowingly gave any false information or made any false statements on any application or any hearing required by these Rules or by any alcoholic beverage control law of the State of Arkansas;
- (3) ***Persons Who Hold Retail Liquor Permits When Interested in Another Retail Liquor Permit.*** No off premises retail liquor permit shall be issued after the effective date of these Rules, either as a new permit or as a replacement of an existing permit, to any person having any interest in another off premises retail liquor permit, regardless of the degree of such interest;
- (4) ***Unauthorized Corporation.*** Any corporation not legally operating in the State of Arkansas at the time of the application;
- (5) ***Persons Under Required Age.*** A person under the age of twenty-one (21) years;
- (6) ***Persons Convicted of Certain Crimes.*** Any individual, partnership or corporation if such individual or any member of such partnership or any officer, director, managing agent or any stockholder holding more than five percent (5%) of the stock of such corporation has been convicted of a felony or has within five (5) years before the date of application been under the sentence of any court for the conviction of any violation of the laws of the State of Arkansas or any state of the United States against possession, sale, manufacture, or transportation of alcoholic beverages; (Amended 8-21-13)

- (7) **Certain Persons From Whom Permit Revoked.** Any individual, partnership or corporation if such individual or any member of such partnership or any officer, director, managing agent or stockholder holding more five percent (5%) of the stock of such corporation has had any permit issued pursuant to the authority of any alcoholic beverage control law of the State of Arkansas revoked within five (5) years preceding the date of application;
- (8) **Persons not Financially Interested or Employed in a Managerial Capacity.** On any retail application filed by an individual or partnership, any person who is not financially interested in the business to be conducted under the permit for which application is being made, or in the case of a corporate applicant, any person as managing agent who is not employed in a managerial capacity at the business seeking a permit;
(Amended 7-19-84)
- (9) **No Alcoholic Beverage Permit Granted to Any Person Who Owes Delinquent Taxes to State.** No alcoholic beverage permit will be issued by the Alcoholic Beverage Control Division to any individual, partnership or corporation that owes the State of Arkansas delinquent taxes of any kind. Further, no replacement permit or, in the case of a private club, a change of manager, will be granted to any applicant at any location where the current permittee owes the State of Arkansas delinquent alcoholic beverage sales taxes, excise taxes, supplemental mixed drink taxes or any other taxes relating to the sale or dispensation of alcoholic beverages. **Provided,** a permittee delinquent in the payment of taxes to the State of Arkansas may not have any interest whatsoever in another permit at the same location where the delinquent taxes accrued. In addition, no new or replacement permit will be granted to any person or organization mentioned above until such person or organization furnishes proof that an application has been made with the Sales Tax Section of the Arkansas Revenue Division for a retailer's sales tax permit and that a tax payment number has been assigned to such person or organization. (Amended 8-20-97)

Section 1.32.1 Applicant Must Attend Educational Seminar. Any person who is applying for a retail alcoholic beverage license or private club license must attend an educational seminar offered by the Alcoholic Beverage Control Division. Attendance at the seminar by the applicant shall be required prior to any action on the application by the Director. **Provided,** that such attendance is not required by those applicants who have held a permit prior to the initial adoption of Section 1.32.1 (8-17-88) and have continued to hold the permit to a point within twelve (12) months of filing a new application. (Amended 8-15-07)

Section 1.33 No Permit to be Issued for Certain Premises. No permit shall be issued pursuant to any alcoholic beverage control law of the State of Arkansas for the following premises:

- (1) **Premises Not Complying with Health, Safety and Sanitary Standards.** Any premises which does not comply with the minimum health, safety and sanitary standards established by the State of Arkansas and the rules and of the State Board of Health;

- (2) **Premises Operated in Conjunction with Certain Other Businesses.** No off premises retail liquor permit shall be operated as part of the profit making business of any billiard hall, pool room, drug, grocery, sporting goods, dry goods, hardware, general mercantile store, or any other business unrelated to such permit; however, the retail liquor store permittee may have tobacco products, mixers, soft drinks, consumables and edible products that complement alcoholic beverages, and other items customarily associated with the retail package sale of the liquors, **Edible products may include:**
 - a. Lemons, limes, cherries, olives and other food items used in the preparation or garnishment of alcoholic beverages or mixed alcoholic beverages;
 - b. Peanuts, pretzels, chips, crackers and other packaged snack foods and confectionaries; and
 - c. Prepackaged food items, including but not limited to cheese, meat and appetizers;
 - d. Retail liquor stores shall not cook, prepare, or package food items on the premises of the retail liquor store for the purpose of resale.

Consumable products may include:

- a. Party supplies, party decorations, gift bags, gift baskets, greeting cards and other items for parties and special events; and
- b. Ice in any form.

Items customarily associated with the retail package sale of liquors may include:

- a. Beverage coolers, beverage insulators and ice chests;
- b. Items used in the preparation of mixed drinks, including, without limitation, beverage strainers, pourers, jiggers, stirrers, ice crushers and ice molds;

- c. Decanters, carafes, glassware and drinkware;
- d. Bottle openers and can openers; and
- e. Corkscrews, wine aerators, bottle stoppers and devices designed to preserve wine.
(Amended 9-20-17)

- (3) **Premises for Which Adequate Police Protection is Not Available.** Any premises for which, in the judgement of the Director, or the Board on appeal, adequate police protection is not available due to the remoteness of the location of the premises;
- (4) **Premises Which Will Not Promote Public Convenience and Advantage.** Any premises for which the issuance of a permit would not, in the judgement of the Director, or the Board on appeal, promote the public convenience and advantage. In determining whether the issuance of a permit would promote the public convenience and advantage the Director, or the Board on appeal, may consider, in addition to all other relevant factors, the number of permits issued in the general vicinity of the premises for which application has been made and whether such area is adequately served by existing outlets; (Amended 8-19-93)
- (5) **Premises for Which Permit has been Revoked; Repealed 8-19-93**
- (6) **Permits Not To Be Issued To Premises Within The Following Stated Distances From Church Or Schoolhouse.** No permit for the sale or dispensing of alcoholic beverages shall be issued nor any existing permit transferred to any location within the following prohibited distances of any church or schoolhouse, such distances to be calculated based upon the existence of the church or school building at the time the application is accepted by the agency for processing:
 - A. **Retail Liquor Permit.** One thousand (1000) feet to be measured from the nearest property line point of the church or school building to the nearest property line point of the building sought to be permitted.
 - B. **Off Premises Retail Beer Permit to be Issued to Retail Liquor Store.** One thousand (1000) feet to be measured from the nearest property line point of the church or school building to the nearest property line point of the building sought to be permitted.

C. Exception for Retail Liquor Store Outlets Which are Within One Thousand Feet of a Church or School Building on the Date of August 13, 2001. Repealed 9-16-15

For purposes of this Rule “church” means a church and all immediately adjacent property owned or leased by the church that is used for church purposes.

For purposes of this Rule, “Schoolhouse” means a facility owned and operated by a public or private school or an open-enrollment charter school as well as a public or private daycare facility licensed by the State of Arkansas.

- (7) **Retail Wine Permit Not to be Issued to a Grocery Sales Outlet; Repealed 8-15-01**
- (8) **Retail Wine Permit Not to be Issued to any Premises that is not a Restaurant Qualified to Hold Restaurant Wine Sales Permit; Repealed 8-15-07**
- (9) **Retail Beer Not to be Issued to Any Establishment Whose Business is Predominantly Motor Fuel Sales. Repealed 8-21-13**
- (10) **“Wholesale” as Part of Trade Name Prohibited.** No retail permit shall be issued to any retail sales outlet any part of whose trade name or firm name includes the word “Wholesale”; (Amended 12-23-86)
- (11) **New Retail Beer On Premises Consumption Permits Not to be Issued to Certain Establishments.** From and after the effective date of this Rule, no new application for an on premises retail beer, on premises retail wine, or wine restaurant on premises permits, will be granted for any grocery store, convenience store or general mercantile store. Those grocery stores, convenience stores or general mercantile stores that hold an off premises retail beer permit, but within the same building have separate kitchen facilities to prepare food on premises and a designated and physically defined seating area, may qualify to hold an on premises retail beer permit or wine restaurant on premises permit in said area.

Further, in those outlets where the permitted area dedicated to retail space contains off premises food or merchandise sales and on premises consumption food sales, prepared from kitchen facilities on the premises, and the seating for the on premises food consumption is in space occupying more than fifty percent (50%) of such total retail space, then the outlet, for purposes of this Rule, shall not be considered to be a grocery store, convenience store or general mercantile store; (Amended 8-18-99)

- (12) **No Permit to be Issued for Certain Premises.** No new on premises alcoholic beverage retail permit or private club permit will be issued to any premises which does not have available for the use of patrons the minimum number of restrooms required by the Arkansas State Health Department; (Amended 8-18-99)
- (13) **Permits Not to be Issued to Outlets With Personal Living Quarters.** No alcoholic beverage retail permit or private club permit will be issued nor will any such permit be transferred to any building which contains personal living quarters adjacent to the proposed area to be permitted which are accessible from the area to be permitted. **Provided,** that the Director or Board may authorize an exception to this Rule for bona fide bed and breakfast inns, and motels and hotels that hold a permit in a designated restaurant area (“bona fide” shall be determined from such evidence as may be presented for consideration by the Director or Board); (Amended 8-21-13)
- (14) **Permitted Outlets to Have at Least One Telephone.** No new alcoholic beverage permit will be issued by the Alcoholic Beverage Control Division for any premises that does not have at least one (1) telephone on the permitted premises; (Adopted 8-18-99)
- (15) **Sale of Beer or Small Farm Wine Through Drive Up Windows Prohibited at Off Premises Retail Beer and Small Farm Wine Premises.** (Repealed 2-25-22)
- (16) **Posting of Pregnancy Warning.** All permits shall post, in a conspicuous place at the permitted premises, a printed sign measuring 8 ½ x 11 inches, the following warning “Warning: Drinking alcoholic beverages during pregnancy may cause birth defects.” The warning shall be printed in English and Spanish.

Section 1.34 Continuation of Permit Conditioned Upon Operation of Originally Proposed Business. Any permit issued by the Alcoholic Beverage Control Division shall remain valid only for use in the business described in the original application including any attachments, letters, statements, or testimony given at the hearing on such application. If no written business and/or entertainment plan was required by this agency at the time such permit was issued, then the business operation shall be defined as it has historically operated during the two (2) years immediately prior to the adoption of this rule.

The maintenance of such business operations shall be deemed a condition of the permittee’s right to retain any permit. Any material change in the business operations proposed in the original application or in the manner the business has historically operated per above, without prior approval of the Director, shall be grounds for the revocation of any such permit. (Amended 8-17-05)

Section 1.35 Applications Granted Conditional-Time Limit Within Which to Meet Conditions. Any conditions attached to the granting of a permit by the Director or Board must be met by the applicant within twelve (12) months of the final agency decision or the application will be cancelled by the agency. In order to extend the twelve (12) month conditional period, written approval must be obtained from the Director or Board before the expiration of the twelve (12) month period. (Amended 8-20-03)

Section 1.36 Contents of Permits. All permits issued under any alcoholic beverage control law of the State of Arkansas shall contain, in addition to any further information or material to be prescribed by the Director, the following:

- (1) The name of the person to whom the permit is issued;
- (2) The kind of permit and the type of activity thereby permitted;
- (3) A description by street and number or otherwise of the permitted premises;
- (4) A statement in substance that such permit shall not be deemed a property or vested right and that it may be revoked at any time pursuant to law.

Section 1.37 Posting of Permit. Before doing any business under any permit issued pursuant to any alcoholic beverage control law of the State of Arkansas, the permit shall be enclosed in a suitable wood or metal frame having a clear glass face and a substantial wood or metal back so that the whole of said permit may be seen therein, and shall be posted upon and at all times, displayed in a conspicuous place in the room where the business permitted by the permit is carried on so that all persons visiting the premises may readily see the permit.

Section 1.38 Reissue of Permit Which has Been Lost, Defaced or Destroyed. Whenever a permit shall be lost, defaced or destroyed, a duplicate permit in lieu thereof will be issued by the Director upon payment of a fee of fifty dollars (\$50.00) and the filing of an application for a duplicate permit which shall be properly verified as provided in these Rules and shall set forth:

- (1) The date which the permit was lost, defaced or destroyed; and
- (2) The circumstances under which the permit was lost, defaced or destroyed.

Section 1.38.1 Permit Renewal; Penalty for Failure to Renew on Time - Exception for Personnel Called to Active Duty in the Armed Forces of the United States Who Are Stationed Outside the State; Annual Report for Non-Profit Corporation Filed by Private Club at time of Renewal of Permit. All permits issued by the Alcoholic Beverage Control Division are renewable on or before June 30th of each calendar year for the fiscal year beginning July 1st. Any person renewing a permit after June 30th shall be required to pay a late

renewal penalty in the amount of one-half (½) of the required yearly renewal fee for the permit for each sixty (60) days, or any portion thereof, after June 30th wherein the renewal is tendered, in addition to the amount of the yearly fee. Alcoholic Beverage Control Division permits may be renewed late by paying the above stated penalty beginning July 1st and ending October 28th of each fiscal year. No permit shall be renewed by the Alcoholic Beverage Control Division for the current fiscal year after October 28th.

For purposes of assessing the penalty, the renewal date shall be considered to be the date of the postmark if mailed, or the date of receipt, if hand delivered.

Holders of private club permits must, at the time of renewal of the permit, provide this agency with a file marked copy of the Annual Report for Non-Profit Corporation required by Act 569 of 2007. (Adopted 8-19-09)

In accordance with Act 996 of 2003, any individual owner/operator permittee of this agency who is a member of the National Guard of Arkansas or any reserve component of the United States of America, who is ordered to active duty to a duty station located outside of Arkansas shall be allowed an extension for renewing an alcoholic beverage permit issued by the Alcoholic Beverage Control Division. As provided by law the extension shall be allowed without penalty or assessment of a late fee if notification is given to the Alcoholic Beverage Control Division on or before June 30th of any calendar year that said individual owner/operator has been called to active duty as prescribed in Act 996 of 2003.

The extension shall not be granted where the person called to active duty is merely a manager for a corporation which is the permittee of this agency as other officers of the corporation may renew the permit in the absence of the person called to active duty. Likewise, the extension shall not be granted to any partnership or LLC where any partner or other member of the LLC can renew on behalf of the business entity. In accordance with Act 996 of 2003, the individual permittee of this agency that has been called to active duty outside the state shall have a grace period of six (6) months to complete the renewal process for his permit after release from active duty. (Amended 8-19-09)

Article 3 – SALE OF BUSINESS OR STOCK AND DISPOSITION OF DAMAGED BEVERAGES

Section 1.39 Director to be Notified of Sale of Business. Whenever any permittee shall sell the business conducted on the permitted premises, such permittee shall give notice of such sale to the Director within ten (10) days of the date of sale. The notice shall state the name, address, and permit number of the seller and the name and address of the purchaser. (Amended 8-19-93)

Section 1.40 Permit for Premises for Which New Permit Issued to be Surrendered. Whenever a new permit is issued for premises for which a permit is then existing, the permittee holding the old permit shall surrender such permit to the Director within three (3) days of the date on which any business is conducted on the premises under the new permit.

Section 1.41 Sale by Person Lawfully in Possession of Controlled Beverages Without a Permit. Any person lawfully coming into possession of any controlled beverages as executor, administrator, trustee or other fiduciary, as surety for or in payment of a debt or as an insurer (or the transferee or assignee of any insurer) for the salvage or liquidation of any insured casualty, damage or loss may, subject to the order of the Director and the requirements of these Rules, sell such controlled beverages in one lot or parcel to a person holding a permit allowing the purchase of such controlled beverages.

Section 1.42 Person Lawfully in Possession of Controlled Beverages Without Permit Must Notify Director and Post Bond Upon Taking Possession of Controlled Beverages. Any person described in Section 1.41 of these Rules coming lawfully into possession of any controlled beverages shall immediately after taking possession notify the Director and furnish a detailed description of the controlled beverages. In addition, such person shall post a bond with the Director in such amount as the Director deems sufficient to protect the state for any taxes due on the controlled beverages. Any such person shall notify the Director of any sale of the controlled beverages as provided in Section 1.41 of these Rules.

Section 1.43 Labeling and Sale of Controlled Beverages Involved in Casualty. Any controlled beverages which have been involved in a fire, wreck or other casualty shall be labeled or otherwise identified on each bottle, can or other container as being distressed merchandise salvaged from fire, wreck or other casualty. Such labeling shall be under the supervision of an authorized agent of the Alcoholic Beverage Control Enforcement Division who may, if such agent deems it necessary, require that the Arkansas Health Department certify such controlled beverages as being safe for human consumption before such beverages may be sold. No controlled beverages involved in a fire, wreck or similar casualty shall be sold unless such sale is approved by the Director as provided for in these Rules. Nothing contained herein shall be construed to allow the sale of any alcoholic beverages within the State of Arkansas which were not originally shipped to a licensed Arkansas wholesale distributor, as evidenced by shipping invoice, bill of lading or other shipping document.
(Adopted 8-19-93)

Article 4 – TRANSFER OF PERMIT BY OPERATION OF LAW

Section 1.44 Permit May be Transferred by Operation of Law, or by Reason of Dissolution, Bankruptcy, Incompetence, Death or Otherwise. A corporation or partnership holding a permit and in the process of dissolution; a trustee, receiver, or assignee for the benefit of creditors appointed for any person holding a permit; a committee of the property of any person holding a permit; an executor or administrator of the estate of any person who has held or holds the permit or any other person who by operation of law has succeeded to the legal title and rights of any person holding a permit may, subject to the approval of the Director as required under these Rules, continue to carry on the business of the person to whom the permit was issued at the premises designated in the permit. Said parties shall be able to renew the license and

carry on the business for a period of time not to exceed twenty-four (24) months. Said persons shall carry on said business with the same right and subject to the same restrictions and liabilities as would be imposed upon the original holder of the permit. The twenty-four (24) month period shall be determined as having begun on the date that the successor takes control of the property of the permittee. (Adopted 8-19-93)

Section 1.45 Person Continuing Business by Operation of Law Must Qualify and be Approved. Any person seeking to continue the business of another person as described in Section 1.44 of these Rules must file an application therefore with the Director on a form approved by the Director. Such person must be qualified to hold the class of permit for which he is making application to continue. If the Director approves the application he shall have written or stamped across the face of the existing permit or license the following words:

- (a) _____ is permitted to manufacture or sell (as the case may be) _____ (type of beverage or beverages allowed by the permit) as _____ (insert representative capacity) of the original permittee. Said _____ (representative capacity) shall be allowed to operate the business for a period of time not to exceed twenty-four (24) months. Said term of authority for the _____ (representative capacity) shall be considered to have begun on the date the representative first took control of the operation of the business.

The Director shall also subscribe his signature to the statement required on the permit. (Amended 8-19-93)

Section 1.46 No Business to be Conducted on Premises by Virtue of Transfer of Permit by Operation of Law Unless Approved by Director. No person acting in any representative capacity by virtue of the transfer of a permit by operation of law as described in this Article shall conduct any business on the permitted premises or otherwise by virtue of the transfer of the permit unless such person has been approved by the Director as provided in this Article or has applied for and secured a permit in such person's own name as representative. Any person applying for a permit in such person's own name as representative shall be required to possess all qualifications required of a normal permittee. (Amended 8-19-93)

SUBTITLE D – HEARING PROCEDURE

Including Procedure for Application, Cancellation, Suspension or Revocation of Permit.

Section 1.47 All Hearings for Cancellation, Suspension or Revocation of Permits to be Before Director or Designated Hearing Officer Upon Notice of Hearing; Emergency Exception. All hearings for the cancellation,

suspension, revocation, or money fine of permits shall initially be before the Director or a Hearing Officer designated as provided in this Article, pursuant to the notice required by this Article, with an opportunity for interested parties to respond and present evidence and argument on all issues involved. Hearings, including proceedings on an application for a permit, may initially be held before the Director, at his discretion, pursuant to the same notice requirements stated above. **Provided**, that if the Director finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in his Order, summary suspension of the permit may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly instituted and determined. (Amended 12-17-82)

Section 1.48 Contents of Notice Required. In every case in which a hearing is required by these Rules or by any law of the State of Arkansas pursuant to notice, such notice shall include the following:

- (1) A statement of the time, place and nature of the hearing;
- (2) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) A short and plain statement of the matters of fact and law asserted.

Section 1.49 Conduct of Hearing by Director or Hearing Officer. In the conduct of any hearing held by the Director or the Hearing Officer designated as provided in these Articles, the Director or such Hearing Officer shall be authorized to examine or cause to be examined under oath any person, and to examine or cause to be examined books and records of any permittee; to hear testimony, to take proof material for his information and for the purposes of the hearing; to administer or cause to be administered oaths; and for such purposes to issue subpoenas to require the appearance of witnesses and the production of books and records, which subpoena shall be effective in any part of this state. Any Circuit Court, either in the term time or vacation, may by order duly entered require the attendance of witnesses or the production of relevant books and records subpoenaed by the Director and the Court may compel obedience to its orders by proceedings for contempt. Any applicant or permittee involved in a hearing before the Director shall be entitled, on request, to a subpoena for the compulsory attendance of witnesses desired by him. All witnesses subpoenaed by the Director or Board shall be entitled to such mileage and fees as are prescribed by law for witnesses in the Circuit Courts in the state. The mileage and fees of witnesses subpoenaed at the request of any applicant or permittee shall be paid by him. (Amended 8-19-93)

Section 1.50 Order Denying, Cancelling, Suspending, Revoking or Imposing a Money Fine Against the Permit. Whenever the Director shall deny an application for any permit or shall cancel, suspend, revoke, or impose a money fine against any permit, he shall prepare an Order so providing, which shall be signed by the Director or some person designated by him and the seal of the Director shall be affixed thereto. Said Order shall include findings of fact

and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Said Order shall be mailed by certified mail by the Director to the applicant at the address shown on the application or to the permittee at the address of the permitted business as the case may be. Such Order shall be final and binding on all parties until such Order has been appealed as provided in this Article.

Section 1.51 Appeal by Person Aggrieved by Order of Director. Any applicant or permittee aggrieved by an Order of cancellation, denial, suspension, revocation, or the imposition of a money fine by the Director, or any person or group of persons who have formally protested the issuance of any permit before a decision was rendered by the Director and are aggrieved by the issuance of such permit, may appeal from such Order to the Alcoholic Beverage Control Board by filing a notice of appeal with the Board. The notice of appeal must be mailed or delivered to the offices of the Alcoholic Beverage Control Division within fifteen (15) days after the Order to be appealed from was received by the recipient, as shown by the Certified Mail Return Receipt card returned to the Alcoholic Beverage Control Division. In the event the person filing an appeal of the Director's Decision or Order was not sent a certified letter of the same, then the fifteen (15) day appeal period begins on the date the Director's Decision or Order was issued. The notice of appeal shall designate the name of the permittee or applicant.

At least ten (10) days before the time set for the hearing the Alcoholic Beverage Control Division shall notify the applicant, permittee, or protestor of the time and place where said appeal shall be heard by the Board or by a Hearing Officer designated as provided in this article. Such notice to the applicant, permittee or protestor shall be mailed by regular first class mail. Said hearing shall be held within at least sixty (60) days after the date of the filing of the notice of appeal unless the person appealing shall consent to a later hearing. No request for a continuance of a Board hearing made after the Friday before a scheduled Board hearing will be considered by the Director, absent emergency circumstances, the determination of which is vested in the discretion of the Director. (Amended 8-16-11)

Section 1.52 Review by Board of Action of Director on Own Motion; Effective Date of Director's Action. The Alcoholic Beverage Control Board may on its own motion review any action of the Director in granting or failing to grant, renewing or failing to renew, cancelling, revoking or suspending, fining, or failing to cancel, revoke, suspend, or fine upon complaint any permit; and, upon such review, set aside any action of the Director in any of said respects. For purposes of this Section only, any action by the Director in any of said respects shall not become effective until the day following the next meeting of the Board following the action by the Director, and then only if the Board fails to make a motion to exercise its right of review. In exercising such right of review the Board may hold any hearing deemed necessary and shall have the power to conduct such hearing in the manner required by this Article. (Amended 8-19-93)

Section 1.53 Conduct of Hearing by Board. For the purpose of hearing or conducting any appeal authorized to be heard by it, the Board or any Hearing Officer designated as provided in this Article, shall have the power to examine or cause to be examined under oath any permittee, the Director, or any other person, and to examine or cause to be examined the books and records of any such permittee; to hear testimony and to take proof material for its information or the information of such Hearing Officer in hearing such appeal; to administer or cause to be administered oaths; and for such purposes to issue subpoenas requiring the attendance of witnesses and the production of books and records, such subpoenas shall be effective in any part of this State; and any Circuit Court may by order duly entered require the attendance of witnesses and the production of relevant books and records subpoenaed by the Board and the Court may compel obedience to its orders by proceedings for contempt. An applicant involved in a hearing before the Board shall be entitled, on request, to a subpoena for the compulsory attendance of witnesses desired by him. All witnesses subpoenaed by the Director or the Board shall be entitled to such mileage and fees as are prescribed by law for witnesses in the Circuit Courts of the State; and the mileage and fees of witnesses subpoenaed at the request of an applicant or permittee shall be paid by him.

Section 1.54 Decision or Order by Board. Within five (5) days after a hearing is concluded by the Board, the Board shall render its written decision or Order. Such written opinion, decision or Order shall include findings of facts and conclusions of law, separately stated. Findings of fact, if set forth in statutory language shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A copy of such opinion, decision, or Order shall be mailed by the Board by certified mail to the applicant, permittee, or protestor. Such Order and decision shall be final and binding on the Director and the applicant, permittee, or protestor. **Provided,** however, that an appeal may be taken from any Order cancelling, suspending, revoking, or placing a money fine against a permit or failing to grant or deny a permit as provided for in this Article. (Amended 8-19-93)

Section 1.55 Appeal from Board to Courts. Within thirty (30) days after the mailing of the Order of the Board, any permittee aggrieved by an Order of the Board or any person or group of persons who have formally appealed a decision of the Director to the Board and are aggrieved by a decision of the Board, may appeal to the Circuit Court system in accordance with the Arkansas Administrative Procedure Act. An appeal from the judgment of the Circuit Court may be taken to the Arkansas Court of Appeals or the Supreme Court of Arkansas in the manner generally provided for the appeal of civil matters from the Circuit Court. (Amended 8-19-93)

Section 1.55.1 Appellant to Pay Costs of Preparing Transcript of Board Hearings. Pursuant to the provisions of the Arkansas Administrative Procedure Act, the Alcoholic Beverage Control Division shall prepare the certified copy of the agency record for filing in any appeal filed under the Arkansas Administrative Procedure Act. However, the Alcoholic Beverage Control Division will recover \$1.50 per page for each page of the transcript of the Alcoholic Beverage Control proceedings filed with the Circuit Court, if the

Alcoholic Beverage Control Division is determined to be the prevailing party in the Administrative Procedure Act review. In the event any parties request that the Alcoholic Beverage Control Division provide a copy of the agency record, the Alcoholic Beverage Control Division shall be entitled to recover forty cents (\$.40) per page for each copy of the transcript. Any copies of Alcoholic Beverage Control files, records, or transcripts shall be paid for at the rates noted above. All monies received by the Alcoholic Beverage Control Division pursuant to the above provisions shall be deposited to the General Revenues of the State of Arkansas. (Amended 8-19-93)

Section 1.56 Admissibility of Evidence in Hearings. In any hearing provided for by this Article or by any alcoholic beverage control law of the State of Arkansas, the Director, the Board and any Hearing Officer designated pursuant to this Article to conduct such hearing, shall not be bound by the legal rules of evidence in conducting any hearing and in making any decision, and may take into consideration any testimony, papers or documents which may be deemed relevant to the issues involved.

Section 1.57 Record of Hearing Required; Contents of Record. In any hearing held pursuant to this Article or any alcoholic beverage control law of the State of Arkansas, the person conducting such hearing shall cause to be prepared a record of the hearing which shall include:

- (1) All pleadings, motions and intermediate rulings;
- (2) Evidence received or considered, including, on request of the party, a transcript of all proceedings or any part thereof;
- (3) Offers of proof, objections and rulings thereon;
- (4) Proposed findings and exceptions thereto.

Section 1.58 Designation of Hearing Officer. Pursuant to the power granted to the Alcoholic Beverage Control Division, in part by ACA § 25-15-213 and pursuant to other powers granted to the Director and the Board, the Director or the Board may designate any member of the Alcoholic Beverage Control Division to conduct any hearing authorized by this Article or by any alcoholic beverage control law of the State of Arkansas. (Amended 8-19-93)

Section 1.59 Decision or Order in Hearing Conducted by Hearing Officer. When in the case of any hearing conducted by a Hearing Officer designated as provided in this Article the Director or a majority of the Board, as the case may be, has not heard the case or reviewed the record, the decision, if adverse to a party other than the Director or Board, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral arguments to the Director or the Board, whichever is to render the decision. The proposal for decision shall contain a statement of the reasons therefor and the issues of fact or law necessary thereto, prepared by the person who conducted the hearing. If the Director or the Board, as the case may be, has heard the case,

or reviewed the record, their decision shall be made and entered as otherwise provided by this Article.

Section 1.60 Notice Required by Director to Certain Persons Upon Application for Permit. Upon receipt by the Director of an application for permit, written notice thereof, which shall include a copy of the application, shall be mailed by the Director to the Sheriff, Chief of Police, if located within a city, and Prosecuting Attorney of the locality in which the premises is situated, and to the Mayor and City Board of Directors or other governing body of the city in which the premises is situated, if within an incorporated area. No permit shall be issued by the Director until at least thirty (30) days have passed from the mailing by the Director of the notices required by this Rule. **Provided,** that this requirement shall not apply if the applicant holds a restaurant mixed drink permit and subsequently makes application for a beer and/or wine permit only at the same location. (Amended 8-20-03)

Section 1.61 Hearing to be Held if Protest Within Thirty (30) Days. If within the thirty (30) day period following the date of the mailing of the notices required by Section 1.60 of these Rules the Director receives any written protest from any person to whom such notice was sent against the issuance of a permit, the Director shall not issue the permit until a hearing has been held on the issuance of the permit as provided in this Article.

Section 1.62 Right to Counsel and to Cross-Examine Witnesses for Any Person Compelled to Appear at Hearing. Any person compelled to appear at any hearing provided for by this Article or by any alcoholic beverage control law of the State of Arkansas shall have the right to be accompanied and advised by counsel and to cross-examine witnesses.

Section 1.63 Cancelled, Suspended, or Revoked Permit to be Surrendered. Within three (3) days after a permit shall have been cancelled, suspended, or revoked, pursuant to the Director's summary authority under this Article or pursuant to any Order of the Director, Board, or any Court which has become final, notice thereof shall be given by the Director to the permittee by mailing such notice by certified mail to the permittee at the premises permitted or by personal service thereof upon the permittee. Upon receipt of such notice, the permittee shall immediately surrender the permit to the Director. The Director, immediately upon giving such notice of cancellation, suspension, or revocation, shall cause to be notified in any manner he deems appropriate the chief of police of the city or town in which the subject premises is located or the county sheriff in any case where the subject premises is located outside a city or town.

If such permit is not immediately surrendered, the Director shall issue a written demand for the surrender of the permit and deliver said demand to the sheriff of the county in which the permitted premises is located or to any authorized agent of the Alcoholic Beverage Control Enforcement Division. Said sheriff or authorized agent shall immediately take possession of the permit and return it to the Director. (Amended 8-19-93)

**SUBTITLE E – PROCEDURE UPON SEIZURE AND FORFEITURE OF
CONTROLLED BEVERAGES AND PERSONAL
PROPERTY**

**Article 1 – PROCEDURE UPON SEIZURE AND FORFEITURE OF
CONTROLLED BEVERAGES**

Section 1.64 *Controlled Beverages Possessed in Violation of Rules or Law Declared Contraband.* All controlled beverages found in the possession of any person where such possession shall violate any of these Rules or any alcoholic beverage control law of the State of Arkansas are contraband and shall be seized and forfeited.

Section 1.65 *Procedure Upon Seizure of Controlled Beverages.* All controlled beverages seized as provided in these Rules and the laws of the State of Arkansas in regard thereto shall be immediately turned over to the mayor, if seized within the city limits of a municipality by a law enforcement officer of such municipality, or to the county judge, if seized without the city limits of any municipality or within the city limits of any municipality by the sheriff or any state policeman or any agent of the Division of Alcoholic Beverage Control, to be held by such mayor or county judge until such time as a district court of the county wherein such beverages were seized determines such beverages to be contraband and subject to sale. Such controlled beverages shall not be considered subject to sale if, upon advice of the Department of Health, the district court determines that the controlled beverages are not fit for human consumption. In such case, the controlled beverages shall not be sold but shall be destroyed under the supervision of an agent of the Division of Alcoholic Beverage Control.

Section 1.66 *Notice of Sale to be Published.* Within three (3) days after being authorized by a district court to sell seized controlled beverages, the mayor or county judge, as the case may be, shall cause to be published in a newspaper having county-wide circulation, a notice, which notice shall appear in said newspaper twice within a thirty (30) day period, fifteen (15) days apart. The notice shall contain a list of the beverages authorized to be sold by the court, the approximate retail value thereof, the person, if known, from whom taken, the place where seized and that the beverage will be sold by the mayor or the county judge, as the case may be, at the expiration of thirty (30) days from the first published notice.

Section 1.67 *Claims Against Seized Beverages.* Any person claiming any interest in any controlled beverages seized may, at any time within thirty (30) days from the date of seizure of such controlled beverages, present a written petition to the district court having jurisdiction of said controlled beverages, setting out the nature of said interest and requesting that a hearing be held by the court to determine the right or interest of such person therein. Upon the filing of the petition with the court, the judge of said court shall set a date for a hearing which date shall be ten (10) days from the date the hearing is requested, unless good and sufficient cause is shown and recorded for a further

delay. At the hearing all witnesses shall be duly sworn and the testimony recorded by a stenographer. The district judge shall within fifteen (15) days after completion of the hearing enter his written findings of fact and order upon the testimony presented.

Section 1.68 Appeal from District Court. The findings of fact and order of the district judge may be appealed to the circuit court of the county wherein such controlled beverages were seized by filing with said court within fifteen (15) days after the district judge's order has been duly entered a transcript of record of the hearing held before the district judge. The circuit court shall hear no new evidence on the appeal and shall render its judgment only on errors of law. An appeal from the judgement of the circuit court may be taken to the Arkansas Court of Appeals.

Section 1.69 Sale of Seized Beverages. Upon the expiration of thirty (30) days from the date of the first notice required to be published as provided in this Article the mayor or county judge, as the case may be, shall immediately notify all permitted liquor wholesalers and/or retailers in the county, or, if the county is dry, then the permitted liquor wholesalers and/or retailers in the nearest wet county, that said seized controlled beverages will be sold to the highest bidder and shall request all permitted liquor wholesalers and/or retailers to submit sealed bids. In the event that controlled beverages are seized upon which any tax has not been paid, the retailer or wholesaler buying such beverages shall pay such tax and affix all stamps required by law. (Amended 8-19-93)

Section 1.70 Mayor or County Judge to File Monthly Report of Seizures and Sales of Controlled Beverages. Every mayor or county judge to whom seized controlled beverages are delivered shall file with the Director of the Division of Alcoholic Beverage Control a report at the end of each month showing the number of seizures, the amount of controlled beverages seized and the amount of money collected from the sale of the controlled beverages.

Article 2 – PROCEDURE UPON SEIZURE AND FORFEITURE OF PERSONAL PROPERTY

Section 1.71 Seizure and Forfeiture of Vehicles, Vessels and Other Personal Property Used in the Manufacture, Transportation or Storage of Illicitly Manufactured Beverages. All vehicles, vessels and other personal property used, or intended to be used, in the manufacture, transportation or sale of any beverages manufactured in violation of any of these Rules or any alcoholic beverage control law of the State of Arkansas may be seized by any law enforcement agent of the State of Arkansas and shall be forfeited to the State and turned over to the Division of Alcoholic Beverage Control for disposition.

Section 1.72 Notice of Seizure and Sale. Within fifteen (15) days after any vehicle, vessel or other personal property is seized, the Director shall publish a notice in a newspaper having statewide circulation describing the property and stating the time, place and cause of its seizure, and stating that such property will be sold at public auction at the expiration of thirty (30) days from the date of publication of such notice if no claimants to the property appear within said thirty (30) day period. The notice shall also state that, upon disposition of any claims filed, the property will be sold pursuant to notice at public auction.

Section 1.73 Claims Against Seized Property. Any person claiming any interest in any property seized under this Article may at any time within thirty (30) days of the date of the notice of publication required by this Article present a written petition to the Director of the Division of Alcoholic Beverage Control setting out the nature of said interest and requesting that a hearing be held to determine such person's right or interest in the property. The Director shall set a date for said hearing which date shall be within ten (10) days of the date the hearing is requested, unless good and sufficient cause is shown and recorded for further delay. The Director shall conduct such hearing and any appeal from the Director shall be made in accordance with the procedure established in this Title.

Section 1.74 Offers to Compromise by Persons Claiming Interest in Property. The Director may accept an offer by a person claiming an interest in the seized property in compromise of such person's claim, taking into consideration mortgages, lender liens, other claims, cost of litigation and financial gain in the final determination of the matter.

Section 1.75 Notice of Sale After Disposition of Claim. Upon disposition of all claims filed against the property seized and upon expiration of thirty (30) days from the date of publication of the first notice of seizure and sale required by this Article, the Director shall publish a notice in a newspaper of general statewide circulation stating that the seized property is to be sold at public auction and stating the time, date and location of such sale. The notice shall also state that all property will be sold on a unit basis and that the terms of the sale shall be cash.

SUBTITLE F – REGISTRATION OF MANAGING AGENT

Section 1.76 Certain Permittees Must Designate and Register Managing Agent. Any individual applying for or holding any permit who is not in actual charge of the day-to-day business conducted on the permitted premises, and all partnerships and corporations applying for or holding any permit, shall designate a managing agent who shall be in charge of the day-to-day business conducted on the permitted premises. Such managing agent must be registered with the Director as managing agent for the permittee at the permitted premises. Such registration shall be on a form provided by the Director and shall set forth in detail such information concerning the managing agent as the Director may require.

Section 1.77 *Qualifications of Managing Agent.* A managing agent must be qualified to hold the class of permit held by the permittee designating such individual as managing agent for the permittee's premises. (Amended 8-19-93)

Section 1.78 *Director to be Notified When Managing Agent Ceases to Act as Such; Designation of New Managing Agent.* Within five (5) days of the date when any managing agent designated and registered as required by this Subtitle ceases to act as such, the permittee shall notify the Director in writing and within thirty (30) days of the date on which the Director is so notified, the permittee shall designate a new managing agent and such managing agent shall be registered as required by this Subtitle within five (5) days of his or her designation as managing agent.

SUBTITLE G – PROHIBITED CONDUCT AND ACTIVITIES AND PROCEDURE FOR CANCELLATION, SUSPENSION AND REVOCATION OF PERMITS

Section 1.79 *Prohibited Activities; Grounds for Cancellation, Suspension, Revocation, or Placing of Monetary Fine Against Any Permit.* In addition to the violation or failure to comply with any of these Rules or any alcoholic beverage control law of the State of Arkansas, any permit issued pursuant to any alcoholic beverage control law of the State of Arkansas may be cancelled, suspended, revoked, or assessed a monetary fine for any of the following prohibited activities committed by the permittee or any employee, agent or servant of the permittee: (Amended 8-18-99)

- (1) ***Failure to Comply with Federal Regulations.*** The permittee violated or failed to comply with any advertising, inducements or packaging regulation issued as a regulation of the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury of the United States Government as promulgated in Title 27 of the Code of Federal Regulations;
- (2) ***Sale of Controlled Beverages When Permit Not Posted.*** The permittee sold, offered for sale, dispensed, gave away or possessed on the premises any controlled beverages at any time when the permit of said permittee was not posted as required by these Rules;
- (3) ***Failure to Furnish Bond; Repealed 8-18-99***
- (4) ***Failure to Pay Tax, Fee, Penalty or Child Support.*** The permittee failed to pay when due, any tax or fee required by these Rules, or by any law of the State of Arkansas, or any political subdivision of the State of Arkansas, or any penalty assessed by the Director, the Board, any Court, or any Court ordered child support. The permittee's failure to pay taxes imposed on alcoholic

beverages by any state or local gross receipts and compensating use taxes in a timely manner shall be grounds for the non-renewal of the permittee's permit(s) by the Board. Provided further, any permit(s) suspended for non-payment of the above taxes shall be cancelled if the tax arrearage is not satisfied within six (6) months of the date of suspension;
(Amended 8-17-05)

- (5) ***Giving False Information or Statements.*** The permittee knowingly gave false information or made false statements on any application or in any hearing required by these Rules or by any alcoholic beverage control law of the State of Arkansas;
- (6) ***Failure to Possess Qualifications Required.*** The permittee, if the permittee is an individual, any partner, if the permittee is a partnership, or if the permittee is a corporation, any officer, director, managing agent, or stockholder holding more than five percent (5%) of the stock of the corporation failed to possess at any time any qualifications required by these Rules or by any alcoholic beverage control law of the State of Arkansas;
- (7) ***Failure to Maintain Health, Safety and Sanitary Standards.*** The permittee failed to maintain the minimum health, safety and sanitary standards established by the State of Arkansas and by the rules of the State Board of Health for the permitted premises;
- (8) ***Violation of Oath.*** The permittee violated any oath required by these Rules or by any alcoholic beverage control law of the State of Arkansas;
- (9) ***Failure to Keep and Maintain Records or Make Report.*** The permittee failed to keep and maintain any records required to be kept and maintained, or failed to make any report required to be made by these Rules or by any alcoholic beverage control law of the State of Arkansas;
- (10) ***Failure to Furnish Access to Premises or Failure to Cooperate.*** The permittee failed to furnish reasonable access to the premises to any law enforcement officer of this State or any county or municipality in which the premises is located or to any duly authorized agent of the Alcoholic Beverage Control Division or failed to cooperate or take reasonable action to assist any such law enforcement officers who are on the permitted premises in the performance of their duties; (Amended 12-23-86)
- (11) ***Failure to Allow Inspection of Books or Records.*** The permittee failed to allow a reasonable inspection of the books or records of the permitted business to any duly authorized agent of the Division of Alcoholic Beverage Control;

- (12) ***Attempt to Transfer or Assign Permit.*** The permittee attempted to transfer or assign the permit to any other person or any premises other than the premises described in the permit by any procedure other than that established by these Rules and the laws of this State;
- (13) ***Pledge, Hypothecation or Use of Permit as Collateral.*** The permittee pledged or hypothecated the permit or deposited the permit as collateral security for any loan or upon any other condition;
- (14) ***Posting Permit on Unauthorized Premises.*** The permittee posted or knowingly allowed any other person to post the permit upon premises other than the permitted premises described in the permit;
- (15) ***Defacing, Destroying or Altering Permit.*** The permittee maliciously defaced or destroyed the permit, or knowingly altered the permit or knowingly allowed any other person to maliciously deface or destroy or knowingly alter the permit in any respect;
- (16) ***Transporting Controlled Beverages in Violation of Rule or Law.*** The permittee transported or caused to be transported any controlled beverage in violation of these Rules or any alcoholic beverage control law of the State of Arkansas;
- (17) ***Manufacture or Possession of Controlled Beverage With Excess Alcohol Content.*** The permittee manufactured or possessed on the permitted premises any controlled beverage having an alcohol content as measured by weight in excess of that prescribed by ACA § 3-1-102 and by these Rules for such beverages; (Amended 8-19-93)
- (18) ***Removing or Obliterating Label, Mark or Stamp.*** The permittee removed or obliterated any label, mark or stamp affixed to any bottle or container of controlled beverages offered for sale or delivered or sold the contents of any bottles or containers upon which the label, mark or stamp had been removed or obliterated;
- (19) ***Consuming and/or Under the Influence of Controlled Beverages While on Duty.*** The owner or permittee was under the influence of alcoholic beverages, or any employee consumed alcoholic beverages or was under the influence of alcoholic beverages, while on duty on the permitted premises. "Duty" shall include the sale or service of alcoholic beverages and/or crowd control. In determining whether the permittee or any agent, server or employee is otherwise on duty, the Director or Board may consider, among other factors, the size of the permitted establishment, the number of employees working at the time, and

whether the permittee has a manager on the premises; (Amended 8-17-05)

- (20) ***Unauthorized Manufacture, Sale, Offer, Dispensing, Gift, or Possession of Controlled Beverage.*** The permittee manufactured, sold, offered for sale, dispensed, gave away, or possessed any controlled beverage not authorized to be manufactured, sold, offered for sale, dispensed, given away or possessed under the permit held by the permittee or allowed any of the foregoing on the permitted premises by any employee or patron; Nothing under this section shall prohibit “home brewed beer” as defined in accordance with ACA 3-5-202 (5) (A), to be allowed on a permitted premises for organized affairs, exhibitions, competitions, and tastings, but not for sale, if tastings or samplings are allowed under the permittee’s permit.
- (21) ***Manufacture or Sale in “Dry” Area.*** The permittee manufactured, sold, offered for sale, solicited or took orders for any controlled beverage in any area in which the manufacture or sale of such beverage is prohibited by law;
- (22) ***Manufacture, Sale, Offer, Dispensing, Gift, Possession or Transportation of Controlled Beverage Upon Which Tax Not Paid.*** The permittee manufactured, sold, offered for sale, dispensed, gave away, possessed or knowingly transported in this State any controlled beverage of any kind upon which any tax required by these Rules or by any alcoholic beverage control law of the State of Arkansas has not been paid; (Amended 8-19-3)
- (23) ***Storing Controlled Beverages on Unauthorized Premises.*** The permittee stored or caused to be stored controlled beverages manufactured, purchased or possessed by the permittee by virtue of the permit at any location other than on the premises described in the permit or in a warehouse approved in accordance with these Rules;
- (24) ***Possession of Illegal Drugs or Narcotics.*** The permittee possessed, or knew or reasonably should have known that any agent or employee or patron of the establishment possessed on the permitted premises, any illegal drug, narcotic, controlled substance or drug paraphernalia, as defined in the Arkansas Uniform Controlled Substance Act. Further, no agent or employee of the permittee shall knowingly allow the possession on the permitted premises of any illegal drug, narcotic, controlled substance or drug paraphernalia; (Amended 8-19-93)

- (25) ***Employing a Convicted Felon. Repealed 8-21-13***
- (26) ***Failure to File Timely Change of Manager or Replacement Application.*** The permittee of any retail outlet sold or leased the permitted business and the purchaser/lessee of such business failed to file an acceptable replacement application within thirty (30) days of such sale or lease; the managing agent of any incorporated retail outlet or private club became unqualified to serve as such for any reason and such corporate permittee or private club failed to file an acceptable change of manager application within thirty (30) days of such disqualification. In the event that any replacement or change of manager application required by this Section is finally denied, such permit will be presumed abandoned in violation of this Section and the Director may hold a hearing on such permit and make appropriate findings; (Adopted 7-19-84)
- (27) ***Allowing Alcoholic Beverages to be Carried From Any On Premises Alcoholic Beverage Outlet or Private Club.*** The permittee allowed any patron to exit the permitted premises carrying any open container of alcoholic beverages or allowed any patron to exit any on premises retail beer outlet carrying sealed alcoholic beverages in any combination not authorized by the Director for off premises sales, unless otherwise authorized by these rules. Private Club permitted outlets are not allowed to sell any alcoholic beverages to be taken off the permitted premises. ***Provided,*** (1) those establishments holding an on premises wine restaurant or café permit, a combined restaurant beer and wine permit, hotel-motel-restaurant mixed drink permit, or private club permit, may allow a customer, who purchases an unsealed package of wine in conjunction with a food purchase and consumes a portion of the wine on the premises with the meal, to replace the cork and remove the partially filled package from the premises and (2) patrons may walk back and forth with an alcoholic beverage between a private club permitted premises and another contiguous permitted premises when both premises are a part of the same business operation and the alcoholic beverage is a type permitted by both premises; and (3) patrons may walk back and forth with an alcoholic beverage between an on premises permitted outlet and a contiguous outlet issued a casino license by the Arkansas Racing Commission as long as the casino licensee is in operation. (Amended 10-21-20)

It is further provided that any on-premises outlet in a valid Entertainment District may allow patrons to leave the permitted premises with alcoholic beverages. A city, municipality, or incorporated town that has designated an Entertainment District shall notify the ABC within ten (10) days of issuance or removal of a district. Notification for issuance of an Entertainment District

shall include: whether the district is temporary or permanent, the days and hours of operation of the Entertainment District, any other regulations within the Entertainment District, as well as any on-premises outlets that elect to opt out of the Entertainment District. Any on-premise permit within an Entertainment District that opts out of the Entertainment District may not permit patrons to leave the premises with alcoholic beverages.

- (28) **Advertising, Selling or Dispensing Alcoholic Beverages on a Two or More for the Price of One Basis.** The permittee advertised, sold, dispensed, or served any alcoholic beverages for on premises consumption on the basis of two or more drinks for the price of one. Further, the permittee advertised, sold, dispensed, or served alcoholic beverages without a limit to any person on the basis of a flat fee or cover charge. Further, distilled spirits may not be sold by the bottle to patrons for self pouring at on premises consumption permitted outlets. **Provided**, a fee charged for wine tastings, where such tastings are served in containers of two (2) ounces or less and each patron is limited to a maximum of four (4) servings per charge, shall not be deemed in violation of this Rule; (Amended 8-17-05)
- (29) **Conviction of Any Permittee of Second or Subsequent DWI or Unlawful Sale of Alcohol.** The permittee or any managing agent for any corporate permittee, after the effective date hereof, has been convicted of a second or subsequent driving while intoxicated (DWI) offense or has been convicted for a second or subsequent time for any unlawful sale of alcoholic beverages where such second conviction occurs within five (5) years of the prior conviction; (Amended 8-19-93)
- (30) **Strict Liability on the Part of the Permittee for Any Prohibited Advertising.** The permittee, partnership, or corporation holding any permit issued by the Alcoholic Beverage Control Division may be held strictly liable for any type of advertising that is prohibited for such permittee by these Rules or by code provisions. When such advertising is promoting any event or activity on a permitted premises it is irrelevant, for the purposes of administrative liability, whether or not the permittee had prior actual knowledge of the contents of the prohibited advertisement. However, lack of actual knowledge may be taken into consideration by the Director, along with all other relevant circumstances, in determining the administrative penalty to be levied for this violation; (Adopted 12-23-86)
- (31) **Failure of Permittee to Maintain on File “Server Awareness Form” for Each Employee as Required by Rules.** The permittee failed to have each employee acknowledge by signature the “Server Awareness Form” promulgated by the Director and to be

maintained in the personnel file of each employee; (Adopted 12-15-89)

- (32) ***Failure to Be a Good Neighbor.*** The policy of the Arkansas General Assembly, per Act 695 of 1989, and the Alcoholic Beverage Control Board, which is empowered to adopt rules thereunder, is that every holder of an Alcoholic Beverage Control permit shall be held to a high duty of care and will operate their business where beverages are sold or dispensed in a manner which is in the public interest and which does not endanger the public health, welfare, or safety. Failure to maintain this duty of care shall be a violation of the Act and shall constitute grounds for the application of the full range of administrative sanctions and penalties against the subject permit.

Any inquiry made under the provisions of this Rule, or Act 695 of 1989, shall be whether or not the outlet, as operated, promotes the public convenience and advantage or whether the continuation of the operation of the outlet would promote the public interest and whether or not the outlet's operation endangers the public health, welfare or safety in the area of a community in which it is located. It is specifically provided that during any hearing called under the provisions of this Rule or the aforementioned Act the permitted outlet may be viewed as if it were a new application and all factors involved in the processing of the application may be re-determined as if the application was being made for the first time.

As to all violations occurring inside the permitted premises, the standard of proof shall be by substantial evidence. As to all violations occurring outside the permitted premises, the standard of proof shall be by clear and convincing evidence. In addition to all factors which may be used on an initial application, inquiry may be made upon the control, or lack thereof, that the permittee exercises over parking lots and other areas adjacent to the permitted outlet which are under the direct control of the permittee. In addition, the permittee may be held accountable under this Section for disorderly conduct, excessive noise or loud music from his outlet and which is of such volume and such degree as to constitute a disturbance of the public peace; (Amended 8-17-05)

- (33) ***Allowing Possession of Weapons on Premises.*** That the permittee, or any employee of the permittee, allowed, or knew, or reasonably should have known, that any person without a possessory or proprietary interest in the permitted outlet was in possession of a weapon on the permitted premises. As used in this Rule, "weapon" means any firearm that is designed, made, or adapted to be fired, or any knife or club as defined by ACA § 5-73-120. Any weapon authorized to be in the permitted outlet pursuant to this Rule must be kept out of sight and inaccessible

to patrons and others who have no legal right to possess a weapon in the outlet. This Rule excludes any law enforcement officer, any duly authorized agent of the Alcoholic Beverage Control Enforcement Division, and any licensed security guard, while acting in the course and scope of their official duties. **Provided**, that any person with a permit issued by the Director of the Arkansas State Police may carry a concealed handgun, as such is defined in ACA § 5-73-301 into a restaurant, as such is defined in ACA § 3-9-202(16). **Provided further**, that an employee of a retail liquor store who is licensed to carry a concealed handgun by the state may possess a handgun on the permitted premises. (Amended 8-21-13)

- (34) **Sale While Permit Suspended or on Inactive Status.** That the permittee or any agent or employee of the permittee sold, offered for sale, dispensed, gave away or allowed the consumption of any controlled beverages upon the permitted premises at any time the permit is suspended or on inactive status; (Adopted 8-19-93)
- (35) **Sale of Tobacco to Minor.** That the permittee or any agent or employee of the permittee sold tobacco in any form or cigarette papers to a minor under eighteen (18) years of age; (Adopted 8-19-93)
- (36) **Allowing Open Containers of Alcoholic Beverages in Off Premises Permitted Outlet.** That the permittee, or any employee of the permittee, allowed or knew or reasonably should have known that open containers of alcoholic beverages were present in an off premises permitted outlet; (Adopted 7-19-95)
- (37) **Duty of Permittee to Provide Certain Information to Alcoholic Beverage Control Enforcement Agents or Law Enforcement Officers.** That the permittee failed to provide to the Alcoholic Beverage Control Division, any Alcoholic Beverage Control Enforcement agent or law enforcement officer, when requested, access to information pertaining to the employment of any person employed by the permittee or gave fraudulent information regarding such employee; (Adopted 7-19-95)
- (38) **Allowing Alcoholic Beverages to be Removed From Permitted Outlet When Sale or Dispensing Prohibited.** That the permittee, or any employee or agent, removed or allowed to be removed alcoholic beverages from a retail or private club permitted outlet at any time the sale or dispensing of alcoholic beverages is prohibited by law; (Adopted 8-20-97)
- (39) **Sale of Alcoholic Beverages to Persons Under Twenty-One (21) Years.** That the permittee or any employee, agent or servant of the permittee sold to, offered for sale, dispensed, gave away, or allowed the possession or consumption of any controlled beverage

by any person under twenty-one (21) years of age. (Adopted 8-18-99)

- (40) ***Alcohol Vaporizers Prohibited.*** That the permittee or any employee, agent or servant of the permittee allowed the use or possession on the permitted premises of any alcohol vaporizing device, as such is defined by Act 466 of 2009. (Adopted 8-19-09)

Section 1.80 Acts of Servants, Agents or Employees Imputed to Permittee.

All acts of any servant, agent or employee of the permittee shall be imputed to the permittee and deemed to be an act of the permittee if done within the scope of such servant, agent or employee's scope of authority under the permittee.

Section 1.81 Suspension of Permit When No Business Conducted for a Period of Thirty Days; Inactive Status of Permits.

In the event a permittee does not conduct business under any permit issued for a period of thirty (30) days, the permit shall be surrendered to the Director and shall be placed on inactive status. Inactive status shall commence at the end of thirty (30) days after close of business, regardless of whether the permit is surrendered to the Director. In any event, for purposes of this Rule, a business that has been closed for a period of thirty (30) days shall be deemed to be on inactive status. The permit may remain inactive for three (3) months.

To secure the return of the permit, the permittee shall file with the Director a written statement showing that all taxes and fees owing to the State have been paid, the reason for the suspension of business activities and the date business activity will resume. The date the business activity will resume must be before or on the following day after the expiration of the last day of the inactive status period and includes the resumption of business at the permitted location that means the outlet is open for business and prepared to sell or dispense alcoholic beverages or means the filing of an acceptable application with the agency to transfer the location of the permitted business or such permit shall expire. If said application to transfer the location of the permitted business is granted conditional, the conditions must be met within twelve (12) months from the final agency decision granting the transfer application or the application will be cancelled. In order to extend the twelve (12) month conditional period, written approval must be obtained from the Director or Board before the expiration of the twelve (12) month period or such permit shall expire. Upon any such expiration or cancellation, the inactive status of the permit will be calculated from the time the final agency decision granting the transfer of location was rendered.

The permittee may petition the Alcoholic Beverage Control Board for an extension of inactive status for an additional three (3) month period. The Board may grant an initial extension upon a showing by the permittee and a finding by the Board that business circumstances exist to justify an extension, that the delay to return to business was not due to mere deferral or inattention on the part of the permittee, and that the inactive status should be extended. The permittee may appeal to the Alcoholic Beverage Control Board for a second extension of inactive status for an additional six (6) month period, but only

upon a showing by the permittee and a finding by the Board that emergency circumstances exist to justify a final extension. Emergency circumstances means delays in return to business that are beyond the control, planning, or foresight of the permittee, including, but not limited to, delays due a natural or man-made disaster, the pending adjudication of a lawsuit, a building construction problem, and a contested or delayed insurance claim or settlement.

Any permit remaining on inactive status for a period of more than twelve (12) months or which has not been granted an extension under the provision of this Rule shall expire pursuant to written notice given to permit holders by this agency or to the provisions of ACA § 3-4-201 as they apply. Any permitted outlet which has been on inactive status in excess of six (6) months shall be re-inspected by the Alcoholic Beverage Control Enforcement Division to determine if the outlet is in compliance with required health and safety rules and the outlet is open for business and prepared to sell or dispense alcoholic beverages before the permit(s) may be returned to active status. As part of the re-inspection process, the Alcoholic Beverage Control Enforcement Division shall give notice of the request to return to active status to the law enforcement officer who has primary jurisdiction over the site of the permitted outlet. The date the business activity will resume must be before or on the following day after the expiration of the last day of the inactive status period and includes the resumption of business at the permitted location that means the outlet is open for business and prepared to sell or dispense alcoholic beverages or such permit shall expire. (Amended 01-22-20)

Section 1.82 Notice of Suspension to be Posted on Premises. Whenever any permit shall be suspended by the Director, Board or any court, a notice thereof in a form prescribed by the Director shall be posted in a conspicuous place in the front entrance to the premises during the period of time for which such permit is suspended. No permittee shall remove or knowingly allow any other person to remove a notice so posted during the period when the permit is suspended.

Section 1.83 Procedure Governing Cancellation, Suspension or Revocation of Permit. The cancellation, suspension or revocation of any permit issued pursuant to any alcoholic beverage control law of the State of Arkansas shall be in accordance with the procedure established under Subtitle D of this Title.

Section 1.84 Employees in Permitted Outlets to Sign “Server Awareness Form”. Every employee in a permitted outlet (excepting kitchen and janitorial personnel), upon commencement of such employment, and every permittee, shall acknowledge by signature that he or she has read and understands the content of a form entitled “Server Awareness Form”; such form being provided by the Director and setting forth pertinent Rules and laws governing the sale and service of alcoholic beverages and other related information as determined appropriate by the Director. The initial form shall be provided to the permitted outlet by the Agency, and thereafter the permittee shall duplicate and provide forms to employees. The form signed by the employees and the permittee shall be maintained in the personnel records in possession of the permittee. If the

original forms are not on the permitted premises, copies of the forms must be available on the permitted premises for inspection by Alcoholic Beverage Control Enforcement agents or other law enforcement officers. (Amended 8-18-99)

Section 1.85 *Warning Notice Regarding Sale to Minors to be Posted in Permitted Outlet.* A warning notice that includes the provisions of ACA § 3-3-202(a) and (b), knowingly furnishing or knowingly selling alcoholic beverages to a minor, shall be posted in a conspicuous place in every establishment that sells or dispenses alcoholic beverages. The size of the notice shall not be less than eight and one-half inches by eleven inches (8½" x 11"). The lettering on the notice shall be clearly legible. (Adopted 7-19-95)

TITLE 2

RULES APPLICABLE TO PERMITS TO MANUFACTURE AND WHOLESALE

SUBTITLE A – SCOPE

Section 2.1 – *General*

The Rules under this Title apply to all permits issued by the authority of the Division of Alcoholic Beverage Control of the State of Arkansas to manufacture and wholesale controlled beverages. These Rules should be regarded as being supplementary to, and not in replacement of, the code provisions of this State relating to the matters covered by this Title. In addition to these Rules, other Rules applicable to the matter covered by this Title may be found under Title 1 of these Rules.

SUBTITLE B – DEFINITIONS

Section 2.2 “*Consumer*” means a person who receives or in any way comes into the possession of controlled beverages for the purpose of consuming them, giving them away or distributing them in any way other than by sale, barter or exchange.

Section 2.3 “*Distiller*” means the person, firm or corporation constituting the original source of sale, after distillation, in the United States.

Section 2.4 “*Importer*” means the person, firm or corporation in the United States holding the basic contract with a foreign supplier, whereby such foreign supplier exports vinous beverages, spirituous liquors or malt beverages into the United States. (Amended 12-17-82)

Section 2.5 “Manufacturer” means any person who brews, distills, rectifies or in any other way manufactures controlled beverages for sale in wholesale quantities.

Section 2.5.1 “Microbrewery-Restaurant” means any establishment in which beer, malt, and hard cider are brewed and sold at retail in a restaurant setting under the same ownership in the same building or attached buildings. The operation of the microbrewery-restaurant shall be a limited exception to the three-tier system as defined in other parts of these Rules. A microbrewery-restaurant establishment shall be allowed to brew hard cider and beer or other malt beverage products, as defined in ACA § 3-5-1202, and such -products may be brewed in one or more varieties to be served in the restaurant operated at the same premises. The microbrewery-restaurant shall be limited to a production of 20,000 barrels of products per year, with each barrel having a volume of thirty-one (31) gallons. The beer, malt beverage, or hard cider brewed at the microbrewery operation may be sold at the restaurant maintained at the same premises for on premises consumption on any day of the week. The microbrewery-restaurant may sell on the premises beer, malt beverages, and hard cider manufactured by the microbrewery in brewery-sealed packages at retail directly to the consumer for off-premises consumption on any day of the week. The microbrewery-restaurant may sell beer, malt, or hard cider of its own manufacture to a wholesale dealer licensed by this state for the purpose of resale to other retail license holders as set forth by ACA § 3-4-605 and ACA § 3-5-101, dealing with the wholesale distribution of beer, malt, and hard cider. The restaurant may purchase beer from other manufacturers of beer as set forth in that Act for sale and dispensing at the restaurant operation.
(Amended 9-15-15)

Section 2.5.2 “Arkansas Small Brewery” means any facility located in the State of Arkansas and licensed under ACA § 3-5-1405 that manufactures fewer than forty-five thousand (45,000) barrels of beer, malt, and hard cider per year. A licensed microbrewery-restaurant is not a “small brewery”. A small brewery permitted under this law shall have the authority to manufacture and sell beer, malt beverages, and hard cider not to exceed an aggregate quantity of 45,000 barrels per year. The operator of a small brewery may serve complimentary samples of products produced by the small brewery and may sell at retail by the drink or by the package beer, malt, and hard cider produced by the small brewery if all sales occur in a wet territory. Authorized sales as described above may occur at the small brewery location property or at fairs and food and beer festivals. Small breweries may sell and transport beer, malt, and hard cider products produced on the premises of the small brewery to retail license holders and small brewery license holders if the total production of the permitted brewery does not exceed fifteen thousand (15,000) barrels per year. If the small brewery determines that it wishes to sell its own products to another small brewery, or to retail license holders it shall obtain a small brewery wholesale permit. Off premises sales are limited to those brand name products which are produced at the permitted facility. Small brewery permittees may sell their beer, malt beverage, and hard cider products for on or off premises consumption during all legal operating hours of the business in which the business is normally and legally conducted, on any day of the week, unless

otherwise prohibited by law, if the small brewer provides tours and provides that only sealed containers are removed from the premises. In addition to serving their own products on the premises of the small brewery, small brewers may serve wine and products produced by another licensed small brewery. (Amended 9-16-15)

Section 2.6 “Rectifier” means the person, firm or corporation constituting the original source of sale, after rectification, in the United States.

Section 2.7 “Retailer” means any person who holds a permit under any alcoholic beverage control law of the State of Arkansas to sell at retail controlled beverages to consumers only.

Section 2.8 “Sales Agent” means any person who shall act as agent or salesperson for any wholesaler, manufacturer or rectifier for the sale of or taking or soliciting orders for the sale of any controlled beverages in the State of Arkansas.

Section 2.9 “Warehouse” means a building or portion thereof approved by the Director in which controlled beverages are stored and which is equipped to maintain such temperatures as may be required for the storage of such controlled beverages.

Section 2.10 “Wholesaler” means any person who holds a permit under any alcoholic beverage control law of the State of Arkansas to purchase controlled beverages from a manufacturer, importer, or domestic wine or brandy producer only and to sell such controlled beverages to retailers only.

Section 2.10.1 “Product” shall mean a brewed, fermented or distilled liquor. A brand for a product registered with the Alcoholic Beverage Control Division shall include the registered product as well as all derivatives or sub-categories of a registered product, without regard to whether such derivative or sub-category is brewed, fermented or distilled. “Product” shall not be construed to mean a particular malt, spirituous or vinous liquor, or any variety, category or sub-category thereof. (Adopted 12-14-11)

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 12-18-19)

Section 2.10.3 “Mead” means an alcoholic beverage made through the fermentation of honey as the primary ingredient. Mead includes without limitation cyser, braggot, metheglin, and melomels.

Section 2.11 Definition of Other Terms. All other terms used in this Title shall be defined in accordance with the definitions under Title 1 of these Rules, with the laws of the State of Arkansas and the customs and usages of the trade and the people of the State of Arkansas.

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

Section 2.12 *Manufacturer to Sell Only to Wholesalers; Exception for Small Farm Wine and Brandy.* Any person manufacturing controlled beverages under any alcoholic beverage control law of the State of Arkansas shall sell such controlled beverages only to persons holding a permit to sell such controlled beverages at wholesale. **Provided**, that manufacturers of small farm wine and brandy may also sell to consumers in accordance with the laws and Rules applicable to such permits. **Provided** further, a distiller or manufacturer, as permitted under § 3-4-602, may sell, deliver, and transport to permitted retailers as described in the provisions of Section 2.85(2). (Amended 09/01/2021)

Section 2.12.1 *Sale of Wine for On Premises Consumption at Arkansas Native Wineries.* **Repealed 8-15-07**

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 12-18-19)

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

- (1) This Rule is intended to more clearly delineate the structure of the three-tier system of alcohol distribution established by Arkansas state code provisions and to prohibit ownership and employment interests between the three tiers. Rule in this area is considered necessary and appropriate for the following reasons:
 - A. The State of Arkansas has long recognized and adhered to the three-tier system of alcohol distribution as evidenced by state laws establishing the types of permits authorized and the many Alcoholic Beverage Control Rules currently in effect implementing those laws;
 - B. A clear delineation of the three-tier system that is in place will foster the understanding of the system by those people

holding alcoholic beverage sales permits and those seeking to obtain permits;

- C. Such rule will give the State of Arkansas greater control of all facets of alcohol distribution and will enhance the State's ability to more effectively administer those code provisions and Rules that are currently in effect;
 - D. Such rule will decrease the likelihood of one tier of distribution owning, gaining control over, and/or dictating distribution, brand availability and pricing, or other marketing practices in any other tiers of the system;
 - E. Such rule will enhance and foster free and independent marketing of alcoholic beverages in the State and will help to maintain a wide selection of brands at reasonable prices available to the consuming public.
- (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.

The following ownership and employment interest among the three Tiers are prohibited:

- A. No person, firm or corporation owning any interest in any business involved in the first tier of distribution may own any interest in any business involved in the second or third tiers of distribution, regardless of degree of such interest. Further, no person, firm, or corporation being employed by or serving as an officer of any business involved in the first tier of distribution shall own any interest in nor be employed by any business involved in the second or third tiers of distribution;
- B. No person, firm or corporation owning any interest in any business involved in the second tier of distribution may own any interest in any business involved in the first or third tiers of distribution, regardless of degree of such interest. Further, no person, firm, or corporation being employed by or serving as an officer of any business involved in the second tier of distribution shall own any

interest in nor be employed by any business involved in the first or third tiers of distribution;

- C. No person, firm or corporation owing any interest in any business involved in the third tier of distribution may own any interest in any business involved in the first or second tiers of distribution, regardless of degree of such interest. Further, no person, firm or corporation, being employed by or serving as an officer of any business involved in the third tier of distribution shall own any interest in nor be employed by any business involved in the first or second tier of distribution;
- D. Notwithstanding the prohibitions contained in Subparagraphs B. and C. above, permit holders in the second and third tiers of distribution may hold stock in businesses involved in the first tier where that stock is traded on any national stock exchange, not to exceed one percent (1%) of the total outstanding shares of any one company;
- E. Nothing contained herein shall be construed to prohibit any manufacturer licensed pursuant to the provisions of ACA § 3-5-408 from maintaining or hereafter acquiring a wholesale wine permit or retail permit;
- F. In addition to any other sanctions or penalties which may be imposed by the Director pursuant to the procedures outlined in Title 3 of the Arkansas Code and Act 434 of 1907, as amended, violation of any provision of this Rule shall also be considered a Class A permit violation, pursuant to the provisions of Act 790 of 1981, as codified in ACA § 3-4-401, *et. seq.* (Amended 8-19-93)

Section 2.14 Records to be Maintained by Manufacturer. All persons manufacturing controlled beverages must keep and maintain on the premises the following records:

- (1) A record showing the kind, quantity and date of the receipt of all materials brought upon the premises for use in the manufacture of controlled beverages; and
- (2) A record of all controlled beverages sold or otherwise disposed of, indicating the date of sale or other disposition, the name of the purchaser and the quantity of controlled beverages sold or otherwise disposed of.

Such records shall be preserved for a period of three (3) years from the relevant date of the record and shall be available on the premises at all times for

reasonable inspection by authorized agents of the Division of Alcoholic Beverage Control.

All persons manufacturing controlled beverages for shipment into the State of Arkansas shall submit to the Department of Revenue such reports as may be required by the Commissioner of Revenues.

Section 2.15 *Records to be Maintained by Wholesaler.* Any person holding a permit to wholesale controlled beverages shall keep and maintain the following records:

- (1) A record of all controlled beverages received by the permittee, indicating the name of the manufacturer thereof, the date purchased, the number of packages and quantity of controlled beverages received, the trade name of the goods, the date received on the premises and the name of the transportation company making the delivery; and
- (2) A record of all sales or other dispositions of controlled beverages, indicating the name of the purchaser, the date of the sale and the number of packages and quantity of controlled beverages sold.

Such records shall be preserved for a period of three (3) years from the relevant date of the record and must be available at all times on the premises for inspection by duly authorized agents of the Division of Alcoholic Beverage Control.

All persons holding permits to sell controlled beverages at wholesale shall submit to the Department of Revenue such reports as may be required by the Commissioner of Revenues.

Section 2.16 *Manufacturers to Register Brands of Controlled Beverages; Manufacturers and Wholesalers Not to Change Brands Without Approval of Director.*

- (1) The purpose of this Rule is to provide guidelines for the business relations between Arkansas wholesalers of alcoholic beverages and distillers, manufacturers, importers and producers of such alcoholic beverages. Rule in this area is considered necessary and appropriate for the following reasons:
 - A. To prevent unfair business practices, discrimination and undue control of such wholesalers by distillers, manufacturers, importers and producers;
 - B. To maintain stability and healthy competition in the alcoholic beverage industry;

- C. To promote and maintain a sound and stable system of distribution of alcoholic beverages; and
 - D. To promote the public health, safety and welfare.
- (2) Every manufacturer, importer or producer of spirituous and vinous beverages doing business in the State of Arkansas shall submit to the Alcoholic Beverage Control Division one (1) Alcohol and Tobacco Tax and Trade Bureau Certificate of Label Approval for each brand of spirituous and vinous beverages and the brand label extension of each brand of spirituous and vinous beverages to be shipped for the first time by the shipper into or within the state and shall designate in the application for registration one (1) licensed liquor wholesaler in the state, who shall be the exclusive distributor of such brand or label within the state. Such designated wholesaler shall be initially approved by the Director and shall not be changed nor initially disapproved except for good cause, and the Director shall determine good cause after a hearing pursuant to the provisions set out in this Rule. Any brands or labels previously registered in this state, and which have subsequently been withdrawn from distribution in this state, shall be treated in the same manner as the initial registration of brands or labels and are subject to the provisions hereof.

A brand label and brand label extension shall be registered by the supplier before the first shipment of each brand label and brand label extension into or within the state on or after July 1, 2013. A copy of the Alcohol Tobacco Tax and Trade Bureau Certificate of Label Approval for each brand label and brand label extension shall be submitted with the registration of each brand label and brand label extension.

The registration of a brand label and a brand label extension shall:
1) Be in writing or electronically submitted, 2) Be verified if it is submitted in writing, and 3) Set forth information as the Director of the Alcoholic Beverage Control Division requires.

Each Alcohol and Tobacco Tax and Trade Bureau Certificate of Label Approval submitted for registration shall be accompanied by a registration fee of fifteen dollars (\$15.00) payable by check, cash, money order, or electronic payment.

All brand label and brand label extensions shall be renewed annually.

In addition to the label registration process provided above, spirituous liquor beverages classified as ready-to-drink products containing spirituous liquor with a final finished product of no

greater than fifteen percent (15%) alcohol by weight may also be registered under A.C.A. § 3-2-409.

- (3) Any distiller, manufacturer, importer or producer desiring to change wholesalers with respect to any brand shall file with the Director a Wholesaler Change Request containing such of the following information as is applicable:
- A. The name of each brand involved;
 - B. The case volume in Arkansas for each brand for the current year or portion thereof and the two previous calendar years;
 - C. The name of the wholesaler currently distributing such brand;
 - D. The name of the proposed new wholesaler; and,
 - E. A detailed explanation of the specific business reasons for the request to change wholesalers. Business reasons which may be considered by the Director in determining good cause for authorizing a change of wholesalers will include:
 - 1. A wholesaler's bankruptcy or serious financial instability, including its consistent failure to pay its debts as they fall due or its failure to meet or maintain any objective standards of capitalization expressly agreed to between the wholesaler and the distiller, manufacturer, importer or producer; provided, such standards are determined by the Director to be commercially reasonable;
 - 2. A wholesaler's repeated violations of any provision of federal or state law or Rule, whether or not such violations resulted in official action;
 - 3. A wholesaler's failure to maintain reasonable sales volume of the brand, taking into consideration such factors as the extent of the distiller's, manufacturer's, importer's or producer's advertising and promotion of the particular brand, prevailing economic conditions affecting sales generally or the extent of the wholesaler's efforts, or lack thereof, to promote a particular brand; and,
 - 4. Any other factors relevant to such proposed change and which aid the Director in determining good cause.

- (4) At the same time that the original Wholesaler Change Request is filed with the Director, a copy thereof shall be mailed by the distiller, manufacturer, importer or producer to each wholesaler who may be affected by the proposed changes. Immediately upon receipt of any Wholesaler Change Request, the Director shall notify the currently designated wholesaler of the request by certified mail. Within fifteen (15) days after receipt of such notice by the affected wholesaler any such wholesaler or party required to be given notice by this Rule may interpose written objections thereto. Such written objections shall be filed in the office of the Alcoholic Beverage Control Division and copies thereof shall be served by the objecting party upon the party proposing the change and upon all wholesalers who may be affected by the proposed change.
- A. Upon the receipt of an objection from any party, or upon his own motion, the Director shall hold a hearing, after providing due notice to all parties concerned, for the purpose of determining the truth of any matters of fact alleged by any party and determining whether the proposed changes are based upon sufficient cause and are otherwise consistent with the policies set out in Subsection 1 above. If it is determined from the evidence deduced at said hearing that the brand or label involved is the same as, or similar to, or is such a modification of, substitution of, upgrade of or extension of a brand or label which has already been registered by the distiller, manufacturer, importer or producer, so as to render it unjust or inequitable (without cause being shown) to designate the brand or label to a wholesaler different from the wholesaler designated for the brand or label being so modified, substituted, upgraded or extended, then such request shall be denied; **provided**, however, that nothing herein shall be construed to prevent the distiller, manufacturer, importer or producer from treating the matter as a desire to change wholesalers, and from proceeding under the provisions of Subsection 3 above, either before or after such determination.
- B. No proposed change will be approved by the Director which is based upon the failure or refusal of a wholesaler to comply with any demand or request of a distiller, manufacturer, importer or producer where such demand or request would result in a violation of any provision of federal or state law or Rule. During such fifteen (15) day objection period, or until the proposed changes have been finally approved by the Director, the party proposing the change shall continue to supply the designated wholesaler, upon commercially reasonable terms, such reasonable quantities of the brand involved as the wholesaler may require. If, at any time, the Director finds a distiller,

manufacturer, importer or producer is not shipping the wholesaler a reasonable amount of merchandise, he may withdraw approval of all brands registered by such parties within the state.

- (5) Any hearing held by the Director pursuant to the provisions of Subsection 4 above shall be held within thirty (30) days after the receipt of any notice of objection to a Wholesaler Change Request. The findings of the Director made after such hearing shall be presented to the Alcoholic Beverage Control Board at its next regularly scheduled meeting. Any aggrieved party may appeal the decision of the Director to the full Board to be heard de novo and any such appeal hearing will be scheduled and held pursuant to hearing procedures established for the Alcoholic Beverage Control Division by state law and Alcoholic Beverage Control Rules.
- (6) If no objection is filed to the Wholesaler Change Request as provided in Subsection 5 above, the proposed changes shall stand automatically approved by the Director at the expiration of such fifteen (15) day period, conditioned upon the manufacturer or importer repurchasing all inventory of the subject brand from the previously designated wholesaler at such wholesaler's laid-in cost.
- (7) Any distiller, manufacturer, importer or producer who obtains or acquires in any manner the right to sell, ship or distribute any label shall for the purpose of these Rules stand in place of, and be subject to, all the rights, privileges, and duties and obligations of its predecessor or its predecessors from whom such brands or labels were obtained or acquired.
- (8) Every manufacturer or importer of beer or other malt products or light wine doing business in the State of Arkansas shall submit to the Alcoholic Beverage Control Division one (1) label for each brand of beer or malt product or light wine to be shipped for the first time into or within the state and shall designate with the application for registration any number of wholesalers in the state, each of whom shall be the exclusive distributor of such brand within the geographical territory assigned by the manufacturer or importer to such wholesaler. (Amended 7-24-87)
- (9) An unlawful dual distributorship is created when any manufacturer, importer, or other person attempts to designate as its distributor more than one (1) Arkansas liquor wholesaler in the state or wholesale beer permit holder to distribute the same brand of alcoholic beverage in the same geographic area (city, county, counties, state). Further, no person shall attempt to register any brand or label which is already distributed by a licensed wholesaler holding a brand registration authorization from the manufacturer or importer for a brand or label. The creation of

such dual distributorships is prohibited. In addition to any remedies to any aggrieved party authorized by law, the Director may withdraw approval of any and all brands registered by any manufacturer or importer found to be in violation of this Rule, such findings to be made after a hearing pursuant to hearing procedures established for the Alcoholic Beverage Control Division by state law and these Rules.

For purposes of this Rule, a "brand" is defined as the same product or substantially the same product, as evidenced by the product label that must be filed with the Alcoholic Beverage Control Division. Identical or substantially identical labels will be considered and treated as the same brand. (Amended 8-19-03)

"Product" shall mean a brewed, fermented or distilled liquor. A brand for a product registered with the Alcoholic Beverage Control Division shall include the registered product as well as all derivatives or sub-categories of a registered product, without regard to whether such derivative or sub-category is brewed, fermented or distilled. "Product" shall not be construed to mean a particular malt, spirituous or vinous liquor, or any variety, category or sub-category thereof.

- (10) The terms, conditions and requirements of this Rule are hereby expressly made a part of the terms of and as conditions to the approval granted by the Arkansas Alcoholic Beverage Control Division to distillers, manufacturers, importers or producers to do business in the state and by the application for, the acceptance of, or the conduct of business under any such approval, a distiller, manufacturer, importer or producer consents and agrees to comply with the terms, conditions and requirements of this Rule. This Rule does not apply to manufacturers or wholesalers of small farm wine. (Amended 8-21-13)

Section 2.16.1 Provisions of the Preceding Section Applicable to Distribution Agreements for Beer and Light Wine in the Absence of Written Distribution Agreement. The provisions of Section 2.16 of these Rules shall be applicable to distribution agreements entered into in this state by brewers, manufacturers, or importers, of beer and light wine, or their agents, in all cases where any distribution agreements between any such brewer, manufacturer, importer, or agent thereof and a licensed Arkansas beer wholesaler, as contemplated by ACA § 3-5-103, has not been reduced to a written agreement which includes the rights and remedies of the respective parties in the event of default or termination or modification of any agreement by such brewer, manufacturer, importer, or agent. In such cases, any brewer, manufacturer, or importer desiring to terminate any designated Arkansas wholesaler, appoint a different wholesaler in a previously designated territory, or modify the geographical territory previously assigned to any wholesaler must comply with each and every provision of Section 2.16(3) of these Rules requiring

the filing of Wholesaler Change Requests with the Alcoholic Beverage Control Division and show good cause for any such desired termination, change, or modification of agreement. In all such cases where Section 2.16(3) of these Rules is determined by the Director to be applicable because of the lack of required written agreement pursuant to this Rule, the notice provisions, hearing requirement, procedures and rights of appeal set out in Section 2.16 of these Rules for manufacturers and distributors of liquor and wine shall apply to manufacturers, brewers, and importers of beer and light wine and to their designated Arkansas wholesalers. (Adopted 7-24-87)

It is further provided that any agreements or appointments entered into by beer manufacturers and beer wholesalers in this state after the effective date of ACA § 3-5-1101, *et. seq.* are governed by the provisions of that Act. (Amended 8-19-93)

Section 2.17 *Manufacturer and Wholesaler Selling Malt Liquor and Certain Other Controlled Beverage Must Label.* Any person holding a permit to manufacture and any wholesaler holding a permit to sell malt liquor, stout beer, or any other controlled beverages containing more than five percent (5%) alcohol by weight or six and three tenths percent (6.3%) alcohol by volume shall state on the container that it contains more than five percent (5%) alcohol by weight or six and three tenths percent (6.3%) alcohol by volume. (Amended 8-17-05)

Section 2.17.1 *Alcohol Content of Malt Beverages Containing Five Percent (5%) or Less Alcohol by Weight or Six and Three Tenths Percent (6.3%) by Volume May be Listed on Containers or Labels.* The alcohol content of malt beverages containing five percent (5%) or less alcohol by weight or six and three tenths (6.3%) by volume shipped into or offered for sale in the State of Arkansas may be listed on the malt beverage container or on the malt beverage label, at the option of the manufacturer. The alcohol content must be shown as alcohol by volume. The alcohol content information may not be made in a misleading or false manner nor may the alcohol content information be more prominent than any other information contained upon the label. (Amended 8-17-05)

Section 2.18 *Controlled Beverages to be Stored in Approved Warehouses Only.* All controlled beverages in the possession of any manufacturer or wholesaler in this state shall be stored only in warehouses approved by the Director. All warehouses for the storage of controlled beverages in this state shall comply with the minimum requirements prescribed by the State Department of Health for such warehouses. Storage of any controlled beverages in any building other than a warehouse approved by the Director shall be cause for seizure and forfeiture of all controlled beverages so stored.

Section 2.19 *Labels and Size of Containers to be Approved by Director.* The contents of all labels affixed to containers of controlled beverages and the size and combination of such containers shall be approved by the Director. In no event shall any label or design be approved by the Director which contains any statement, design, device or representation which is obscene or indecent. Any product that does not meet the criteria for TTBA COLA or Certification of

Exemption, (such as IRC beers or ciders under 7% ABV), shall submit the following: proposed label(s), lab certificate of analysis, and a certification that the product does not qualify for TTB COLA or Certificate of Exemption. Any Primary American Source (PAS) submitting a brand registration to the agency for distribution of a product shall, in addition to all other requirements, submit to the Alcoholic Beverage Control Division a copy of the Alcohol and Tobacco Tax and Trade Bureau (TTB) Certificate of Label Approval (COLA) or a Certificate of Exemption from label approval. Any PAS that wishes to register a product for sale where the PAS has obtained a Certificate of Exemption from the TTB and any PAS that cannot be issued a COLA or Certificate of Exemption by TTB shall certify to the Director that the labels will still comply with TTB labeling criteria as found in the “Federal Alcohol Administration Act” Title 27 CFR Subchapter A – Liquors, Part 4, Subpart D, Section 4.39, Part 5, Subpart D, Section 5.42, Part 7, Subpart C, Section 7.29. Beer, light wine, and malt beverage products may submit a COLA with an updated label; provided only amended labels with TTB permitted changes will be accepted. If the ABV on the amended label differs from the COLA, a certificate of lab analysis must accompany the submission. In no instance shall permitted containers of spirituous beverages be less than one hundred (100) ml, vinous beverages or wine be less than one hundred eighty-seven (187) ml or beer or malt liquor be less than one hundred sixty-nine (169) ml or five and seventy-five hundredths (5.75) ounces.

Section 2.19.1 *Private Labels Prohibited.* Every brand of alcoholic beverage registered for distribution in the State of Arkansas, pursuant to Section 2.16 of these Rules, shall be made available for resale to each permitted retailer authorized to sell such alcoholic beverage. Registration and distribution of “private labels”, which for purposes of this prohibition are those labels intended or contracted for retail sale at a specific outlet or chain of retail outlets, is hereby prohibited. (Adopted 12-21-88)

Section 2.19.2 *Manufacturers Who Sell Any Alcoholic Beverages Directly to Military Reservations or Other Federal Enclaves Must Label and Report.* The Arkansas Alcoholic Beverage Control Board, in the interest of promoting responsible use of alcoholic beverages, ensuring orderly market conditions and fostering the ability of the State of Arkansas to collect appropriate taxes on alcoholic beverages consumed within the state, hereby adopts the following Rule:

- (1) Each container of liquor, wine or beer, as such beverages are defined by Arkansas code provisions and these Rules, which is shipped by any distillery, winery, brewery or other manufacturer, supplier, broker, or any agent thereof, to any federal military reservation or enclave in Arkansas, which is intended to be sold or consumed on such reservation or enclave and which is not distributed through a licensed Arkansas wholesaler, shall contain and display an identification label which states that such alcoholic beverages shall be intended for consumption within such federal reservation or enclave exclusively. This mandatory label shall be in a size, configuration and contain wording as hereinafter

specified. The distillery, winery, brewery, manufacturer, supplier or broker which ships or causes to be shipped such alcoholic beverages to any federal reservation or enclave within the state is responsible for ensuring that such alcoholic beverages are appropriately labeled as provided for herein. Each manufacturer or supplier will be responsible for providing their own identification labels as required by this Rule;

(2) The identification label required to be affixed to each container of alcoholic beverage, as set out above, shall meet the following requirements:

- A. The label shall be a minimum size of one (1) inch in height and two (2) inches in length;
- B. The label shall be made of day-glow orange crack and peel permanent self-adhesive paper with bold black lettering;
- C. Each label shall contain three (3) lines of print, shall be consecutively numbered and shall state the following:

MILITARY RESERVATION USE ONLY

NUMBER (Letter plus five-digit number)

ARKANSAS

- D. One such label shall be placed on the front of each individual container (bottle or can) of any size of 375 ml or larger. Front shall mean the same side on which the label identifying the product is placed and, if on a bottle, below the neck. On containers smaller than 375 ml, such label may be placed on either the back or front of such container and may be placed lengthwise.

(3) In addition to affixing identification labels as required herein, any distillery, winery, brewery, or other manufacturer or supplier who, after the effective date hereof, ships any alcoholic beverages directly to any federal military reservation or enclave within Arkansas shall file a monthly report with the Arkansas Revenue Division Miscellaneous Tax Section, on such reporting forms as are specified by the Revenue Division, reflecting by brand, size and quantity, all alcoholic beverages shipped to any such federal reservation or enclave during the preceding calendar month. The report submitted shall also include a listing of the serial numbers of the identification labels affixed to all bottles and cans so shipped during the previous month. Such reports shall be filed with the Miscellaneous Tax Section no later than the fifteenth (15th) of each month and shall reflect all such shipments made during the previous month. It is specifically provided that the

Revenue Division Miscellaneous Tax Section will have no duty or responsibility pursuant to this Rule other than the maintenance of a file of any shipment reports received. Any and all responsibility for the enforcement of any provision herein shall be solely that of the Arkansas Alcoholic Beverage Control Division.

- (4) Full and complete compliance with each and every requirement contained herein shall be considered a continuing condition of the authority of any manufacturer or supplier to distribute its alcoholic beverage products within the State of Arkansas. Failure to comply with this Rule, after appropriate notice and hearing, could result in revocation of any such manufacturer's or supplier's brand registrations, thereby revoking authorization to do business in Arkansas. (Adopted 6-19-91)

SUBTITLE D – SALES AGENT PERMITS

Section 2.20 Sales Agents Must Make Application to and be Approved by Director. Repealed 8-16-11

Section 2.21 Application for Sales Agent Permits. Repealed 8-16-11

Section 2.22 Sales Agent to Possess Qualifications of Principal. Repealed 8-16-11

Section 2.23 Sales Agent to Represent Only Principal in Accordance With Permit. Repealed 8-16-11

Section 2.24 Issuance and Duration of Sales Agent Permit. Repealed 8-16-11

Section 2.25 Exhibition of Permits. Repealed 8-16-11

Section 2.26 Surrender of Permit Upon Leaving Employ of Employer. Repealed 8-16-11

Section 2.27 Suspension and Revocation of Sales Agent Permit. Repealed 8-16-11

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:

- (1) ***Manufacturer or Wholesaler to Have No Interest in Retail Establishment.*** That the manufacturer or wholesaler was interested directly or indirectly in any premises where controlled beverages are sold at retail, or in any business devoted wholly or partially to the sale of controlled beverages at retail, or by stock ownership, interlocking directors, mortgage or lien on any personal or real property in any premises where controlled beverages are sold at retail.

The term “interest” as used in ACA § 3-3-212 shall mean such a substantial ownership or financial interest, whether direct or indirect, in the business of any wholesale or retail licensee or in the premises on which said business is conducted as in the judgment of the Alcoholic Beverage Control Division may tend to influence such licensee to purchase beverages from such manufacturer to the exclusion or detriment of alcoholic beverages offered for sale by others. In determining whether an “interest” is prohibited by ACA § 3-3-212, the Division shall consider the following factors:

- A. Whether the retail licensee is owned directly by the manufacturer or whether the manufacturer and the retailer are merely under common ownership of the same parent company. In the event a manufacturer and a retail licensee are commonly owned by the same company, the Alcoholic Beverage Control Division shall examine the degree to which the management and control of the manufacturing business and the retail business are separate and independent;
- B. Whether there is a bona fide business reason for owning the retail licensee other than solely to promote the sale of alcoholic beverages;
- C. Whether a significant portion of the revenues obtained by the manufacturer, or its parent company, as a result of the interest in a retail business, are derived from the sale of alcoholic beverages;
- D. Whether the retail licensee purchases alcoholic beverages from an independently owned unrelated wholesaler;
- E. Whether more than ten percent (10%) of the total gross annual revenues from the sale of alcoholic beverages by the retail licensee shall be derived from the sale of the alcoholic beverage products of the manufacturer or any entity affiliated with or related to the manufacturer;

- F. Any other factor which the Alcoholic Beverage Control Division deems relevant.

Whenever a manufacturer proposes to acquire any interest, to any degree, in a wholesale or retail outlet, such acquisition shall be reviewed by the Agency. Such review shall include whatever documentation the Agency deems necessary to fully define the degree of interest acquired by the manufacturer, in accordance with the above factors.

Upon a finding by the Director that no “prohibited interest”, as defined herein, exists in the proposed purchase, stock transfer, merger, or other means of acquiring an interest in a wholesale or retail licensee by a manufacturer, an order approving such acquisition will be entered; (Amended 12-15-89)

- (2) **Manufacturer or Wholesaler Not to Make Loan to Retailer.** That the manufacturer or wholesaler made any loan to any person holding a permit to sell controlled beverages at retail;
- (3) **Exclusive Contracts Prohibited.** That the manufacturer or wholesaler entered into a contract with any person holding a permit to sell controlled beverages at retail whereby such person agreed to confine his sales to the products manufactured by one manufacturer or sold by one wholesaler;
- (4) **Gifts and Services to Retailers Prohibited.** That the manufacturer or wholesaler gave an article or articles away of any value or use what-so-ever, 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 Rule.

In addition, the following practices are not prohibited gifts or services under this Rule: 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 Rule 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 Rules, 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)

- (5) **Inducements Prohibited.** That the manufacturer or wholesaler gave any inducement for sale to any person holding a permit to sell controlled beverages at retail, including but not limited to secret discounts, rebates, gifts or fictitious sales;

- (6) **Samples Prohibited.** That the manufacturer or wholesaler gave samples to any person, said samples being either in unbroken packages, partial packages or by the drink, except that a manufacturer or wholesaler may give a sample of distilled spirits, wine, or malt beverages to a retailer who has not previously purchased the brand from that manufacturer or wholesaler. No manufacturer or wholesaler may give to any retail outlet more than three (3) gallons of any brand of malt beverage, 750 ml of any brand of distilled spirits, or three (3) liters of any brand of wine.

Further, a wholesaler may provide retail package store owners or employees with a small sample of any brand of wine or liquor not previously purchased by such retail package store, with such sample not to exceed one (1) ounce per owner or employee. Such samples shall be poured from bottles owned by such wholesaler, brought into the retail package store by such wholesaler or its employees, and removed from the retail package store premises immediately after the conclusion of any such sampling activity. Any sampling conducted by a wholesaler in accordance with this Section shall not violate any other law or rule prohibiting possession of an open container on the premises of a retail package store or violate any other law or rule prohibiting an employee of a retail package store from drinking while on duty.

Sampling parties may not be given to retailers, consumers or prospective customers by manufacturers, distillers, importers, producers, distributors, retailers or wholesalers, except as permitted herein. Manufacturers, distillers, importers, producers, distributors, wholesalers and retailers may donate intoxicating liquor to charitable or non-profit organizations for on premises consumption only at non-profit functions where such organization receiving the intoxicating liquor does not hold a permit to dispense intoxicating liquors. The donation of intoxicating liquor by manufacturers, distillers, importers, producers, distributors, retailers or wholesalers may occur on a permitted premises of an on premises permittee of this agency. Manufacturers, wholesalers, distillers, importers, producers, distributors, and retailers may provide keg-tapping equipment and hook-up service to a charitable or non-profit organization at a function;
(Amended 8-21-13)

- (7) **Employment of Unpermitted Sales Agents Prohibited.**
Repealed 8-21-13

- (8) **Sale, Taking of Order or Solicitation of Business by Wholesale Liquor Dealers From Private Clubs.** No holder of any wholesale liquor permit shall sell to, take any order or solicit any business, directly or indirectly, from a private club permittee;

- (9) **Effect of Violation of Rules or Law.** That the manufacturer or wholesaler violated any of these Rules or any alcoholic beverage control law of the State or Arkansas;
- (10) **Wholesalers Furnishing Outside Signs to Retailers Governed by Federal Regulations.** Notwithstanding the provisions of Section 2.28(4) of these Rules, the Federal Regulations governing the furnishing of outside signs to retailers by wholesalers are hereby adopted by reference and incorporated herein; Further, any outdoor sign provided by an industry member shall only contain information regarding products sold to the retail outlet by the industry member. The retail outlets agree, as consideration for receiving the advertising banner, that said outlets will not customize or otherwise edit, add to or delete from the sign furnished by the industry member. All employees or agents of the industry member providing the signs are prohibited from erecting any temporary signs for the retail outlet.

It shall not be considered a violation for the industry member to provide a sign to a retail outlet containing the name of the outlet and “Grand Opening” so long as it is not displayed at the outlet for more than twenty-one (21) days. (Amended 8-16-11)

- (11) **Manufacturers Not to Engage in Price Fixing.** No liquor manufacturer or supplier shall take or fail to take any action that would cause any type of fixing of wholesale or retail prices in the state. This shall include engaging in the industry practice known as “reach-back pricing” Suggestion of wholesale or retail prices will not be considered to be a violation of the permit. **Further,** alcoholic beverage manufacturers or suppliers shall not require, any alcoholic beverage wholesaler to contribute to any local or national advertising, marketing or brand development fund, either directly or indirectly. (Amended 8-19-09)
- (12) **Wholesalers May Pay for Advertising Devices in Certain Retail Outlets.** Wholesale beer permittees shall be allowed to pay for certain advertising devices used at government owned facilities which are issued a large attendance facility permit as long as the permitted facility is located in a county which has a population of more than one hundred fifty-five thousand (155,000) people according to the 2000 Decennial Census. Such advertising devices shall include items such as inside or outside signs, scoreboards, programs, scorecards, and the like. However, payment for the advertising devices cannot result in the formation or existence of an exclusive buying arrangement between the large attendance facility permittee and the wholesaler who furnishes such advertising items; (Adopted 8-15-07)

- (13) **Advertising and Promotion Materials; Exception for Racing Facilities, Nonprofit Entities holding a Large Attendance Facility Permit, and Casino Licensee.** As an exception to Section 2.28(4) of these Rules, 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. In addition, any manufacturer may provide sponsorship of or payment for the display or other presentation of advertising and promotional material on or about the premises of the holder of a Large Attendance Facility permit, as defined by A.C.A. § 3-9-202 (16), owned by a qualifying charitable nonprofit organization that has received tax exempt status under 26 U.S.C. § 501 (c)(3). (Amended 12-18-19)
- (14) **Arkansas Licensed Beer Wholesalers to Offer Keg Identification Labels for Sale.** Arkansas licensed beer wholesalers shall maintain and offer for sale to retail dealers any keg identification labels or tags required by Act 2320 of 2005. The identification labels or tags, as described by that Act, shall be sold at a price of the cost of manufacturing and maintaining the keg tags or labels. Any Arkansas native brewery or microbrewery-restaurant that sells kegs for off premises consumption at their location or which engages in sales to retailers for resale shall also be required to furnish said identification labels or tags as required by law; (Adopted 8-17-05)
- (15) **Professional Sports Teams Allowed Sponsorship.** A large attendance facility permitted establishment owned or operated by an owner of a professional sports team franchised by the National Association of Professional Baseball Leagues within a county that has a population of more than one hundred fifty-five thousand (155,000), according to the 2000 Federal Decennial Census, may accept sponsorship funds, advertising items or promotional items from licensed beer wholesalers. The furnishing of the sponsorship funds, advertising or promotional items may not result in the formation or existence of an exclusive buying arrangement between the large attendance facility permittee and the wholesaler who furnishes the sponsorship funds, advertising items or promotional items.(Adopted 8-15-07)
- (16) **Unlawful Pricing by Brewers and Manufacturers.** Pursuant to Act 783 of 2009 it is unlawful for a brewer or manufacturer of malt beverage products to engage in unlawful pricing practices as between the manufacturer or brewer and their respective Arkansas wholesalers.

Any violation of these rules, or any violation of Act 783 of 2009, shall subject the Arkansas Native Brewery permit or non-resident beer seller's permit issued to such party or their designee

(Suppliers) to the full range of penalties as provided by ACA 3-2-212 and may also subject said permits to the imposition of a fine as authorized by ACA 3-4-401, et seq. The following rules are hereby adopted to supplement Act 783:

- (1) A supplier shall offer all Arkansas wholesalers to whom it offers product the same price, allowance, rebate, refund, commission, or discount.
- (2) Suppliers shall act in “good faith” as defined in 3-5-1102(a)(4) toward wholesalers with regard to all matters including, but not limited to, transport costs, fees, charges, product support, rebates, commissions, refunds, and product availability .
- (3) No supplier may take any “retaliatory action” as defined in 3-5-1102(a)(6) against a wholesaler.
- (4) If a wholesaler believes a supplier has not acted in good faith or has taken retaliatory action against it, a hearing before the Director may be requested.
- (5) Suppliers with wholesalers that have state-wide distribution rights on or after the effective date of this rule may provide those wholesalers quantity discounts. Any wholesaler that obtains state-wide product distribution rights as of the effective date of this rule, due to the consolidation of one or more wholesalers or suppliers, shall not be entitled to quantity discounts from the supplier.
- (6) A supplier shall post the following information with the Director in its most current form: FOB-Source for all products offered in Arkansas, and all allowances, rebates, refunds, commissions or discounts it offers.
- (7) All price information shall be provided by the supplier to the Director via email. It shall be submitted 14 days prior to any increase and 2 days prior to any decrease.
- (8) All information provided to the ABC Director by the supplier is proprietary in nature and not subject to freedom of information requests pursuant to the Arkansas Freedom of Information Act.

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 licensee 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 Rules. No wholesaler shall accept from any retailer or casino licensee a post-dated check. (Amended 12-18-19)

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

Article 1 – PERMIT TO TRANSPORT CONTROLLED BEVERAGES

Section 2.32 *Transportation of Controlled Beverages Interstate by Common Carrier.* Persons licensed by the Interstate Commerce Commission as common carriers may transport controlled beverages into and through the State of Arkansas pursuant to the laws and regulations applicable to such common carrier.

Section 2.33 *Contract Carrier, Private Carrier or Permittee to Make Application for Permit to Transport Controlled Beverages, Except Beer and Malt Liquor, Interstate and Into Arkansas.* Any person serving as a contract carrier or a private carrier, as defined in Title 49 Section 303 of the United States Code, or any person holding a manufacturer's or wholesaler's permit desiring to transport controlled beverages in interstate commerce through the State of Arkansas, into the State of Arkansas or out of the State of Arkansas, shall make an application to the Director therefor which shall set forth the following information and statements:

- (1) The point of origin of the shipment, the point where such shipment will enter the State of Arkansas, the destination of such shipment and, if the destination is outside the State of Arkansas, the point where such shipment will leave the State of Arkansas;
- (2) The approximate duration of the entire trip through the State of Arkansas if the destination is outside the State of Arkansas;

- (3) A description of the vehicle to be used in such shipment including the motor number, the license plate number and a description of the make, model and dimensions of the vehicle;
- (4) The approximate number of cases or kegs expected in each shipment; and
- (5) If shipments are to be made on a regular basis, the schedule of such shipments expected to be followed.

The application shall be verified in the manner provided in Title 1 of these Rules.

Section 2.34 *Transportation by Holder of Liquor Off Premises Permit Prohibited.* Only persons, firms, or corporations holding retail liquor off premises permits may obtain designation as a source of supply for licensed private clubs. Those distributors so designated by the Director may not make deliveries of controlled beverages to licensed private clubs. Only those retail liquor stores which have obtained a Federal Basic Wholesalers Permit from the Alcohol and Tobacco Tax and Trade Bureau will be designated as a private club distributor by the Director. (Amended 7-19-84)

Section 2.35 *Date Application for Transportation Permits to be Made.* If for regularly scheduled shipments, the application for a transportation permit shall be made annually and such permit shall be issued for a period of one (1) year. If the shipment for which the application is made is not pursuant to a regular schedule, an application shall be made for each shipment.

Section 2.36 *Transportation Permit to be Issued After Approval and Posting of Bond.* Upon approval by the Director and the posting of a surety bond approved by the Director the transportation permit shall be issued. The surety bond shall be in the amount of two thousand dollars (\$2,000.00) and shall be conditioned that in the event the person holding the transportation permit violates or fails to comply with any of these Rules or any alcoholic beverage control law of the State of Arkansas, the amount of the bond shall be forfeited to the State of Arkansas.

Section 2.37 *Transportation Permit to Accompany Transportation of Controlled Beverages.* At all times when controlled beverages are transported pursuant to a transportation permit, such permit shall be present within the vehicle in which such controlled beverages are transported and shall be available for inspection by any law enforcement officer or by any officer of the Division of Alcoholic Beverage Control.

Section 2.38 *Suspension and Revocation of Transportation Permit.* If any person holding a transportation permit shall violate or fail to comply with any of these Rules, any rules of the Arkansas Commerce Commission or any alcoholic beverage control law of the State of Arkansas, the Director may suspend or revoke such permit pursuant to the procedure established by these Rules.

Article 2 – TRANSPORTATION OF CONTROLLED BEVERAGES

Section 2.39 *Bill of Lading or Invoice to Accompany Shipment.* A bill of lading, invoice or other memorandum of shipment shall accompany each shipment of controlled beverages made pursuant to a transportation permit and shall be present in the cab of the truck in which the controlled beverages described in the bill of lading are transported. The bill of lading, invoice or other memorandum of shipment shall show the date of sale of the controlled beverages, the quantity, brand and size of container of the controlled beverages transported, the name and address of the consignor and consignee and the permit number of the consignee. A copy of all bills of lading, invoice, or other memorandum of shipment shall be retained in the custody of the person holding the transportation permit for a period of three (3) years.

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 Rule, the manufacturer or liquor wholesaler shall comply with the requirements of Section 2.38 of these Rules 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 Rules and shall comply fully with Section 2.39 of these Rules. 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 Rules for a period of three (3) years.

Section 2.42 Truck in Which Controlled Beverages Transported by Manufacturer or Wholesaler to be Identified. A manufacturer or wholesaler which transports controlled beverages in its own truck shall have painted in letters not less than two (2) inches high on each side of each truck used in transporting alcoholic beverages the name and address of the business and the Alcoholic Beverage Control Division permit number assigned to such business. (Amended 8-19-93)

Section 2.43 Carrier Unloading Controlled Beverages in Freight Depot Must Store Controlled Beverages Separate From Other Freight. Any carrier who transports controlled beverages shall, when unloading such controlled beverages in any freight depot or other warehouse, store such controlled beverages separate from other freight.

Section 2.44 Manufacturer or Wholesaler May Store Controlled Beverages in Bonded Warehouse. A manufacturer or wholesaler may store controlled beverages owned by such manufacturer or wholesaler in a bonded warehouse not located on the premises described in such manufacturer or wholesaler's permit. **Provided,** such warehouse must be in compliance with the requirements of these Rules for such warehouse, and such manufacturer or wholesaler must maintain records indicating the quantity, brand, and date of storage of all controlled beverages so stored. Such records shall be retained by such manufacturer or wholesaler for a period of three (3) years.

Article 3 – PROHIBITED CONDUCT AND ACTIVITIES

Section 2.45 Prohibited Conduct and Activities; Grounds for Suspension or Revocation of Transportation Permit. Any transportation permit issued pursuant to this Subtitle may be suspended or revoked for any of the following reasons:

- (1) **Manufacturer Making Delivery to Retailer or Consumer.** That a manufacturer delivered controlled beverages directly to a person holding a permit to sell controlled beverages at retail or to a consumer;
- (2) **Wholesaler Making Delivery to Consumer.** That a wholesaler delivered controlled beverages directly to a consumer;

- (3) ***Variance of Described Route.*** A permittee varied the transportation route as described in the transportation permit;
- (4) ***Sale or Attempt to Sell Controlled Beverages.*** A permittee, not authorized to do so, sold or attempted to sell any controlled beverages in such permittee's possession for purposes of delivery; and,
- (5) ***Storage or Delivery of Interstate Shipment.*** A permittee stored or delivered, or attempted to store or deliver, within the State of Arkansas, any controlled beverages in the possession of the permittee for purposes of delivery outside the State of Arkansas.

Article 4 – TRANSPORTATION OF NATIVE BEVERAGES

Section 2.46 Native Beverages Must be Sealed and Stamped Before Transport. Repealed 8-15-07

Section 2.47 Sealing, Stamping and Printing of Native Beverages Responsibility of Holder of Permit. Repealed 8-15-07

Section 2.48 Sale of Native Beverages for Transportation Without Seal and Stamp Prohibited. Repealed 8-15-07

Section 2.49 Quantity of Native Wine Which May be Transported by Consumer. Repealed 8-15-07

Section 2.50 Transportation of Native Beverages. Repealed 8-15-07

Section 2.51 Opening Container or Breaking Seal of Case or Package Prohibited. Repealed 8-15-07

Section 2.52 Native Beverages to be Available for Inspection While Transported; Procedure for Inspection. Repealed 8-15-07

SUBTITLE H – MICROBREWERY-RESTAURANT OPERATIONS

Section 2.53 Microbrewery-Restaurant and Separate Brewing Facility Application and Operations.

A. A microbrewery-restaurant shall manufacture beer, malt beverage, or hard cider containing not in excess of twenty-one percent (21%) alcohol by weight, and may sell the same or products produced at the permittee's separate brewing facility, for consumption on or off the premises. The microbrewery portion of the microbrewery-restaurant permitted operation (hereinafter "permitted business") shall be separated from the restaurant portion of the permitted business by a solid wall. The wall may be made of glass or other materials, but shall prevent direct access by the public patronizing the

restaurant. If the operator of the permitted business does desire to allow members of the public to take a tour of the brewery, such tour shall only be conducted under the direct supervision of brewery personnel. Microbrewery-Restaurant permittees may store the manufactured beer, malt beverage, or hard cider and any other beer, malt beverage, or hard cider which the permittee may purchase from wholesalers and small brewers licensed by this state on the microbrewery-restaurant premises and on the premises of the one (1) separate brewing facility of the microbrewery-restaurant. Two (2) or more microbrewery-restaurants sharing ownership or a brewery of any size sharing common ownership with a microbrewery-restaurant shall be considered one (1) entity for the purposes of calculating barrel production and transportation of beer, malt beverage, or hard cider produced by one (1) entity among no more than three (3) microbrewery restaurant facilities of the one (1) entity. (Amended 9-20-17)

B. A microbrewery-restaurant permittee may maintain one (1) separate brewing facility for production or storage of beer, malt beverage, or hard cider as needed to meet demand, except that each facility used by the microbrewery-restaurant permittee shall not in the aggregate produce more than forty-five thousand (45,000) barrels of beer, malt beverage, and hard cider per year.

C. A microbrewery-restaurant permittee shall notify the Alcoholic Beverage Control of its intent to operate a separate brewing facility by providing the following documentation:

- (1) A completed Separate Brewing 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 microbrewery restaurant permittee. The endorsement shall be posted on the premises in compliance with the specifications set forth in Section 1.37. (Adopted 9-20-17)

Section 2.54 Limitation on Production. Each operator of a microbrewery-restaurant establishment is allowed to manufacture beer, malt beverage, or hard cider products in limited quantities. The operator shall be allowed to brew one or more varieties of beer, malt beverage, or hard cider products, but in any event shall not brew more than 45,000 barrels, for all products per calendar year. The 45,000 barrel limitation applies to all beer, malt beverages, and hard cider brewed, including test runs. (Amended 10-29-19)

Section 2.55 *Samples May be Offered in Brewery Portion.* The operator of a permitted establishment described in this Subtitle may offer samples of the beer or malt beverages brewed at the microbrewery to persons taking tours of the brewery. No free samples of beer or malt beverages may be distributed in the restaurant portion of the establishment, but may only be sold at retail in the restaurant portion for on or off premises consumption. (Amended 7-19-95)

Section 2.56 *Division of Premises.* Such microbrewery-restaurant operation shall be maintained in such a manner by solid walls or other such items as to clearly define and control the travel of persons inside the establishment, between the microbrewery portion of the building and the restaurant portion of the building. However, nothing in this Section shall be interpreted to prevent the installation of solid glass walls or other such transparent materials in order that patrons at the restaurant establishment may actually view part of the brewery operations without being able to enter the brewery portion of the establishment. (Adopted 7-15-91)

Section 2.57 *Floor Plan to be Furnished with Application.* Each person applying for a microbrewery-restaurant permit as authorized by law shall submit with the application a floor plan of the permitted business which will identify the portion of the building which will be operated as the brewery and the portion which will be operated as the restaurant. The floor plan will contain such sufficient descriptions and other information as may be required to show how the traffic flow of customers will be separated in the two portions of the permitted business. The brewery diagram will also show the size and location of various tanks or other devices which will be used to brew and store the beer or malt beverages brewed at such brewery. In addition, the applicant for the microbrewery-restaurant 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 brewery operations as set forth in 27 CFR § 25.25 or other applicable Alcohol and Tobacco Tax and Trade Bureau regulations that may apply to the operation of a microbrewery-restaurant as created by the Arkansas General Assembly. (Amended 7-19-95)

Section 2.58 *Disposition of Microbrewery Products.* A microbrewery-restaurant operation shall be allowed to dispose or sell the products that it brews by the following methods:

- (1) A permittee may sell beer or malt beverages in draft form at the restaurant for on premises consumption only;
- (2) The permittee may can or bottle beer or malt beverage products and may sell those products in brewery-sealed packages at retail to the customer for consumption off the premises;
- (3) The permittee may distribute beer and malt beverage products to charities and non-profit corporations on the same basis as a manufacturer under the provisions of Section 2.28(6) of these Rules or the microbrewery-restaurant may sell for resale the products that it manufactures to charitable or non-profit

organizations holding valid “special-event” 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 4 of this Section. The sale of said products shall be limited to the duration of the particular “special event” permitted activity;

- (4) The permittee may sell at retail by the drink or by the package products produced on the premises of the microbrewery-restaurant at fairs and food and beer festivals, with the permission and the consent of the management of events. (Amended 9-16-15)
- (5) The permittee may sell beer, malt beverages, and hard cider of its own manufacture to a wholesaler dealer licensed by this state for the purpose of resale to other retail license holders as set forth by ACA 3-4-605 and ACA 3-5-101, dealing with wholesale distribution of beer, malt beverage, and hard cider. (Adopted 9-16-15)

Section 2.58.1 *Microbrewery-Restaurant Delivery.* Microbrewery Restaurant permit holders may deliver or cause to be delivered alcoholic beverages directly to the private residences of a consumer twenty-one years of age or older in a wet county or territorial subdivision in accordance with the Rules 3.22 through Rule 3.28.

Section 2.59 *Trademarks or Other Designs to be Used.* Microbrewery-restaurant operators may can or bottle beer for off premises consumption. In order to comply with all applicable State and Federal rules, microbrewery-restaurant operators will be required to adopt a label design to be approved by the Director under the provisions of Section 2.19 of these Rules. In addition, the microbrewery-restaurant operator may design a trademark, logo, graphic design or representation or other symbol to be used on point of sale advertising items inside the restaurant, in newspaper advertisements, billboards, or other printed media, which shall identify the beer or malt beverage which is brewed at the microbrewery-restaurant and sold in the restaurant portion of the business for consumption on or off the premises as provided by law. Such trademark, logo, graphic design or other symbol or label shall be allowed as a limited exemption to the private label prohibition contained in Section 2.19.1 of these Rules. Such graphic design, trademark, logo or label design shall be submitted for approval by the Director. In addition, the microbrewery-restaurant operation must secure a certificate of label approval, or complete items as may be required by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury. Additional labels made after the first application for trademark, label or design shall have the graphic design for the product approved by the Director prior to the sale of the product in the restaurant. (Amended 7-19-95)

Section 2.60 Requirements of Design of Trademark, Logo, Symbol or Label to be Used by Microbrewery-Restaurant. Any licensed microbrewery-restaurant may adopt a trade name, logo, trademark, symbol or label or other graphic representation to be used by the microbrewery-restaurant (hereinafter “permitted establishment”) in advertising the availability of beer or malt beverage products brewed and sold at the permitted establishment. In addition, the permitted establishment may advertise the existence of its beer and malt beverage products by use of billboards, newspaper advertisements, outside signs or other devices away from the permitted establishment and by point of sale items at the restaurant. The trademark, logo, symbol, label or other graphic design (hereinafter “design”) shall be used for the products to be sold by the permitted establishment and shall conform to the following standards:

- (1) The design shall contain the brand name of the alcoholic beverage being offered at the permitted establishment. No design shall contain any brand name which, standing alone or in association with other printed or graphic matter, creates any misleading impression or inference as to the age, origin, identity, or other characteristic of the product. The design shall contain a statement, if FD & C Yellow No. 5 is used in the product, in conformance with 27 CFR § 7.22(4). If the product contains saccharin the design shall contain a statement in conformance with 27 CFR § 7.22(5);
- (2) The design shall state the class of malt beverage and, if desired, the type of malt beverage may be stated. Statements of class and type shall conform to the designation of the product as known to the trade;
- (3) The design shall carry, in type not smaller than ten (10) points in size, the name of the microbrewery-restaurant operation brewing and selling the alcoholic beverages. The type face shall be of a plain Gothic or Roman design;
- (4) If the manufacturer desires to make a statement of alcohol content of any beer product, the manufacturer shall be guided by the provisions of Section 2.17 of these Rules in this regard. In regard to the sale of malt beverage products, the manufacturer shall be guided by the provisions of Section 2.17 of these Rules. In addition, no words shall be used in the design such as “strong”, “full strength”, or similar words which imply alcohol content;
- (5) All information, other than the brand name, shall be in the English language. Additional statements in foreign languages may be made if desired, if the statements in the foreign language do not conflict with or contradict the statements made in the English language;

- (6) No design shall contain any statement that is false or untrue in any particular, or that tends to create a misleading impression. No design shall contain any statement that is disparaging of a competitor's product. No design shall contain any statement, device or other representation which is obscene or indecent. No design shall contain any statement, device or representation relating to analysis, standards, or tests of malt beverage products. No design shall offer any statement, device, or representation relating to any guarantee and permittees are prohibited from offering money-back guarantees on beer and malt beverage products they sell. No design shall resemble or simulate a stamp of the United States government or the State of Arkansas or any other state or foreign government. No design shall contain any flags, seals, coat of arms or crests, nor shall it contain any curative or therapeutic claims. No design shall use any numerals, statements or other devices in the forms of numerals, letters, characters, figures or otherwise which are likely to be considered as statements of alcohol content;
- (7) Except as specifically provided above, the Director shall be generally guided by the provisions of 27 CFR § 7.20, et seq. in considering whether a design of a permittee may be used in the state;
- (8) In the event of claims of trademark infringement, service mark infringement, or other such competing claims between microbrewery-restaurant operations, all such claims shall be resolved outside the Alcoholic Beverage Control Division under such provisions of law that may apply to such disputes.
(Amended 7-19-95)

Section 2.61 *Small Brewery Operations Allowed.* A small brewery is allowed to brew beer, containing not in excess of five percent (5%) alcohol by weight, to brew malt beverage products, containing not in excess of twenty-one percent (21%) alcohol by weight, brew hard cider not in excess of twenty-one percent (21%) alcohol by weight, and to sell the same on the premises of the brewery, for consumption on or off the premises. (Adopted 9-16-15)

Section 2.62 *Limitation on Production.* Each operator of a small brewery is allowed to manufacture beer, malt beverage products, and hard cider in limited quantities. The operator shall be allowed to brew one or more varieties of beer, malt beverage products, and hard cider, but in any event shall not brew more than forty-five thousand (45,000) barrels, for all products per year. For purposes of this Rule, a year is determined to be a calendar year beginning on January 1st of each year and ending on December 31st of the same year. The 45,000 barrel limitation applies to all beer, malt beverages, and hard ciders brewed, including test runs. (Adopted 9-16-15)

Section 2.63 Samples May be Offered. The operator of a permitted establishment described in this Subtitle may offer complimentary samples of the products produced on the premises of the brewery. (Adopted 9-16-15)

Section 2.64 Floor Plan to be Furnished with Application. Each person applying for a small brewery 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 brewery and the portion that will be operated as the tap room, if any. The brewery diagram will also show the size and location of various tanks or other devices that will be used to brew and store the products brewed at such brewery. In addition, the applicant for the small brewery 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 brewery operations as set forth in 27 CFR § 25.25 or other applicable Alcohol and Tobacco Tax and Trade Bureau regulations that may apply to the operation of a small brewery as created by the Arkansas General Assembly. (Amended 9-16-15)

Section 2.65 Disposition of Small Brewery Products. A small brewery operation shall be allowed to dispose or sell the products that it brews by the following methods:

- (1) The permittee may sell to wholesale dealers or to the consumer at the small brewery premises for consumption either on or off the premises brand name products of the licensed facility;
- (2) The permittee may sell and transport brewery products produced on the premises of the small brewery to retail license holders and small brewery license holders if the total production of the permitted brewery does not exceed fifteen thousand (15,000) barrels per year. A small brewery may distribute no more than fifteen thousand (15,000) barrels per year. If a small brewery wishes to distribute its products in this manner, the brewery shall obtain a small brewery wholesale permit;
- (3) The permittee may distribute beer and malt beverage products to charities and non-profit corporations on the same basis as a manufacturer under the provisions of Section 2.28(6) of these Rules or the microbrewery-restaurant may sell for resale the products that it manufactures to charitable or non-profit organizations holding valid "special-event" 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 4 of this Section. The sale of said products shall be limited to the duration of the particular "special event" permitted activity;

- (4) The permittee may sell at retail by the drink or by the package products produced on the premises of the small brewery at fairs and food and beer festivals, with the permission and the consent of the management of events. (Adopted 9-15-15)

Section 2.66 *Separate Brewing Facility - Application.* An Arkansas Small Brewery permittee shall notify the Alcoholic Beverage Control of its intent to operate a separate brewing facility by providing the following documentation:

- (1) A completed Separate Brewing 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 small brewery permittee. The endorsement shall be posted on the premises in compliance with the specifications set forth in Section 1.37. (Adopted 9-20-17)

Section 2.67 *Small Brewery Tap Room - Application.* An Arkansas Small Brewery permittee shall complete an application for a small brewery tap room. The same posting, publication and notice requirements of applicants for a retail beer permit shall apply to small brewery tap room applicants. Small Brewery permittees shall designate a managing agent for each small brewery 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 Small Brewery Permittee for the operation of a Small Brewery 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 Small Brewery Tap Room endorsement to the Small Brewery permittee, the Director's decision may be appealed to the Alcoholic Beverage Control Board pursuant to Section 1.51. (Adopted 9-20-17)

Sections 2.68 – 2.69 *Reserved*

SUBTITLE I – SMALL FARM WINERY OPERATIONS

Section 2.70 “Small Farm Winery” means a wine-making establishment that does not produce for sale more than two-hundred fifty thousand (250,000) gallons of wine, the alcoholic content of which is not less than one-half of one percent (0.5%) and which does not exceed twenty-one percent (21%) by weight, per calendar year, as reported on the federal tax report form TTB 5210-17, as it existed on January 1, 2007. (Adopted 8-15-07)

Section 2.71 “Small Farm Wine Grocery Store” means an establishment that has more than fifty thousand dollars (\$50,000) of inventory of human consumable items. The applicant must prove the inventory requirement to apply for or renew the small farm wine retail permit. The establishment must be of such a nature and size that it offers a full range of typical grocery store items including, but not limited to, fresh produce, fresh meat, laundry detergents, frozen foods, dairy products, breads and other such items. The above list is not all inclusive. (Adopted 8-15-07)

Section 2.72 “Small Farm Wine Convenience Store” means an establishment which sells convenience goods, such as a limited range of grocery, snack items, and other human consumables or both convenience goods and motor fuel. The convenience store must prove, in order to apply for or renew the Small Farm Wine retail permit for convenience stores, that it has in inventory at least seven thousand five hundred dollars (\$7,500) worth of human consumable food items.
(Amended 8-21-13)

Section 2.73 Small Farm Winery may bottle and sell wines produced by another licensed small farm winery. Under the provisions of Act 668 of 2007 a small farm winery license authorizes the permittee to manufacture and bottle wines produced by that small farm winery. In addition a small farm winery license authorizes the holder of that permit to bottle and sell wines produced by another small farm winery. In order for a small farm winery to bottle and sell another small farm winery’s products both the selling winery and the buying winery must be small farm winery permit holders as defined in Act 668 of 2007. (Adopted 8-15-07)

Section 2.74 Product Source for Small Farm Wine. Small farm wine means wine made from grapes, berries, other fruits, honey or vegetables. Small farm wine includes mead. (Adopted 8-15-07)

Section 2.75 Direct Shipment of Vinous Liquor or Mead to Arkansas Residents. Any winery licensed by this state or the state where its principal place of business is located and which is registered with the Alcoholic Beverage Control Division pursuant to ACA § 3-5-1703 may ship vinous liquor or mead to an Arkansas consumer. Prior to the winery’s first shipment into or within the state the winery shall (1) register with the Alcoholic Beverage Control Division; (2) provide the division with a copy of the winery’s current licenses to manufacture wine issued by: (A) the state of domicile; and (B) the Alcohol and

Tobacco Tax and Trade Bureau of the United States Treasury; and (3) pay a registration fee of twenty-five dollars (\$25.00).

A consumer must be physically present at the winery to purchase the vinous liquor or mead to be shipped into or within the state and must provide identification to the shipping winery that the consumer is at least twenty-one (21) years old.

A winery shall ship only a vinous liquor or mead to a private residence and may only ship one case of vinous liquor and one case of mead per consumer in any calendar quarter.

A shipment of a vinous liquor or mead shall have a shipping label provided by the Alcoholic Beverage Control Division affixed to the shipping package. The fee for each label shall not exceed ten dollars (\$10.00).

A winery shall have the vinous liquor or mead delivered to an Arkansas consumer during the hours of the day that alcoholic beverages may be purchased in the state.

A winery shall collect and remit to the Department of Finance and Administration all sales taxes and excises taxes due on a sale to an individual of this state as if the sale took place on the premises of an Arkansas Small Farm Winery, including without limitation taxes under ACA § § 3-5-1605, 3-7-104, 3-7-111, and 3-7-201. (Adopted 9-01-2021)

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:

- (1) Sold to a licensed wholesaler; or
- (2) Transported:
 - (i) 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
 - (ii) 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 Rules 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 2.83.1 Hard Cider Manufacturing Delivery. Hard Cider Manufacturing permit holders may deliver or cause to be delivered alcoholic beverages directly to the private residences of a consumer twenty-one years of age or older in a wet county or territorial subdivision in accordance with the Rules 3.22 through Rule 3.28.

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.

SUBTITLE K – DISTILLER OR LIQUOR MANUFACTURER OPERATIONS

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 sell, deliver, and transport to permitted retailers not more than fifteen thousand (15,000) nine-liter-equivalent cases or thirty-five thousand six hundred sixty-seven gallons (35,667 gals.) of spiritous liquor produced by the distiller or manufacturer per year.
- (3) A distiller or manufacturer may export any liquor product from this state;
- (4) 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;
- (5) 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;
- (6) A distiller or manufacturer may sell for on-premises consumption any liquor product it purchases from an in-state permitted wholesaler;
- (7) 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;

- (8) 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;
- (9) 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;
- (10) 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. 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.

TITLE 3

RULES APPLICABLE TO PERMITS TO SELL CONTROLLED BEVERAGES AT RETAIL

SUBTITLE A – SCOPE

Section 3.1 – General

The Rules under this Title apply to all permits issued by the authority of the Alcoholic Beverage Control Division of the State of Arkansas to sell controlled beverages at retail. These Rules should be regarded as being supplementary to, and not in replacement of, the code provisions of this State relating to the matters covered by this Title. In addition to these Rules, other Rules applicable to the matters covered by this Title may be found under Title 1 of these Rules, under Title 4 of these Rules in regard to hotel and motel, and restaurant permits, and under Title 2 of these Rules in regard to the transportation of native Arkansas beverages and small farm wines as defined within these Rules. (Amended 8-15-07)

Section 3.2 Rules Applicable to Wine Restaurant On Premises Permit. In addition to the Rules under Title 1, the Rules under this Title shall be specifically applicable and shall govern activities and conduct under a Wine Restaurant On Premises Permit as defined under Article 1 of Title 1.

SUBTITLE B – DEFINITIONS

Section 3.3 “Consumer” means any person who receives or in any way comes into the possession of controlled beverages for the purpose of consuming them, giving them away or distributing them in any way other than by sale, barter or exchange.

Section 3.4 “On Premises Wine Restaurant or Café” means a place of business that is regularly used to serve a meal to a guest for compensation and has a suitable kitchen facility to serve an entire menu approved by the Alcoholic Beverage Control Division. The menu shall contain a selection of food and shall not be limited to sandwiches or salads. The kitchen shall have adequate refrigeration to preserve the food on the menu, shall be kept in a sanitary condition, and shall comply with the Rules of the Department of Health. For purposes of this rule “meal” means food commonly ordered at various hours of the day and “guest” means a person who orders and is served a meal inside a café or restaurant during regular hours. The principal business at a restaurant or café shall be the serving of food for consumption on the premises. A drive-in food service establishment shall not be considered a café or a restaurant for purposes of this Section. (Amended 8-21-13)

Section 3.5 “Retailer” means any person who holds a permit under any alcoholic beverage control law of the State of Arkansas to sell at retail controlled beverages to consumers only.

Section 3.6 Definition of Other Terms. All other terms used in this Title shall be defined in accordance with the definitions under the Titles of these Rules and in accordance with the customs and usages of the trade and people of the State of Arkansas.

SUBTITLE C – CONDUCT OF BUSINESS OF SELLING CONTROLLED BEVERAGES AT RETAIL

Section 3.7 Retailer to Purchase Only From Permitted Wholesaler. Persons holding a permit to sell controlled beverages at retail shall purchase such beverages allowed by the permit only from persons holding a permit to sell beverages at wholesale. **Provided**, persons holding a permit to sell controlled beverages at retail may purchase such beverages from a permitted manufacturer or distiller under the provisions of Section 2.85(2) and A.C.A. § 3-4-602.

Section 3.8 Retailer to Sell Only to Consumer; Exceptions. Persons holding a permit to sell controlled beverages at retail shall sell such controlled beverages to consumers only. **Provided**, that retailers who have been designated by the Director as a private club distributor under Title 5 of these Rules may sell to persons holding a private club permit in accordance with the Rules under Title 5. In addition, any retailer who has for any reason ceased to conduct business under the permit may, upon approval of the Director as

provided by these Rules, dispose of the stock of controlled beverages to another retailer or to any other person permitted under these Rules or any alcoholic beverage control law of the State of Arkansas to purchase or receive such controlled beverages.

Section 3.9 Types of Sales Authorized for On Premises Permit. Any person holding a permit to sell any controlled beverages for consumption on the premises must sell such controlled beverages from the original container.

Section 3.10 Dispensing Faucet for Draught Beer Must be Labeled. Every faucet or other dispensing apparatus from which draught beer is dispensed must be equipped with a sign clearly indicating the name or the brand of the particular product being dispensed at any time through the faucet or other apparatus. Such sign shall be in legible lettering and in full view of the purchaser.

Section 3.11 Controlled Beverages to be Sold in Original Bottle or Package and to be Labeled. All controlled beverages shall be sold or offered for sale in the original bottle or original package containing bottles bearing the original label and the full name of the manufacturer thereof, both upon the label, upon the bottle and upon the cap or cork of the bottle. All sales of draught beer shall be made from the original container or barrel which shall have stamped upon the ends thereof the full name of the manufacturer of the beer therein contained.

Section 3.12 Retailers to Keep and Maintain Certain Records. Each person holding a permit to sell controlled beverages at retail shall maintain written records of all controlled beverages purchased by or for the permittee or delivered to the permitted premises and of all sales of controlled beverages under the permit. Such records shall be maintained in a manner consistent with standard business bookkeeping practices. Such records shall be maintained by the permittee for a period of three (3) years and such records shall be open for inspection upon reasonable notice by any authorized agent of the Alcoholic Beverage Control Enforcement Division or any other duly authorized law enforcement officer or State Revenue Department employee. (Amended 8-19-93)

Section 3.13 Sales of Controlled Beverages Under Off Premises Permit to be From Unbroken Packages and Containers Only. All sales of controlled beverages pursuant to a permit to sell controlled beverages for consumption off premises shall be in unbroken packages or containers which shall not be opened or the contents or any part consumed on the premises where purchased.

Section 3.14 Sales of Malt Beverages for Consumption Off Premises to be in Containers of Certain Combinations and Size.
Repealed 12-18-82

SUBTITLE D – ADVERTISING

Section 3.15 Advertising by Billboard or Sign Off Premises Prohibited.
Repealed 12-17-80

Section 3.16 Price Advertising of Controlled Beverages Prohibited.
Repealed 12-17-80

Section 3.17 Advertising Discount Sales Prohibited. Except as provided in Section 3.17.1 and Section 3.17.2, no person holding any permit to sell any controlled beverages, nor any manufacturer, importer, or distributor of such controlled beverages, shall advertise, by any means, that such controlled beverages are available for purchase in conjunction with a monetary rebate, cash discount, or give the impression that upon purchase of a controlled beverage the consumer will be entitled to a monetary refund or direct cash rebate upon purchase. Further, no such person named above shall distribute or offer any coupon or other inducement to purchase alcoholic beverages to the consumer, unless specifically authorized to do so by these rules and rules.
(Amended 9-16-15)

Section 3.17.1 Advertising or Providing Refunds or Rebates or Other Inducements by Arkansas Wholesalers and Retailers. No person holding any permit to sell any controlled beverages at retail or wholesale shall advertise that such controlled beverages are available for purchase in conjunction with a monetary rebate or give the impression that upon purchase of a controlled beverage the consumer will be entitled to a monetary refund, cash rebate, or merchandising discount from said retailer or wholesaler. Likewise, no such person shall allow or give any such refund, rebate, or merchandise discount to any consumer in conjunction with the purchase of any alcoholic beverages. Further, no such person named above shall distribute or offer any coupon or other inducement to purchase alcoholic beverages to the consumer. Exceptions to these provisions are as set forth in Section 3.17.2 of these Rules.
(Adopted 7-19-95)

Section 3.17.2 Consumer Promotion Offers Allowed by Manufacturers or Importers. A manufacturer or importer of beer, wine or distilled spirits products may offer certain consumer promotional programs that are tied to the purchase of an alcoholic beverage. However, no manufacturer or importer of alcoholic beverages shall offer any coupon or other promotion incentive which entitles the consumer, in conjunction with the purchase of an alcoholic beverage, to any type of cash discount, rebate, or merchandise redemption from an Arkansas wholesaler or retailer. A manufacturer or importer, or their agent, not to include any Arkansas wholesaler or retailer, shall be allowed to offer the following types of consumer programs:

(1) A manufacturer or importer of wine or distilled spirits may offer a form, conditioned upon the purchase of an alcoholic beverage, which entitles the consumer to a monetary rebate from said manufacturer or importer or designated third party;

(2) A manufacturer or importer may offer merchandise programs to consumers with the merchandise price being discounted upon proof of purchase. Provided, that no discount program may be offered based upon multiple purchases by the consumer; (Amended 9-8-97)

(3) A manufacturer or importer may offer merchandise to a consumer that is part of a combination package or is sealed inside or contained within an alcoholic beverage carton;

(4) A manufacturer or importer may offer consumers the ability to enter sweepstakes events based upon proof of purchase of an alcoholic beverage. Provided, if a manufacturer or importer offers a sweepstakes event based upon proof of purchase of an alcoholic beverage, they will also be required to offer an alternative means of entry, by way of free standing point of sale items, that is not attached to or packaged with the alcoholic beverage product.

The cost of any such authorized rebate program, merchandise program, or sweepstakes shall be an expense to the manufacturer or importer offering such promotional programs, and not be recouped in whole or part from any Arkansas wholesaler or retailer.

Any such authorized promotional offerings or rebates must be made to Arkansas consumers through the following means of distribution: (Amended 9-16-15)

(a) In any printed media of statewide circulation;

(b) In the original package arrangement produced and shipped by the manufacturer;

(c) Manufacturers or suppliers may provide brand specific mail in rebate forms to Arkansas wholesalers for distribution to Arkansas retailers. Arkansas wholesalers may distribute brand specific mail in rebate forms to Arkansas retailers; provided that the brand specific rebate forms are made available to any Arkansas retailer offering the brand for sale to an Arkansas consumer. (Adopted 9-16-15)

Licensed wholesalers, retailers and their employees shall be ineligible to participate in consumer promotional programs authorized by this Rule.

Section 3.17.3 Retailer Loyalty Programs

(1) For the purposes of the section, a loyalty program is defined as a marketing program that offers certain incentives to encourage customer retention.

- (2) The holder of a manufacturer or wholesale tier license or permit cannot directly or indirectly reimburse a retailer for any costs associated with a loyalty program.
- (3) A retailer may offer a loyalty program subject to the following conditions:
 - a. The loyalty program may give consumers discounts on the purchase of alcoholic beverages and on non-alcoholic products or items.
 - b. The loyalty program may have a point accrual and redemption component in addition to discounts. Accrued points may be redeemed on alcoholic beverage or non-alcoholic beverage products or items.
 - c. Loyalty program point accrual and redemption components shall only be offered on the final sale of alcoholic beverage or non-alcoholic beverage products. Increased loyalty program awards or point values for the purchase of specific alcoholic beverage or non-alcoholic product brands is strictly prohibited.
(Adopted 9-20-17)

Section 3.18 Advertising Controlled Beverages as Being Free Prohibited.

No person holding any permit to sell controlled beverages shall advertise by any means that such controlled beverages are to be given away.

SUBTITLE E – PROHIBITED CONDUCT AND ACTIVITIES

Section 3.19 Prohibited Conduct and Activities; Grounds for Suspension or Revocation of Retail Permit.

In addition to the violation or failure to comply with any of these Rules or any alcoholic beverage control law of the State of Arkansas, a permit to sell or dispense controlled beverages at retail may be cancelled, suspended or revoked or assessed a monetary fine for any of the following prohibited activities committed by the permittee or any employee, agent or servant of the permittee: (Amended 8-18-99)

- (1) **Conduct Prohibited On Premises.** That the permittee or any agent, servant, or employee of the permittee did or allowed any of the following to occur on the permitted premises:
 - A. **Prostitute Frequenting Premises.** Permitted any prostitute to frequent the permitted premises;
 - B. **Employment of Certain Persons.** Employment of or permitting any person to solicit patrons for drinks or to accept drinks from

patrons and receive therefore any commission or any remuneration in any other way;

- C. ***Gambling on Premises.*** Permitted gambling or games of chance or kept any gambling device, machine or apparatus upon the permitted premises. ***Provided***, any establishment licensed under the authority of Act 132 of 1969, as amended, (e.g. hotel-motel mixed drink, restaurant mixed drink, private club & large attendance facility) shall be allowed to have certain gambling machines or devices on its property in conformance with Act 1170 of 2005. Gambling devices or machines may only be on the property of a premises described above if the gambling machines or devices are being used by a non-profit organization that is described in the Act. Any non-profit organization desiring to use gambling machines on a permitted premises must register the event with the Alcoholic Beverage Control Division at least sixty (60) days before the event. The games used at the event may not use money but may use some form of play money. No cash or other item of value may be won or awarded as a prize. This proviso shall only be available for one event during a calendar year by any specific non-profit qualified organization. No permitted premises shall be allowed to host more than ten (10) such events per calendar year under authority of this law. ***Provided further***, that games of bingo and raffles are not considered gambling when conducted at those permitted outlets which have obtained an authorized organization license from the Department of Finance and Administration to conduct games of bingo and raffles, pursuant to Act 388 of 2007. A violation of any provision of Act 388 of 2007 subjects the permitted outlet to the full range of administrative sanctions that may be levied by the Alcoholic Beverage Control Division. ***Provided further***, that any activity authorized by the Arkansas Lottery Commission which occurs in a permitted outlet shall not be a violation of this rule. (Amended 8-19-09)
- D. ***Immoral Conduct or Improper Entertainment on Premises.*** Permitted any immoral, lewd, obscene, or profane conduct, language, literature, pictures or materials or improper entertainment on the permitted premises.
1. ***General Attire and Conduct.*** The following acts or conduct on licensed premises are deemed to constitute lewd, immoral, or improper entertainment as prohibited by this Section:
- a. To allow any person in or upon the licensed premises while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breasts below the top of the areola, any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals or any simulation thereof; (Amended 9-8-97)

- b. To employ or use the services of any hostess or other person to mingle with the patrons while such hostess or other person is unclothed or in such attire, costume or clothing as described in Subparagraph 1(a) above;
 - c. To encourage or permit any person on the licensed premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any other person;
 - d. To permit any employee or person to wear or use any device or covering, exposed to view, which simulates the breasts, genitals, anus, pubic hair or any portion thereof.
2. **Entertainers and Conduct.** Acts or conduct on licensed premises in violation of this Section are deemed to constitute lewd, immoral, or improper entertainment as prohibited by this Section.
- a. Live entertainment may be approved by the Director or Board at any on premises licensed premises, except that no permittee shall permit any person to perform acts of or acts which simulate:
 - 1) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;
 - 2) The touching, caressing or fondling of the breasts, buttocks, anus or genitals;
 - 3) The displaying of the pubic hair, anus, vulva or genitals.
 - b. Subject to the provisions of Subparagraph 2(a) hereof, entertainers whose buttocks are exposed to view shall perform only on a stage at least two (2) feet above the immediate floor level and removed at least three (3) feet from the nearest patron. Physical contact between customers/patrons and entertainers during any dancing performance, including placing tips in the hand of or within or on any article of clothing of any such dancer, is prohibited.

No permittee shall permit any person to use artificial devices or inanimate objects to depict any of the prohibited activities described above.
3. **Visual Displays.** The following acts or conduct on licensed premises are deemed to constitute lewd, immoral, or improper entertainment as prohibited by this Section.

The showing of films, still pictures, electronic reproduction, or other visual reproductions depicting:

- a. Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;
- b. Any person being touched, caressed or fondled on the breast, buttocks, anus or genitals;
- c. Scenes wherein a person displays the vulva or the anus or the genitals;
- d. Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above.

(2) **Samples Prohibited.** The permittee or any agent, servant or employee of the permittee accepted from any person or sold or gave to any person any samples, either in unbroken packages, partial packages, or by the drink; this provision is applicable to private clubs, and all holders of retail permits. Provided, retail liquor stores may offer samples of intoxicating liquors of all kinds pursuant to permit as authorized by Act 455 of 2007. Further, retail permit holders may donate intoxicating liquor to charitable or non-profit organizations for non-profit functions where the charitable or non-profit organization does not have a permit to dispense intoxicating liquors and where such functions occur on a permitted premises of an on premises permittee of this agency. Provided further, that holders of large attendance facility permits in which pairmutuel wagering has been authorized by law may offer samples of alcoholic beverages by the drink to patrons who are in that area of the permitted facility where games of skill are housed. **Provided** further, that holders of permits in hotels and holders of private club permits that own or lease space within a hotel building may offer samples of alcoholic beverages by the drink to registered guests of the hotel as part of a manager's reception. All such samples offered shall be subject to the gross receipts and use taxes as a withdrawal from stock and shall be paid by the permit holder in the manner prescribed by law.
(Amended 8-21-13)

(3) **Hours of Sale.** The permittee or any agent, servant or employee of the permittee sold, offered for sale, dispensed, gave away or allowed the consumption of any controlled beverages at any time prohibited by law, including the following:

- A. Sundays, Mondays between 12:00 a.m. and 1:00 a.m., or on any other days between the hours of 1:00 a.m. and 7:00 a.m. **Provided**, that this Rule shall not conflict with the

ordinance of any city or town. In addition, the governing body of any city or town may fix later closing hours for the permitted premises of a hotel or restaurant which in no event shall be later than two (2) hours after midnight on Saturday night. (Amended 7-19-95)

It is further provided that any establishment which holds a permit that allows the on premises sale of alcoholic beverages may sell alcoholic beverages and allow the possession and consumption thereof on Sunday between the hours of 10:00 a.m. and 12:00 midnight, or within a lesser period of time as authorized by city or county ordinance. It is further provided that if a city or county has held an election under the provisions of Act 294 of 2009, legalizing the off premises sale of alcoholic beverages on a Sunday by all permittees located within their jurisdiction, then such off premises retail sales shall be lawful between the hours of 10:00 a.m. and 12:00 midnight, or within a lesser period of time as authorized by city or county ordinance. (Amended 8-19-09)

It is further provided that when Sunday falls on December 31st of any year, any on premises consumption permit holder may sell and allow the possession and consumption of alcoholic beverages for on premises consumption between the hours of 10:00 a.m. on Sunday and 2:00 a.m. on the following Monday unless the city or county establishes by ordinance a lesser period of time in which alcoholic beverages may be sold for on premises consumption on New Year's Eve; (Amended 8-19-09)

- B. Christmas Day;
- C. ***Election Day Prohibition; Repealed 12-15-89***
- D. Under the provisions of Act 305 of 1999, if a permittee is cited by a local jurisdiction for operating during hours prohibited by local city ordinance or by local county quorum court ordinance, and if such hours of operation for which the permittee is cited are more restrictive than the general hours of operations established by the Alcoholic Beverage Control Division or by the Arkansas General Assembly for a retail or private club permit, then such violation shall only be heard by a local court of competent jurisdiction and such violation shall not be considered to be an administrative violation against the permit issued by the Alcoholic Beverage Control Division; (Adopted 8-18-99)
- E. Post Exchange Liquor Store permits may sell alcoholic beverages seven days per week to those customers that may

purchase from such facilities. The post exchange package store may operate on the same hours as those established for military service clubs pursuant to ACA § 3-4-706. (Adopted 8-17-05)

- F. Any large attendance facility permit issued under the authority of ACA § 3-9-202(8)(B) in which pairmutuel wagering has been authorized and which has a current large attendance facility permit for on premises consumption may sell alcoholic beverages on any day of the week during hours in which the large attendance facility if open for business except on (1) Christmas Day and (2) Easter Sunday. However, the large attendance facility may sell alcoholic beverages on Easter Sunday between the hours of 12:00 midnight and 2:00 a.m., as authorized by Act 790 of 2009. (Amended 8-19-09)
- G. A restaurant holding a permit under ACA § 3-9-202(8)(A) may sell alcoholic beverages for on premises consumption between the hours of 12:00 midnight Saturday and 2:00 a.m. on Sunday and on Sunday between the hours of 12:00 noon and 2:00 a.m. on the following Monday in addition to other times authorized by law for selling alcoholic beverages for on premises consumption if the restaurant is located in the same city where a large attendance facility permit has been issued to a facility in which pairmutuel wagering has been authorized. Such expanded hours are authorized under Act 7 of 2009. (Adopted 8-19-09)

(4) **Sales to Certain Persons Prohibited.** The permittee or any employee, agent or servant of the permittee sold to, offered for sale, dispensed, gave away, allowed the possession or consumption of, or otherwise disposed of or furnished any controlled beverages by any person who is not a person permitted by these Rules or by the laws of the State of Arkansas to purchase, receive, possess, or consume such beverages, including but not limited to any of the following persons: (Amended 8-21-13)

- A. **Persons Under 21 Years.** Any person under twenty-one (21) years of age;
- B. **Person Who is Intoxicated.** Any person who is intoxicated or who is known to be an habitual drunkard;
- C. **Person Failing to Make Provision for Family; Repealed 8-17-05**

- D. **Person Who is Insane.** Any person who is known to the permittee to be insane or mentally handicapped;
 - E. **Habitual User of Narcotics.** Any person who is known to the permittee to be an habitual user of narcotics or other habit forming drugs;
 - F. **Person Acquiring Controlled Beverages for Illegal Sale.** Any person who the permittee knows or has reasonable cause to believe is acquiring the controlled beverages for the purpose of illegal sale or other disposition;
 - G. **Person Paying for Controlled Beverages With Food Stamps.** Any person who attempts to pay for the controlled beverages with United States Department of Agriculture Food Stamps.
- (5) **Sale of Controlled Beverages for Other Than Cash, Check, or Nationally Recognized Credit Card Prohibited - Gift Certificates Allowed.** The permittee or any employee, agent or servant of the permittee sold or dispensed any controlled beverages for any consideration other than cash, nationally recognized credit card, or check dated the same day as the sale. Nationally recognized credit card shall mean, but is not limited to VISA, Mastercard, American Express, Diners Club, Carte Blanche, Discover, major oil company credit cards, or others of the same nature and type. Further, any permittee may sell gift certificates or gift cards to any person permitted by these Rules which may be redeemed for alcoholic beverages on a subsequent date by any person permitted by these Rules.

It is further provided that any permittee that offers gifts certificates or gift cards shall receive full payment for the same at the time the gift card or gift certificate is sold to any person. Payment shall be made for the gift card in the same manner as if alcoholic beverages were being purchased at that time. Only cash, credit card or check dated the same date as the date of sale may be used for payment for the gift card or gift certificate. Gift cards or gift certificates may not be bartered or exchanged to any other person to be used as payment for any obligations owed by the permittee. If it is found that a permittee is paying its advertising bills or other such obligations with gift cards or gift certificates being given as payment or partial payment for the debt owed by the permittee, then redemption of the gift card or gift certificate, where the item has been sold by the third party for a price less than the face value of the gift certificate or gift card, will be deemed to be a merchandising discount program and will constitute a violation against the retailer under the provisions of Arkansas ABC Rule 3.19(5). (Amended 8-16-11)

- (6) ***Delivery of Controlled Beverages by a Retailer Prohibited.*** The permittee or any employee, agent or servant of the permittee delivered or arranged for the delivery of any controlled beverages to a consumer, except as otherwise provided for in these Rules. (Amended 8-18-99)
- (7) ***Sale of Controlled Beverages in Container or Size Other Than Approved Prohibited.*** The permittee or any employee, agent or servant of the permittee sold or offered to sell any controlled beverages in any container or size of container not approved by the Director in accordance with these Rules. (Amended 8-18-99)
- (8) ***Sale of Controlled Beverages by Vending Machine Prohibited.*** The permittee or any employee, agent or servant of the permittee sold, offered to sell, dispensed or gave away any controlled beverages by means of a vending machine or other similar type device. (Amended 8-18-99)
- (9) ***Purchase or Order From Unpermitted Sales Agent Prohibited. Repealed 8-14-11***
- (10) ***Employment of Certain Persons Prohibited.*** The permittee knowingly had in his employment any person who is not qualified by reason of these Rules or by reason of any alcoholic beverage control law of the State of Arkansas for the position to which such person was employed, including but not limited to, any of the following persons:
- A. ***Persons Convicted of Certain Laws.*** Any person in the serving or mixing of controlled beverages, or in the dispensing of alcoholic beverages, the control of crowds or entrance to the permitted premises, or the management of the business or activities of the outlet who has pleaded guilty or nolo contendere to or has been found guilty of; (1) a violation of a law concerning the possession, sale, manufacture or transportation of intoxicating liquor or (2) a felony and who is on probation or serving a suspended sentence as a result of the felony. ***Provided,*** a person who has pleaded guilty or nolo contendere to or has been found guilty of a felony and who is on probation or serving a suspended sentence as a result of the felony may be employed by an on premises permittee if the person works only in a kitchen and alcoholic beverages are not served out of the kitchen. ***Provided further,*** a person who has pleaded guilty or nolo contendere to or has been found guilty of a felony and who is not on probation or serving a suspended sentence as a result of the felony may be employed by an on premises permittee in any capacity.

Provided, that those convicted felons whose felony conviction involves bodily harm or the threat thereof to another person or the use of a weapon, as such is defined in Section 1.79(33) of these Rules, may not be employed as a manager, security guard, bouncer, or in any position that requires the handling of alcoholic beverages.
(Amended 8-21-13)

- B. **Persons Under Twenty-One (21); Exceptions.** Any person less than twenty-one (21) years of age in the mixing, serving, selling or handling of controlled beverages.
Provided, that nothing in this Rule shall prohibit a minor eighteen (18) years of age or older to be employed as a musician or entertainer or to be employed in the preparation or serving of food or in the housekeeping department of any establishment permitted by this Agency; and nothing in this Rule shall prohibit a minor eighteen (18) years of age or older, with the written consent of a parent or guardian, to be employed in the sale of beer, wine, and small farm wine at retail grocery establishments, nor from being employed by permitted liquor and beer wholesalers and by permitted small farm wineries to handle alcoholic beverages at the place of business of the permitted wholesaler or winery; and further, nothing in this Rule shall prohibit a minor of any age to be employed as an entertainer when the minor and his parent or guardian perform together as part of the same show and the parent or guardian remains with the minor in a supervisory capacity.
Provided further, minors sixteen (16) and seventeen (17) years of age may be employed at those permitted outlets that qualify as retail grocery establishments, but may not handle alcoholic beverages. (Amended 1-22-20)

For purposes of this Rule, retail grocery establishments shall not include those establishments engaged in the sale of motor fuels which do not maintain an inventory of human consumables (not including alcoholic beverage products) in an amount in excess of fifty thousand dollars (\$50,000). The burden of providing this inventory requirement shall be on the permittee.

Any person or organization which holds a public restaurant mixed drink permit, a public hotel-motel-restaurant mixed drink permit, a restaurant wine permit, or a private club permit may employ persons 19 years of age or older to sell and handle alcoholic beverages. **Provided**, that persons 19 years of age and older may not act as bartenders but they may otherwise open bottles of wine and beer and serve the alcoholic beverages and take payment for the same.
(Amended 8-21-13)

- C. **Person Held Ineligible for Permit.** Any person who has been held ineligible within two (2) years prior to the date of such employment to hold any permit under any alcoholic beverage control law of the State of Arkansas for any reasons other than his status as a resident.
- (11) **Procuring or Accepting Any Unlawful Gift or Service From a Wholesaler.** The permittee or any employee, agent or servant of the permittee requested or accepted any gift or service from a permitted wholesaler that is prohibited by these Rules or by applicable Federal Regulations. **Provided**, that the holder of a large attendance facility permit issued to property owned by a government entity may solicit sponsorship money for public events from malt based products wholesalers, under the guidelines of Section 1.22.4 of these Rules, or receive payment for advertising devices under the guidelines of Section 2.28(12) of these Rules. (Amended 8-18-99)
- (12) **Disorderly Conduct on the Premises.** Any disorderly conduct or a breach of the peace by patrons or employees on the permitted premises. Such disorderly conduct shall include but not be limited to fights, brawls, or disturbances which result in bodily injury to any degree to any person on the permitted premises. (Amended 8-19-93)
- (13) **Sellers of Kegs of Beer and Malt Liquor to Require Registration Statements to be Signed by Purchasers; Sellers of Kegs of Malt Beverage Products to Affix Identification Label to Keg; Sellers Required to Collect Registration Deposit; Conditions for Return of Registration Deposit or Forfeiture of Registration Deposit; Violation for Failure to Report Forfeitures of Registration Deposits.** Under the provisions of Act 254 of 2007, all retail sellers of kegs of beer and malt liquor products are required to attach an identification label to the keg of malt beverage product, to have their customers sign certain statements, and to collect a registration deposit on each keg delivered to the customer. The sellers are also required to return the registration deposit in certain circumstances and to require a forfeiture of the registration deposit under other circumstances as described in the law. This rule will be applicable to persons who hold a permit to sell beer for off premises consumption under the provisions of Sections 1.19(1), 1.19(2), 1.19(18), 1.19(27), and 1.19(34). A keg as defined in the law means any vessel, constructed of any material, which has a liquid capacity of more than five (5 gals.) gallons. Off premises is defined in the law to mean a place other than the licensed retailer who is selling the keg described. Provided, no keg registration statement will be required when the retailer is selling the keg of malt

beverage product to a licensed private club permittee for dispensing at the private club property.

- A. All retailers that sell a keg of malt beverage product for off premises consumption are required to attach an identification label or tag approved by the Alcoholic Beverage Control Division to the keg prior to the time of sale.
 - 1. The identification label or tag shall consist of a paper within a clear protective coating that is composed of either plastic, metal or other durable material that may not be easily damaged or destroyed.
 - 2. The paper shall be of a kind which allows the information to be copied and retained by the retail dealer.
 - 3. Identification labels used may contain a non-permanent adhesive material in order to apply the label directly to the outside service of the keg at the time of sale. Otherwise, the identification tag shall be attached at the time of sale with nylon ties, or cording, wire ties or other tag metal attachment devices or some other durable means of tying or attaching the identification tag to the keg. The identification label or tag shall be perforated and of a composition and so designed and affixed that it will not mar or otherwise physically damage the keg. The tag must be of a design that allows for the full removal of the tag when common external cleaning procedures are performed at retail.
 - 4. The identification tag or label shall include the following Information:
 - a. The name and address of the retail dealer making the sale.
 - b. The name of the purchaser.
 - c. An identification number assigned by the retail dealer that uniquely identifies that particular keg of malt beverage product.
 - d. Prior to the retail sale of the keg of malt beverage product, the retail dealer shall require the purchaser to sign a statement furnished by the Director of the Alcoholic Beverage Control Division.
- B. The retail dealer shall also record the following information and retain it as part of their records:

1. The name and address of the purchaser.
 2. The identification card or driver's license number from the purchaser's acceptable documentation of age.
 3. The amount of the container deposit of not less than seventy-five dollars (\$75.00).
 4. The date and time of the purchase.
 5. The keg identification number that was created by the retailer making the sale.
 6. All records and statements required under this law shall be maintained by the retail dealer for a period of ninety (90) days from the date of the return of the keg. In the event that a keg is not returned as required by law and a forfeiture occurs, the records and statements required under this law and rule shall be maintained by the retailer dealer for a period of ninety (90) days after the declared date of forfeiture.
 - a. The records and statements required by the Keg Registration Law shall remain open to inspection by agents of the ABC Enforcement Division and law enforcement officers during the retail dealer's normal business hours.
- C. The retail dealer shall notify the Director of the Alcoholic Beverage Control Enforcement Division that a forfeiture has occurred. The retail dealer shall forward to the Alcoholic Beverage Control Division its \$25.00 portion of the forfeited container deposit. The retail dealer shall indicate on a form furnished by the ABC Division, within ten (10) days of the date of forfeiture, the reason why the container deposit has been forfeited, including but not limited to the following reasons:
1. The keg was not returned;
 2. The keg was returned more than one hundred twenty (120) days after purchase;
 3. The identification label or tag was removed; or
 4. The identification label or tag was damaged.

Any retail dealer that fails to notify the Director of the ABC Enforcement Division or forward to the ABC Division its share of the forfeited container deposit within ten (10) days of the forfeiture of each container deposit is guilty of a violation of Act 254 of 2007 and is also

guilty of a Class B violation against their permit as is provided in ACA § 3-4-402.

Any Arkansas brewery or microbrewery-restaurant operation that sells for off premises consumption, as described above, shall be required to engage in the keg registration process on the same basis as any other retailer of keg malt beverage products. (Amended 8-15-07)

Section 3.20 To go and delivery by a restaurant. A restaurant holding a valid alcoholic beverage permit may sell alcoholic beverages in a sealed container during legal operating hours directly to a consumer twenty-one (21) years of age or older along with the purchase of a meal. The sale of alcoholic beverages under this rule may occur:

- 1) At the point of sale to be consumed off-premises;
- 2) At the drive-through to be consumed off-premises;
- 3) At the curbside to be consumed off-premises, or
- 4) Delivered to a consumer at a location off-premises.

Restaurant as used in this rule means a public or private place that:

- 1) Is kept, used, maintained, advertised, and held out to the public or to a private or restricted membership as a place where complete meals are actually and regularly served;
- 2) Provides adequate and sanitary kitchen and dining equipment;
- 3) Has a seating capacity of at least twenty-five (25) persons;
- 4) Employs a sufficient number and variety of employees to prepare, cook, and serve suitable food for its guest or members;
- 5) Serves at least one (1) meal per day; and
- 6) Is open a minimum of five (5) days per week, with the exception of holidays, vacations, and periods of redecorating.

A meal is defined as the usual assortment of food commonly ordered at various hours of the day.

Sealed container means a container with a secure cap or lid that completely covers the opening for the container and a seal designed to make it evident when the seal has been removed or broken. The seal is affixed to the container by the licensee after the container is filled pursuant to a consumer order for the drink. This may include the use of tape or other adhesive.

The restaurant to go and delivery rules do not apply to private clubs or restaurants located in a dry area.

Section 3.21 *Limits on alcohol and quantities for to go or delivery by restaurant.* A permit holder authorized to sell alcoholic beverages with the purchase of a meal under Rule 3.20 is limited to the following quantities per sale:

- 1) Seventy-Two ounces (72 oz.) of beer, malt beverage, or hard cider, or the equivalent of one (1) standard six-pack;
- 2) Seven hundred fifty milliliters (750 ml) of wine, or the equivalent of one (1) standard bottle; and
- 3) Thirty-two ounces (32 oz.) of spirituous liquors or the equivalent of four (4) eight-ounce drinks. “Spirituous liquors” includes mixed drinks or specialty drinks that are made by the permit holder at the premises and does not include unmixed spirits or spirits in the manufacturer’s original container.

Unless authorized by local election under Ark. Code Ann. Section 3-3-210, a permit holder shall not sell alcoholic beverages under these rules on a Sunday.

Section 3.22 *Delivery by retail liquor, microbrewery restaurant, small brewery, or hard cider manufacturer permit holders.* Holders of a retail liquor, microbrewery-restaurant, small brewery, or hard cider manufacturer permit shall be authorized to deliver alcoholic beverages directly to the private residence of a consumer twenty-one (21) years of age or older in a wet county or territorial subdivision during legal operating hours. Alcoholic beverages for the purpose of this rule shall mean any intoxicating liquors that the permit holder is allowed to sale.

Section 3.23 *Delivery by employee only.* The permit holder authorized to deliver alcoholic beverages under Rule 3.20 or Rule 3.22 shall be delivered by an employee of the permit holder and not through a third-party delivery system. The employee responsible for delivery of the alcoholic beverage must be twenty-one (21) years of age and possess a valid driver’s license.

Section 3.24 *Delivery in wet counties only.* A permit holder authorized to deliver alcoholic beverages under Rule 3.20 or Rule 3.22 may deliver alcoholic beverages directly to a consumer only in a wet county or wet area. The delivery must be to the person that placed the order. The delivery must occur within the time of legal operating hours.

Section 3.25 Required information for placing order for alcoholic beverages. The employee or permit holder of the permitted establishment must collect the following information when taking a customer's order under Rule 3.20 or Rule 3.22:

- 1) Name of person making order;
- 2) Address where delivery is to occur;
- 3) Phone number of the person making the order;
- 4) Date of birth for the person making order; and
- 5) Payment information;

Section 3.26 Required information for delivery. The employee or permit holder of the permitted establishment must confirm and collect the following information when completing the delivery:

- 1) Name of person receiving the order;
- 2) Address where delivery occurred;
- 3) Phone number of the person receiving the order;
- 4) Date of birth for the person receiving the order;
- 5) Payment information;
- 6) The recipient of the delivery must present valid state issued identification to the employee of the permitted establishment to confirm date of birth; and
- 7) The recipient must sign for the delivery.

Section 3.27 Record retention. The permitted establishment shall keep and retain a record of all deliveries of alcoholic beverages for a period three (3) years from the date of delivery and shall make such records available to Alcoholic Beverage Control Administration and Alcoholic Beverage Control Enforcement upon request. The records shall contain:

- 1) The name of the person who placed the order and the date, time, and method of order;
- 2) The name of the employee making the delivery and the date, time, and address of the delivery;
- 3) The type, brand, and quantity of each alcoholic beverage delivered; and

- 4) The name, date of birth, and signature of the person that received the delivery.

Section 3.28 *Delivery not allowed.* Employees delivering alcoholic beverages under this subtitle shall refuse delivery and return alcoholic beverages to the permitted establishment if:

- 1) The delivery is to an address on a campus of any educational building including, but not limited to, any elementary school, secondary school, university, college, technical college or institute;
- 2) The delivery is to any public playground or building used primarily as a church, synagogue, mosque or public library;
- 3) The delivery is outside of the hours that the retailer's physical premise is open to the public;
- 4) The recipient does not produce a valid and current form of state identification;
- 5) There is reason to doubt the authenticity or correctness of the recipient's identification;
- 6) The recipient refused to sign for the receipt of the delivery;
- 7) The recipient is intoxicated; or
- 8) The recipient is in a dry county or located outside the county of the permitted establishment.

SUBTITLE G – EXCURSION TRAIN PERMITS

Section 3.29 “*Excursion train*” means a train made available to the public through ticket sales for scheduled dates and times for operation over a common carrier railroad or railroad authority that operates on a fixed schedule or route with a specific beginning and ending point.

Section 3.30 “*Alcoholic beverage*” for purposes of this subtitle, means spiritous liquor, vinous liquor, small farm wine, light wine, malt liquor, and hard cider.

Section 3.31 *Scope of Excursion Train Permit.*

An excursion train permit may sell and serve alcoholic beverages on an excursion train. Sale and service of alcoholic beverages for on-premise consumption may occur only when the train is located in a territory that has authorized the sale of alcoholic beverages. A permittee is also authorized to store alcoholic beverages, legally purchased, onboard the excursion train.

Section 3.32 Permit application. An application for an excursion train permit shall be made in writing, on a form approved by the Director, and verified by the applicant for the permit. The application shall include a description of the excursion train and identify the areas where alcoholic beverages are sold and served. The application shall be accompanied by a permit fee of two hundred dollars (\$200.00).

Section 3.33 Separate storage facility – Application. An excursion train permittee shall notify the Alcoholic Beverage Control of its intent to operate a separate storage facility by providing the following information.

- (1) A completed excursion train separate storage facility application form;
- (2) A floor plan of the separate storage facility; and
- (3) Certification that the proposed storage facility is in compliance with any local zoning requirements for the location.

Upon receipt of an acceptable application, the Alcoholic Beverage Control shall issue an endorsement to the excursion train permittee. The endorsement shall be posted on the premises of the separate storage facility in compliance with the Rule 1.37. Such endorsement allows an excursion train permittee to store legally purchased alcoholic beverages for sale on the excursion train.

Section 3.34 Posting of permit. Excursion train permittees shall post their Alcoholic Beverage permit pursuant to Rule 1.37. In addition, the excursion train permittees shall post a copy of their excursion train permit, pursuant to Rule 1.37, in each train car in which alcoholic beverages will be sold and served.

TITLE 4

RULES APPLICABLE TO ON PREMISES HOTEL OR MOTEL AND RESTAURANT PERMITS

SUBTITLE A – SCOPE

Section 4.1 – General. The Rules under this Title apply to permits authorizing the sale of controlled beverages for consumption on the premises only of a hotel or motel, or restaurant. These Rules should be regarded as being supplementary to, and not in replacement of, the code provisions of this State relating to the matters covered by this Title.

Section 4.2 *Related Rules.* In addition to these Rules, other Rules applicable to hotel or motel, or restaurant permits may be found under Title 1 of these Rules in regard to all categories of permits and under Title 3 of these Rules in regard to permits to sell controlled beverages at retail generally.

SUBTITLE B – DEFINITIONS

Section 4.3 “*Alcoholic Beverages*” means all intoxicating liquors of any sort other than beer and wine.

Section 4.4 “*Hotel*” means every building or other structure commonly referred to as a hotel, motor hotel, motor lodge or similar name which is kept, used, maintained, advertised and held out to the public to be a place where a restaurant as defined under these Rules is maintained and sleeping accommodations are offered for adequate pay to travelers or guests whether transient, permanent or residential, in which fifty (50) or more rooms are used for sleeping accommodations of such guests and having one or more public dining rooms with adequate and sanitary kitchen facilities, where meals are regularly served to such guests, such sleeping accommodations and dining room being conducted in the same building or in separate buildings or structures used in connection therewith that are on the same premises and are part of the hotel operation.

Section 4.5 “*Hotel or Motel Permit*” means a permit issued by authority of Act 132 of 1969 under which beverages described in the permit may be sold for consumption only on the premises of the hotel or motel described in the permit.

Section 4.5.1 “*Temporary Expansion of Premises Permit*” means a permit issued to hotels or motels with mixed drink permits for the sale of alcoholic beverages on property adjacent to their permitted premises. The hours of operation under said permit shall be the same as those under the hotel or motel mixed drink permit held by the outlet. The fee for such permit shall be the same as the annual fee for the hotel or motel mixed drink permit and the term of said permit shall, likewise, be the same as the outlet’s hotel or motel mixed drink permit.

Applicants for such permit shall meet requirements as established by the Director and set out in the application and attachments thereto. The area of expansion must be designated and controlled in a manner satisfactory to the Director.

A request must be made in writing for each temporary expansion under this permit at least fourteen (14) days in advance of the date wherein the expansion is requested to occur. Approval to sell and serve alcoholic beverages under this permit shall be in writing by the Director to the permittee and each such authorization shall not exceed a period of three (3) consecutive days. A copy of such approval shall be sent by mail to Alcoholic Beverage Control Enforcement

and the local law enforcement agency having primary jurisdiction over the permitted outlet.

Any action by the Director in granting or denying any such permit application is appealable to the Alcoholic Beverage Control Board pursuant to Section 1.51 of these Rules.

All laws and Rules governing the sale and service of alcoholic beverages applicable to the hotel or motel mixed drink permit holder shall likewise apply to the area of approved temporary expansion. (Adopted 6-13-91)

Section 4.6 “Restaurant” means any public place or private place that is primarily engaged in the business of serving a meal for consumption on the premises to a guest, has a seating capacity of at least fifty (50) people, and has a suitable kitchen facility to serve the entire menu approved by the Alcoholic Beverage Control Division. The menu shall contain a selection of food and shall not be limited to sandwiches or salads. The kitchen shall have adequate refrigeration to preserve the food on the menu, shall be kept in a sanitary condition, and shall comply with the rules of the Department of Health. Food from the menu shall be available from opening time until (2) hours before closing time. “Meal” means the usual assortment of food commonly ordered at various hours of the day and “guest” means a person who orders and is served a meal inside a restaurant during regular hours. **Provided**, that nothing in this rule regarding the seating capacity of a restaurant shall preclude a person with a concealed handgun permit issued by the Director of the Arkansas State Police from carrying a concealed handgun into a restaurant as defined herein. (Amended 8-21-13)

Section 4.7 “Restaurant Permit” means a permit issued by authority of Act 132 of 1969 under which controlled beverages described in the permit may be sold for consumption only on the premises of the restaurant described in the permit.

Section 4.8 Definition of Other Terms. All other terms used in this Title shall be defined in accordance with the definitions under the other Titles of these Rules or with the laws of the State of Arkansas or the customs and usages of the trade or the people of the State of Arkansas.

SUBTITLE C – PERMIT PROCEDURE

Section 4.9 Information, Statements and Documents to be Furnished by Applicant in Application for Permit. In addition to the information, statements and documents required to be furnished by an applicant for a permit generally under Title 1 of these Rules, an applicant for a hotel or motel, or restaurant permit shall submit to the Director the following:

- (1) **Hotel or Motel Permit.** If the application is for a hotel or motel permit, the following information shall be included in the application:
- A. The exact number of rooms available as sleeping accommodations for guests;
 - B. A detailed description of the rooms in the hotel or motel from which controlled beverages will be sold, including the dimensions thereof, the relation of the location of such rooms to the rest of the hotel or motel, a statement of the number of structures composing the hotel or motel and a description of such structures;
 - C. A detailed description of the dining rooms or restaurant areas in the hotel, including the dimensions thereof, a statement of the seating capacity of each room or restaurant area, the relation of each room or restaurant area to the rest of the hotel or motel and a statement indicating in which of such dining rooms or restaurant areas controlled beverages will be sold;
 - D. A general description of the menu of food usually served, including a general description of the types of food served at each meal served during the day;
 - E. A detailed description of the kitchen area in which the food served is prepared, including the dimensions thereof, the appliances used in the preparation of the food and the relation of such kitchen area to the rooms in which controlled beverages will be sold and to the rest of the hotel or motel; and
 - F. A statement of the number of staff members or employees usually employed in the preparation of food in the kitchen area described.
- (2) **Restaurant Permit.** If the application is for a restaurant permit, the following information shall be included in the application:
- A. A description of the rooms in the restaurant in which controlled beverages will be sold, including the dimensions thereof and the relation of the location of such rooms to the rest of the restaurant;
 - B. A detailed description of the rooms in the restaurant in which food will be served, including the dimensions thereof, a statement of the seating capacity of each room, the relation of each room to the rest of the restaurant and a

statement indicating in which of such rooms controlled beverages will be sold;

- C. A general description of the menu of food usually served, including a general description of the types of food served at each meal served during the day;
- D. A detailed description of the kitchen area in which the food served is prepared, including the dimensions thereof, the appliances used in the preparation of the food and the relation of such kitchen area to the rooms in which controlled beverages will be sold and to the rest of the restaurant; and
- E. A statement of the number of staff members and employees usually employed in the preparation and service of food in the kitchen and dining areas described in Paragraph D above, and the job title in normal usage for the level of employment.

Section 4.10 Person Holding Hotel or Motel, or Restaurant Permit Not to be Required to Hold Other Permit for Same Premises. No person holding a hotel or motel, or restaurant permit shall be required to hold any other alcoholic beverage permit for the same premises described in the hotel or motel, or restaurant permit.

SUBTITLE D – CONDUCT OF BUSINESS

Section 4.11 Controlled Beverages May be Served to Guest in Hotel or Motel Room. Any person holding a hotel or motel permit may serve controlled beverages to a guest of the hotel or motel in the room occupied by such guest; provided such guests shall be legally eligible to receive such beverages.

Section 4.12 Controlled Beverages to be Served Only by Qualified Persons. Controlled beverages may be served pursuant to a hotel or motel or restaurant permit only by persons qualified by these Rules and the laws of the State of Arkansas to serve such controlled beverages, whether such controlled beverages be served on the premises described in the hotel or motel, or restaurant permit or to a guest of a hotel or motel in a room occupied by such guest.

Section 4.12.1 Hotel or Motel In-Room Hospitality Units. A hotel or motel holding a public mixed drink permit may sell alcoholic beverages for on premises consumption only in sealed containers from an in-room hospitality unit located in any sleeping room of the permitted hotel or motel occupied by qualified persons. For the purpose of this Rule, qualified persons are defined as registered guests, all of whom shall be twenty-one (21) years of age or older.

In-room hospitality unit is defined as a closed container, refrigerated or non-refrigerated, access to the interior of which is restricted by means of a locking device under the control of hotel management. Each such container shall have permanently affixed thereto a sign that informs the qualified guests of the legal hours the container may be accessed, such hours to correspond to state law

regarding the sale or consumption of alcoholic beverages. The in-room hospitality unit herein described must meet such requirements as may be set forth by the Director and, further, must be approved by the Director in writing before sales may commence from such units.

An in-room hospitality unit may be stocked or inventoried only by the permittee or its employees, who are twenty-one (21) years of age or older, and only during the hours legally prescribed by law for the sale of alcoholic beverages by the hotel or motel. The following sizes and quantities of alcoholic beverages are authorized to be placed in and sold from an in-room hospitality unit:

- (1) Wine and vinous liquor in 187 ml containers, with no more than a total of eight (8) containers per hospitality unit;
- (2) Malt beverages in 12 ounce or less containers, with no more than a total of eight (8) containers per hospitality unit;
- (3) Upon written approval by the Director, distilled spirits may be sold only in 200 ml or less size containers. Any container size less than 200 ml is specifically an exception from the provisions of Section 2.19 of these Rules, and may only be sold in such in-room hospitality units. No more than a total of fourteen (14) such distilled spirit containers may be maintained in each hospitality unit. Based on container size approval, the Director shall determine the appropriate number of such containers allowed in the in-room hospitality unit.

The permittee shall remain accountable under applicable law and Rule for sales from the in-room hospitality unit the same as if such were made from any other point of sale within the establishment. (Amended 7-19-95)

Section 4.13 Hotel or Motel and Restaurant Must Conform to Health, Safety and Sanitary Standards. All areas of the premises of a hotel, motel or restaurant for which a permit has been issued must conform to the minimum health, safety and sanitary standards prescribed by the Arkansas State Department of Health or by any county or municipality in which such premises is located, whether the area is part of any other part of the premises of such hotel, motel or restaurant.

Section 4.14 Misrepresentation of Brand, Keeping Beverage in Unauthorized Container, Refilling, Diluting or Failing to Destroy Empty Bottles. No person holding a hotel or motel, or restaurant permit shall misrepresent the brand of any controlled beverage sold or offered for sale, keep controlled beverages in any bottle or container other than that in which it was purchased, refill or partly refill any bottle or container of controlled beverage or dilute or otherwise tamper with the contents of any bottle or container of controlled beverage or fail to break and destroy by the close of each business day all such empty bottles or containers other than beer containers.

Section 4.15 *All Controlled Beverages May be Sold During Legal Hours of Operation of Hotel or Motel, or Restaurant Permit.* All controlled beverages, including beer, may be sold pursuant to a hotel or motel, or restaurant permit at any time authorized by law. (Amended 7-19-95)

SUBTITLE E – PROHIBITED CONDUCT AND ACTIVITIES

Section 4.16 *Prohibited Conduct and Activities Under Hotel or Motel, or Restaurant Permit.* In addition to the violation or failure to comply with any of the Rules under this Title and under Title 1 of these Rules or with any alcoholic beverage control law of the State of Arkansas, any hotel or motel, or restaurant permit may be suspended or revoked for the violation of or failure to comply with any Rule under Title 3 of these Rules in regard to retail permits.

Section 4.17 *Failure to Maintain Food Service Sales Ratio.*
Repealed 8-16-11

TITLE 5

RULES APPLICABLE TO THE DISPENSING OF CONTROLLED BEVERAGES IN PRIVATE CLUBS

SUBTITLE A – SCOPE

Section 5.1 – *General*

The Rules under this Title relate to applications for permits, conduct of the business and prohibited activities of private clubs. These Rules should be regarded as being supplementary to, and not in replacement of, the code provisions of this State relating to the matters covered by this Title. In addition to these Rules, other Rules applicable to the matters covered by this Title may be found under Titles 1 and 3 of these Rules.

SUBTITLE B – DEFINITIONS

Section 5.2 “Barrel” means thirty-one (31) gallons.

Section 5.3 “Club” means a private club.

Section 5.4 “Dry Area” means an area in which the sale or manufacture of intoxicating liquors (as defined by ACA § 3-8-201, et. seq.) is prohibited.

Section 5.5 “Guest” means an individual who is personally known by the member’s family and who is admitted to the club premises by personal

introduction or in the physical company of the member or one of the member's family and who otherwise qualifies as a guest under these Rules.

Section 5.6 "Guest Book" means a well bound book showing the name of the host, the name of the guest and the date on which the guest is upon the premises. A guest book shall be kept by the private club for a period of six (6) months from the last date of use of the guest book. (Amended 8-20-97)

Section 5.7 "Locker System" means a system of operation of a private club whereby all controlled beverages dispensed on the premises of the private club are owned by the members of the club individually.

Section 5.8 "Malt Beverage" means liquor brewed from fermented juices of grain and having an alcoholic content of at least five percent (5%) but not more than twenty-one (21%) by weight.

Section 5.9 "Managing Agent" means the individual or individuals who shall be actually in charge of and responsible for the day-to-day operations of the private club on the permitted premises.

Section 5.10 "Member" means a person who has been admitted to membership in the private club. (Amended 8-17-05)

Section 5.11 "Member's Family" means the spouse, parents, and children of a member.

Section 5.12 "Membership Book" means a well bound book in which is shown the following about each member: the full name of the member, his initial membership number, which shall be issued in sequence; the current complete address of such member; the date such member was admitted to membership, if such be after the effective date of this Rule; and the date (if applicable) such member was removed from the membership, if such be after the effective date of this Rule. When a member has been removed from membership, his membership number may be reassigned to another member.

Additional well bound books may be used if necessary to record the information required by this Rule, but all such books shall be kept by the club for a period of three (3) years. A club using a business machine to maintain its membership records shall not be required to keep a well bound book if such machine provides the information required by this Rule.
(Amended 8-17-05)

Section 5.13 "Membership Card" means a card identifying the name of the private club, the name of the member, and the date on which the membership card was issued. (Amended 8-17-05)

Section 5.14 "Microbrewery" means a brewery that manufactures one (1) or more varieties of beer, malt beverages, or hard cider in an aggregate quantity not to exceed forty-five thousand (45,000) barrels per year from all facilities under common ownership with the microbrewery.

Section 5.15 “Microbrewery-restaurant Private Club” means a nonprofit organization organized and existing under the laws of this state that: is both a microbrewery and a restaurant; has members which are not directly or indirectly benefitted by the entity’s net revenues; exists for some common recreational, social, patriotic, political, national, benevolent, athletic, community hospitality, professional association, entertainment, or other object or purpose other than the consumption of alcoholic beverages; and has existed for at least one (1) year.

Section 5.16 “Net Revenues” means any amount of receipts realized by the club from the dispensing of controlled beverages in excess of the bona fide expenses of the club.

Section 5.17 “Pool or Revolving Fund System” means a system of operation of a private club whereby the entire stock of controlled beverages on the premises of the club is owned in common by the membership of the private club. (Amended 8-17-05)

Section 5.18 “Private Club” means a non-profit corporation organized and existing under the laws of the State of Arkansas, no part of the net revenues of which shall inure directly or indirectly to the benefit of any of its members or any other individual, except for the payment of bona fide expenses of the club’s operation, having not less than 100 members, conducted for some common recreational, social, patriotic, political, national, benevolent, athletic, community hospitality, professional association, entertainment, or other non-profit objective or purpose other than the consumption of alcoholic beverages, which shall have been in existence for a period of not less than one (1) year before application for permit, and owning or leasing a building or space therein for the reasonable comfort and accommodation of its members and their families and guests and, in dry areas, restricting the use of the club facilities to such persons. (Amended 8-17-05)

Section 5.19 Membership Information not to be Released. No organization holding a private club permit shall market, sell, or otherwise furnish the name of its members, or any other information pertaining to its members, to any other public or private entity, except as is authorized in ACA § 3-9-232(a). (Adopted 8-17-05)

Section 5.20 “Restaurant” means any public place or private place that is primarily engaged in the business of serving a meal for consumption on the premises to a guest, has a seating capacity of at least fifty (50) people, and has a suitable kitchen facility to serve the entire menu approved by the Alcoholic Beverage Control Division. The menu shall contain a selection of food and shall not be limited to sandwiches or salads. The kitchen shall have adequate refrigeration to preserve the food on the menu, shall be kept in a sanitary condition, and shall comply with the rules of the Department of Health. Food from the menu shall be available from opening time until (2) hours before closing time. “Meal” means the usual assortment of food commonly ordered at various hours of the day and “guest” means a person who orders and is served

a meal inside a restaurant during regular hours. A microbrewery-restaurant private club must also serve at least one (1) meal per day and be open for business a minimum of five (5) days per week, with the exception of holidays, vacations, and periods of redecorating. (Amended 2020)

SUBTITLE C – PERMIT PROCEDURE

Section 5.21 Local Ordinance Required, Presumption That The Application is Qualified to be Received by Agency; Information, Statements and Documents to be Furnished by Applicant.

- A. A private club application may only be submitted to the Alcoholic Beverage Control after the governing body of the county or municipality in which the private club seeks to be located has issued an ordinance approving the private club to operate in that county or municipality. A private club application filed with and accepted by the ABC Division meeting the requirements of Section 5.14 of the Alcoholic Beverage Control Rules and approved by local ordinance will be presumed to be a “qualified application” under the terms of ACA § 3-9-222(f). This presumption shall be met if the application is accompanied by the required documents listed in Subsection B. of this Rule. (Amended 9-20-17)
- B. In addition to such information as the Director may determine shall be furnished, the following information, statements and documents shall be given or made by an applicant for a private club permit and such application shall be verified under oath by the chairman of the board of directors or other governing body, the president and the secretary of said private club or the named managing agent of the non-profit corporation:
 - (1) The name, and residence of each consenting charter member of the club on the date of application and who is in good standing on the date of the application;
 - (2) The name, and address of each member of the board of directors or other governing body and each officer of the club;
 - (3) The premises to be permitted stating the street and number or such description of the premises and the character of the area surrounding the premises as will reasonably indicate the locality of the premises and will specifically designate and describe all areas on the premises of the club where controlled beverages will be dispensed and the consumption of such controlled beverages will be allowed;

- (4) The applicant shall submit the description called for in Subsection (3) of this Rule and a plot plan of the premises which shall clearly show the construction of the premises, including the dimensions thereof and the relation of the premises to surrounding structures;
- (5) A detailed description of the non-profit purpose or objective of the club and a complete description of entertainment and/or other services offered by the club;
- (6) The amount assessed a member as dues, if any, at the time of said application for permit;
- (7) A copy of the minutes of the meeting of the governing board of the non-profit corporation which shows that the application for the private club permit is authorized by the organization's governing body;
- (8) A statement that the applicant is the owner of the premises for which the permit is sought or is the holder of an existing lease thereon. If the applicant is not the owner of the premises for which the permit is sought, the applicant must state the name of the owner of the premises and the names of any other persons holding a leasehold interest in the premises;
- (9) A statement that no member of the board of directors or other governing body nor any of the officers of the club has been under the sentence, whether suspended or otherwise, of any court for the conviction of a felony within two (2) years preceding the date of the application, that no member of the board of directors or other governing body nor any of the officers of the club has had a permit, license or registration issued to them under any alcoholic beverage control law or Rule of the State of Arkansas revoked within five (5) years preceding the date of application and that all members of the board of directors or other governing body and all officers of the club are of good moral character;
- (10) A copy of the articles of incorporation, as filed-marked by the Arkansas Secretary of State's Office, and the by-laws of the private club shall be attached to the application;
- (11) If the premises are not owned by the applicant, a copy of the lease or other agreement for use of the premises shall be attached to the application; and

- (12) The applicant, in the application, must elect to operate under either the “locker system” or the “pool or revolving fund system” of operation.
- (13) ***Permit Not to be Issued to Unqualified Corporation; Repealed 8-17-05***

Section 5.22 Election of System of Operation Binding. The election made in the application for a private club permit to operate said private club under either the “locker system” or the “pool or revolving fund system” of operation shall be binding upon said club for the life of the permit.

Section 5.23 Private Club to Operate for Non-Profit Purpose or Objective Described in Application. No private club shall operate for any purpose or objective other than the non-profit purpose or objective described in said club’s permit application.

Section 5.24 Satellite Location for Private Clubs in Hotel Buildings. In any case where an on premises consumption private club permit has been issued to an organization which owns or leases space within a hotel building, the private club organization may elect to have, subject to approval by the Director, an additional location or locations which must be located on contiguous property owned or controlled by the same hotel entity from which the private club leases its space. When such application is made it shall be on forms provided by this Agency. An additional permit fee of one thousand five hundred dollars (\$1,500.00) per year shall be procured from the organization seeking such satellite location per hotel as set forth above. (Amended 8-20-97)

Section 5.25 Private Club Restaurant Operations. Those private clubs which are held out to this agency as food service establishments must maintain food service operations on the permitted premises that meet the requirements for restaurants as defined in Section 4.6 of these rules. Further, kitchen facilities in those private clubs must remain open and serve food at all times alcoholic beverages are served on the permitted premises. (Amended 8-16-11)

SUBTITLE D – CONDUCT OF THE NON-PROFIT BUSINESS OF DISPENSING

CONTROLLED BEVERAGES IN PRIVATE CLUBS

Section 5.26 Membership. No person shall be considered a member of a private club holding a permit under the alcoholic beverage control laws of the State of Arkansas unless such person has met the membership requirements as set forth in the by laws of the non-profit corporation. (Amended 8-17-05)

Section 5.27 *Minimum Membership.* Every private club must have a minimum of one hundred (100) voting members. Nothing in this Rule shall prohibit a club from establishing other classes of membership.
(Amended 8-17-05)

Section 5.28 *Membership Committee.* Repealed 8-17-05

Section 5.29 *Election of Members.* Repealed 8-17-05

Section 5.30 *Membership Book.* All private clubs shall maintain and keep current a membership book as defined by these Rules.

Section 5.31 *Resolution of Internal Matters of a Licensed Private Club.* All officers and directors or other members of the governing body of a permitted private club shall be elected in accordance with the Arkansas Non-profit Corporation Act of 1993. The subject of membership voting rights of any permitted private club, including whether or not proxy voting will be allowed or whether cumulative voting will be allowed, shall be governed in accordance with the provisions of the Arkansas Non-profit Corporation Act. Any requirements for notices of meetings of a permitted private club shall also be governed in accordance with the provisions of the Arkansas Non-profit Corporation Act. Any complaint as to whether the above items have been complied with by a permitted private club shall be resolved outside the Alcoholic Beverage Control Division as may be provided for by the Arkansas Non-profit Corporation Act of 1993 or other law. In the event the corporation was created under the Arkansas Non-profit Corporation Act of 1963, and the corporation has not elected to be treated as a non-profit corporation under the provisions of the Arkansas Non-profit Corporation Act of 1993, the resolution of these matters will occur outside the Alcoholic Beverage Control Division as may otherwise be provided by law. (Amended 8-17-05)

Section 5.32 *Voting by Proxy Allowed.* Repealed 8-17-05

Section 5.33 *One Vote For Each Member.* Repealed 8-17-05

Section 5.34 *Notice of Meeting.* Repealed 8-17-05

Section 5.35 *Salaries to be Reasonable and Proper and Commensurate With Other Salaries.* Repealed 8-17-05

Section 5.36 *Net Revenues to be Used Only for Bona Fide Expenses of the Club.* Any net revenues (as defined by these Rules) of the club shall be used only for payment of bona fide expenses of the club.

Section 5.37 *Bond for Payment of Fees Required.* Repealed 8-19-99

Section 5.38 *Private Club in Dry Area to Dispense Alcoholic Beverages to Members and Guests.* A private club located in a dry area of the state may dispense alcoholic beverages only to members and to guests who are in the

physical company of a member. **Provided**, that an employee of the private club may not act as a host for any guest. (Amended 8-21-13)

Section 5.39 Dispensing Controlled Beverages to or Consumption by Non-member/Non-guest Prohibited. **No private club in a dry area shall allow the dispensing or consumption of controlled beverages on the premises of the club to or by any person other than a bona fide member of the club, one of such member's family or a bona fide guest of a member of the club.**

A private club may serve alcoholic beverages on a golf course on which the private club is located and which is controlled by the private club when the private club is hosting a professional golf tournament or other charitable golf tournament, either of which is sponsored by a charitable organization as described in §501(c)(3) of the Federal Internal Revenue Code and the Director has been notified by the private club at least sixty (60) calendar days prior to the beginning of the event. Persons who attend such event, either as spectators or as participants, shall be deemed to be guests of the private club and the private club may serve alcoholic beverages to the guests for cash. (Amended 8-17-05)

Section 5.40 Controlled Beverages Dispensed by Private Club to be Purchased From Authorized Source of Supply. All controlled beverages dispensed by a private club must be purchased from a retail liquor store which holds a Federal Basic Wholesaler's Permit issued by the Alcohol and Tobacco Tax and Trade Bureau. **Provided**, however, that those private clubs located in wet areas holding a retail beer permit or a retail wine permit must purchase beer and wine from holders of relevant wholesale beer or wine permits in whose designated territory the private club is located. (Amended 8-17-05)

Section 5.41 Private Club Must Designate Managing Agent. All persons applying for or holding a private club permit shall designate a managing agent as provided in Title 1 of these Rules.

Section 5.42 Managing Agent or Officer of Private Club Not to Hold Retail Off Premises Liquor Permit. No managing agent of any private club or any officer or member of the board of directors of any private club shall hold a retail liquor permit for off premises consumption. (Amended 5-19-99)

Section 5.43 Financial Statement may be Required. The Director, at his discretion, may order a private club to prepare a financial statement covering the immediately preceding calendar year of the club's operations. The financial statement shall be certified by a licensed or registered accountant and shall clearly indicate the amount and source of all club receipts and the amount and purpose of all club disbursements in specific categories consistent with standard accounting practices. In addition, the financial statement must show a balance sheet of the club's assets and liabilities at the end of the immediately preceding calendar year and must show the following in regard to all salaries and wages paid during the preceding calendar year:

- (1) The name of each person receiving a salary or wages paid by the club during the preceding calendar year and such person's social security number;
- (2) The position each such person held with the club; and
- (3) The amount paid to each such person in the form of salary, wages or otherwise. (Amended 8-17-05)

Section 5.44 *Financial Statement to be Available for Inspection.* The financial statement described in Section 5.35 of these Rules shall be available for inspection upon reasonable notice to the Director of the Alcoholic Beverage Control Division. (Amended 8-17-05)

Section 5.45 *Private Club to Maintain Financial Records.* Each private club shall maintain written records of all club transactions, including all club receipts and disbursements, in a manner consistent with standard business bookkeeping practices. Such records shall be open for inspection upon reasonable notice by the Director of the Alcoholic Beverage Control Division or any authorized agent of the Alcoholic Beverage Control Enforcement Division. (Amended 8-17-05)

Section 5.46 *Private Club to File Name and Address of Licensed Accountant and Bookkeeper. Repealed 8-17-05*

Section 5.47 *Private Club Permit Issued to Qualified Persons Only.* No private club permit shall be issued to any person who, in the judgement of the Director, does not qualify for said permit under these Rules or under any alcoholic beverage control law of the State of Arkansas.

Section 5.48 *Private Club Not to Allow Certain Persons to Serve as Directors or Officers.* No private club shall allow any person to serve as a member of the board of directors or other governing body nor as an officer of the club who has been under the sentence, whether suspended or otherwise, of any court for the conviction of a felony within two (2) years preceding the date of the application, has had a permit, license or registration issued to them revoked under any alcoholic beverage control law of the State of Arkansas within five (5) years preceding the date of application, or is not of good moral character.

Section 5.49 *Transportation of Controlled Beverages Through "Dry" Area to Private Club. Repealed 8-15-07*

Section 5.50 *Director to Issue permit to Transport Through "Dry" Area; Permit to be in Possession of Driver When Controlled Beverages Transported. Repealed 8-15-07*

Section 5.51 *Permit to Transport Controlled Beverages to Private Club Valid for One Year From Date of Issuance. Repealed 8-15-07*

Section 5.52 *Unloading or Transfer of Controlled Beverages While in Transit Prohibited; Vehicle to be Locked While in Transit.*
Repealed 8-15-07

Section 5.53 *Hotel-Motel Guest Authorized to Apply for Membership of Private Club.* In any case where a private club is operating within facilities connected with or leased or rented from a hotel or motel, any person registered as a guest of such hotel or motel may be admitted as a member to such private club only after making the application prescribed by these Rules for any other applicant for private club membership. If the manager of the hotel or motel where the separate private club is housed desires to offer free samples of alcoholic beverages to registered hotel guests, the hotel guests must either become a member in conformance with the provisions of this Rule, or the hotel guests may be admitted to the private club in the physical company of the manager or his or her designee at the time the reception is held. The manager shall be responsible for all drink charges that are assigned to him/her in order that the revolving fund of the non-profit corporation may be replenished as is required by law. (Amended 8-19-09)

SUBTITLE E – PROHIBITED CONDUCT AND ACTIVITIES

Section 5.54 *Prohibited Conduct and Activities Under Private Club Permit.* In addition to the violation of or failure to comply with any of the Rules under this Title and under Title 1 of these Rules or with any alcoholic beverage control law of the State of Arkansas, a private club permit may be suspended or revoked for the violation or failure to comply with any Rule under Title 3, Subtitle E in regard to Prohibited Conduct and Activities for retail permits.

Section 5.55 *Advertising the Availability of Alcoholic Beverages to the Public by a Private Club in a Dry Area.* Private clubs in any area of the state where the sale of alcoholic beverages is prohibited by law (“dry” area) are prohibited from using the advertising media, including any signs or trade names on the exterior of the club building, to promote the consumption and use of alcoholic beverages within the club. The use of terms such as “happy hour”, or any other term or brand name that generally identifies any brand or mixture of alcoholic beverages, is included in this prohibition.

No private club, located in either a “wet or dry” area of the state, may advertise or use any part of the advertising media to announce social functions of general interest to the membership, entertainment, or other similar activities within the confines of the club property, without preceding such advertisement or announcement with the words “Notice to Members” or “Attention Members” prominently displayed, and the name of the club or organization sponsoring such social activities. (Amended 8-21-13)

Section 5.56 Hours of Dispensing Alcoholic Beverages in Private Club; Class A Private Club Permit Defined; Class B Private Club Permit Defined; Imposition of More Restrictive Hours of Operation as a Sanction for a Violation; Prohibition Against Transfer of Class B Private Club Permit; and More Restrictive Hours of Operations by Local Governments. Private club permits which are classified as Class A private club permits as well as all new private club permits issued by the Alcoholic Beverage Control Division shall be allowed to dispense alcoholic beverages and to allow the possession and consumption of alcoholic beverages on the permitted premises beginning at 7:00 a.m. of a day and ending by 2:00 a.m. of the following day. No new private club permit shall be issued, nor any existing Class A private club permit changed, to allow the dispensing, consumption or possession of alcoholic beverages on the permitted premises from 2:00 a.m. until 7:00 a.m. daily.

Those permitted establishments which have received a Class B certificate from the Alcoholic Beverage Control Division classifying them as a Class B private club shall be allowed to dispense alcoholic beverages and to allow the possession and consumption of alcoholic beverages on the permitted premises between the hours of 10:00 a.m. of a day and ending by 5:00 a.m. of the following day. No transfer of location application shall be allowed on any Class B private club permit to move the permit to another county.

The Alcoholic Beverage Control Board recognizes that cities or counties may desire to impose more restrictive hours of operation on private club permittees within their jurisdiction than is provided for by the Class A or Class B private club permits. Further, it has never been the intention of the Alcoholic Beverage Control Board, by the passage of prior versions of Section 5.48 of the Alcoholic Beverage Control Rules, formerly numbered Section 5.47, to preempt the authority of cities or counties in this regard that was granted to them in the case of *Tompos vs. City of Fayetteville*, decided in 1983. Cities and counties are recognized to be empowered to provide, by ordinance, hours of operation that are more restrictive in nature than provided for by the Class A or Class B permit structure issued by this agency. However, in accordance with ACA § 3-4-407, any violation of more restrictive hours of operation provided for by city or county ordinance will not be considered a violation against the permit issued by this agency.

The Director, or the Board on appeal, in their discretion, is empowered to impose more restrictive hours of operation as a sanction for violation of any alcoholic beverage control law or Rule. If any member, guest, employee, agent, or servant of the private club shall dispense, consume, or allow the possession of alcoholic beverages on the permitted premises during the prohibited hours, such action may result in a hearing against the permit and the levying of a fine and/or the suspension, revocation, or cancellation of the permit. (Amended 8-15-01)

Section 5.57 Presence of Minors in Private Club. No minors may be allowed on the permitted premises of a private club when alcoholic beverages are being served unless there is food service available from health department approved

kitchen facilities on such premises where the food is prepared and being served.
(Amended 8-20-03)

Section 5.58 Hotel or Large Event Facility Private Club Permit For “Dry” Areas Only.

In addition to the requirements for an application for a regular private club permit, including an ordinance approving the operation of the private club by the governing body of the county or municipality in which the club is located, the applicant for a permit issued under this rule must elect to apply as either a hotel or as a large event facility private club.

(Amended 9-20-17)

- (a) If application is being made for a hotel private club permit as authorized by Act 1194 of 2011, the application for the hotel permit must include, in addition to information already required for a private club application, a description of the hotel facility, which shows at a minimum that the hotel meets the following additional requirements:
 - (1) The space leased must have at least eighty (80) lodging rooms and five thousand (5000) square feet of public meeting, banquet or restaurant space that is leased to the nonprofit corporation;
 - (2) Additional areas, other than the bar area, in which the private club hotel applicant desires the ability to serve alcoholic beverages to members and their guests must be shown on a floor plan. Such additional areas may include sleeping rooms, poolside bars, banquet facilities, restaurants, lobbies, exhibit halls, patios and outdoor gardens.
 - (3) If the hotel desires to offer room service, either by the use of in-room hospitality units as authorized by Alcoholic Beverage Control Rule Section 5.51 or by room service, the floor plan submitted must clearly identify those rooms which are leased by the nonprofit corporation.
- (b) Additional information or requirements for a large event facility under Act 1194 shall include the following:
 - (1) The large event facility must serve full and complete meals and food on the premises;
 - (2) The large event facility must have one (1) or more places for food service on the premises with a seating capacity for not fewer than five hundred (500) people, and must employ a sufficient number and kind of employees to serve meals and food on the premises capable of handling at least five hundred (500) people. However, the food service requirement and employee requirement may be supplied

either through the large event facility permittee or through one or more independent contractors;

- (3) The large event facility may serve alcoholic beverages on the premises at one (1) or more places only on days complete meals and food are served at one (1) or more places on the premises;
 - (4) The large event facility applicant must show that the space leased has ten thousand (10,000) square feet of interior or exterior public meeting, banquet, exhibit hall or restaurant space;
 - (5) The applicant for the large event facility permit shall list, and show on its floor plan, all areas of the large event facility where alcoholic beverage service is being requested. This includes outdoor areas, exhibit halls, patios, lobbies, restaurants that may be within the large event facility and any other portion of the large event facility property where alcoholic beverage service is desired. Areas where alcoholic beverage service is desired must be leased by the nonprofit corporation that is making application for the private club permit;
 - (6) Attachments to the application must show that the large event facility permit will be a facility that will house convention center activity, tourism activity, trade show and product display and related meeting activity, or any other similar large meeting or attendance activity as required by Act 1194 of 2011.
- (c) The applicant for the hotel or the large event facility must show, on the floor plan, an entryway where members of the public may enter the property before they are offered the opportunity to become members of the nonprofit corporation. Both members of the public and members of the private club and bona fide guests of a member of the private club may freely move about the private club property, but only members and guests of a member of the nonprofit corporation may receive alcoholic beverage service from the private club. (Adopted 8-16-11)

Section 5.59 Hotel or Motel In-Room Hospitality Units for “Dry” Area Hotels or Motels under Act 1194 of 2011 A nonprofit corporation private club permittee which leases a space or spaces within a hotel or motel building, including sleeping room areas, which meets the requirements of Act 1194 of 2011, may dispense alcoholic beverages for on premises consumption only in sealed containers from an in-room hospitality unit located in any sleeping room of the permitted hotel or motel leased by the not for profit corporation permit holder and which is occupied by qualified persons. For purposes of this Rule,

qualified persons are defined as members or bona fide guests of a member of the private club, all of whom are twenty-one (21) years of age or older.

In-room hospitality unit [“unit”] is defined as a closed container, refrigerated or non-refrigerated, access to the interior of which is restricted by means of a locking device under the control of hotel management. Each such unit shall have permanently affixed thereto a sign that informs the qualified members or guests of the private club of the legal hours the unit may be accessed, such hours to correspond to state or local laws regarding the dispensing of alcoholic beverages. The unit herein described must meet such requirements as set forth by the Director and, further, must be approved by the Director in writing before dispensing commences from such unit:

An in-room hospitality unit may be stocked or inventoried only by private club employees who are twenty-one (21) years of age or older and only during the hours legally prescribed by law for the dispensing of alcoholic beverages at the private club. The following sizes and quantities of alcoholic beverages are authorized to be placed in and dispensed from an in-room hospitality unit:

- (1) Wine and vinous beverage in 187 ml. containers with no more than a total of eight (8) containers per hospitality unit; and
- (2) Malt beverages, including both beer and malt liquor, in 12 oz. or less containers with no more than a total of eight (8) containers per hospitality unit; however, no malt beverage container shall be less than 200 ml or 6.8 oz. in size; and
- (3) Upon written approval by the Director, distilled spirits may be dispensed only in 100 ml. or less size containers. Any container size less than 100 ml. is specifically an exemption from the provisions of Section 2.19 of these Rules, and may only be dispensed in such in-room hospitality units. No more than a total of fourteen (14) of such distilled spirits containers may be maintained in each hospitality unit. Based on the container size approval, the Director shall determine the appropriate number of containers allowed in the in-room hospitality unit. The private club permittee shall remain accountable under applicable law and rules for dispensing from the in-room hospitality unit the same as if such were made from any other point from within the establishment; and
- (4) The private club permittee at the hotel or motel, on property leased by the private club permittee, may also offer room service of alcoholic beverages during legal hours of the dispensing of alcoholic beverages as set by state or local law. Room service of alcoholic beverages may not be offered to any sleeping room if the room is solely occupied by persons under the age of twenty-one (21). (Adopted 8-16-11)

SUBTITLE F – OPERATION OF PRIVATE CLUBS IN WET AREAS

Section 5.60 *Applicability of Other Rules.* The Rules under this Subtitle relate to the operation of private club permits which are located in wet areas; said operations being authorized by Act 1371 of 1999. The Rules contained within this Subtitle should be regarded as being supplementary to the code provisions of the State of Arkansas regarding the matters covered by this Subtitle.

In addition to the Rules found within this Subtitle, other Rules applicable to private club permits under Title 5 will apply to operations of private club permits in wet areas, except to the extent excluded under this Subtitle. “Wet area” means any area of the state where the sale of alcoholic beverages is allowed by law. Also, other Rules that pertain to the general operations of private club permits may be found under Title 1 and Title 3 of these Rules. (Adopted 5-19-99)

Section 5.61 Application for Membership Required Only When Distilled Spirits Drink or Beverage Made From Distilled Spirits Product is Ordered.

Any private club permittee located within a wet area, under the terms of Act 1371 of 1999, as applies to the dispensing or consumption of alcoholic beverages, shall require a person to become a member of the private club only when that person orders a distilled spirits drink or a beverage made from distilled spirits products. No written membership application is required. No “guest” status (for the purpose of ordering a distilled spirits drink), as provided for private clubs in dry areas, is allowed. **Provided,** private clubs may elect, upon written notice to this agency, to operate the private club in accordance with the Rules promulgated by this agency prior to the passage of Act 1371 of 1999. (Amended 8-17-05)

Section 5.62 Service of Distilled Spirits Drink to Members Only –

Violation. No person in a private club in a wet area shall be served a distilled spirits drink or a beverage made from distilled spirits products unless that person shall be a member of the private club. In order to prove membership status, any person receiving the distilled spirits drink must show, upon request, a membership card which has been issued to them in accordance with the provisions of this Subtitle, or in the alternative, they must have their name legibly entered, by the permittee or their employee, into a well bound, business identified, membership book. If a person consuming a distilled spirits drink is not in possession of a valid membership card, or if the membership book does not reflect that they are a current member of the private club, then a violation will lie against the permit. (Adopted 5-19-99)

Section 5.63 Membership Book Requirement for Private Clubs in Wet

Areas. The membership book for private clubs located in wet areas shall, at a minimum, reflect the member’s name and the date upon which their annual membership became effective. “Membership book” means a well bound book, identified by the name of the permitted establishment on the

exterior cover, or a business machine listing which has been approved by the Director in writing. (Adopted 5-19-99)

Section 5.64 Membership Card. Any person who joins a private club located in a wet area may, at the club's option, be issued a membership card as provided above. If the club elects to issue membership cards, the membership cards shall reflect, at a minimum the name of the private club, the name of the member, and the date upon which the membership card was issued. Every membership card issued under the provisions of this Subtitle shall remain valid in accordance with the club's by-laws, unless otherwise revoked or cancelled by the private club in accordance with such by-laws or any applicable law or rule of the State of Arkansas. (Amended 8-17-05)

Section 5.65 Advertising Availability of Alcoholic Beverages to the Public by a Private Club in a "Wet" Area. Repealed 8-21-13

Section 5.66 Private Club Permittee May Not Allow the Sale of Beer for Off Premises Consumption From the Private Club Premises on Sunday. Under Act 1371 of 1999, any member of the public may enter the private club premises in a wet area for the purchase of food (if available) and beer or wine products if the private club has the required retail beer and retail wine permits. No private club holding a retail beer permit may allow the off premises sale of beer on a Sunday or after 10:00 p.m. Monday through Saturday. (Amended 8-17-05)

Section 5.67 Sale of Beer to the Public – Retail Beer Permit Required – Source of Supply. Any private club permitted organization in a wet area that desires to sell beer to the public for on premises consumption under the provisions of Act 1371 of 1999, must secure a retail beer permit for on premises consumption from the Alcoholic Beverage Control Division. If the private club has obtained the retail beer permit, then the private club must buy its beer from a licensed Arkansas wholesale beer dealer. (Adopted 5-19-99)

Section 5.68 Sale of Wine to the Public – Retail Wine Permit Required – Source of Supply. Any private club permitted organization that desires to sell wine to the public for on premises consumption under the provisions of Act 1371 of 1999, must secure a retail level wine permit. If the private club has obtained the retail level wine permit, then the private club must buy its wine from a licensed Arkansas wholesale liquor dealer. (Adopted 5-19-99)

Section 5.69 Sale of Beer or Wine Without Requisite Permit – Violation. If a private club permittee in a wet area sells either beer or wine to the public without having the required retail beer or retail level wine permits, as the case may be, then a violation will lie against the private club permit issued by this agency. If a private club organization elects not to obtain a retail beer and/or retail level wine permit in order to serve beer or wine to the public, it can only dispense such beverages to members of the non-profit organization; said beer and/or wine being purchased from an authorized retail liquor store as provided in other Subtitles of this Title. (Adopted 5-19-99)

Section 5.70 *Payment for the Sale or Dispensing of Alcoholic Beverages in Private Clubs in “Wet” Areas Operating Pursuant to Act 1371 of 1999.*

Payment for alcoholic beverages sold or dispensed in a private club in a wet area operating under the provisions of Act 1371 of 1999 shall be as is provided for in Section 3.19(5) of these Rules. In addition, those private clubs that are located in any area of the state where the sale of alcoholic beverages is allowed by law (“wet” area) that assess minimum monthly dues of fifty dollars (\$50.00) may assess such members for the cost of controlled beverages at the time of dispensing of the alcoholic beverages and then bill that member only on a subsequent date by mail. (Adopted 8-20-03)

Sections 5.71 – 5.74 *Reserved*

SUBTITLE G – OPERATION OF BED AND BREAKFAST PRIVATE CLUB

Section 5.75 “*Guest*” means a person who is registered as the receiver of overnight accommodations from the bed and breakfast private club. (Adopted 5-19-99)

Section 5.76 “*Managing Agent*” means a person who lives on the premises, is responsible for the daily operation of the business and is in compliance with Sections 3(c)(A) through (D) of Act 1063 of 1999 and who has their name placed on a permit issued to the business which operates the bed and breakfast private club. (Adopted 5-19-99)

Section 5.77 *Service of Beer and Wine Only to Registered Guests – Source of Supply.* A licensed bed and breakfast private club permit may serve beer and wine only to registered lodging guests, in accordance with the limitations contained within Act 1063 of 1999. The wine or beer furnished by the bed and breakfast private club permittee must be furnished from supplies purchased by the bed and breakfast private club permittee from a liquor store authorized by the Director to sell beer and wine supplies to private club organizations. (Adopted 5-19-99)

Section 5.78 *Service of Beer or Wine.* The employee, the owners, or the managing agent must control the actual dispensing of the wine or beer products. Guests cannot serve themselves. (Adopted 5-19-99)

Section 5.79 *Receipts to be Maintained for Three (3) Years.* All receipts showing the purchase of beer and wine from the authorized source shall be maintained for a period of three (3) years. The receipts should reflect the date of purchase from the authorized liquor store, the amount of wine or beer purchased and the name of the retail outlet from which it was purchased. The receipt shall be made available to agents of the Alcoholic Beverage Control Enforcement Division in conformance with existing law. (Adopted 5-19-99)

Section 5.80 *Public Restaurant Not Allowed on Permitted Premises.* No bed and breakfast private club permittee may operate a restaurant open to any party other than registered lodging guests on the same property as the bed and breakfast permitted establishment. (Adopted 5-19-99)

Section 5.81 *Permittee to Designate Service Areas – Subject to Approval.*

The premises where the consumption of beer and wine furnished to registered lodging guests is lawful, shall consist of the building in which the permit is located, plus any land or open space as shown on the floor plan submitted by the permittee and approved by the Alcoholic Beverage Control Division.

In the event the bed and breakfast permitted premises consists of multiple buildings, the premises shall be the lodging buildings owned or leased by the bed and breakfast private club permittee and outdoor service areas shown on a site plan submitted by the permittee and approved by the Alcoholic Beverage Control Division. (Adopted 5-19-99)

Section 5.82 *Breakfast Meal Must be Served.* Bed and breakfast private club must serve a breakfast meal to its lodging guests. This meal may be served buffet style or by individual servings and it shall be served in a common dining area. An exception to service in a common dining area may be made only if the bed and breakfast operator prepares a complete breakfast daily, in a central kitchen, and delivers the prepared breakfast daily to an individual guest room. (Adopted 5-19-99)

Section 5.83 *Wine and Beer Cannot be Given Away – Taxes to be Collected.* A bed and breakfast private club must make a charge for the service of beer and wine and shall collect the appropriate state, county and local sales taxes and remit them to the proper authority. (Adopted 5-19-99)

SUBTITLE H – OPERATION OF MICROBREWERY-RESTAURANT PRIVATE CLUB

Section 5.84 A microbrewery-restaurant private club applicant shall be an entity organized and existing under the laws of this state before applying for a microbrewery-restaurant private club. The net revenues of the microbrewery-restaurant private club shall not directly or indirectly benefit its members, except for the payment of bona fide expenses of the microbrewery-restaurant private club's operations. Activities at the microbrewery-restaurant private club shall be conducted for some common recreational, social, patriotic, political, national, benevolent, athletic, community hospitality, professional association, entertainment, or other object or purpose and not solely for the consumption of alcoholic beverages. At the time of application for a microbrewery-restaurant private club permit, the entity shall own or lease, be the holder of a buy-sell agreement or offer and acceptance, or have an option to lease a building, property, or space for the reasonable comfort and accommodation of its members and the families and guests of its members. The microbrewery-restaurant private club shall restrict the use of club facilities to its members and the families and guests of its members. For purposes of the microbrewery-restaurant private club, a person is a member of the *microbrewery-restaurant private club only upon ordering an alcoholic beverage*. If the entity holding a microbrewery-restaurant private club permit additionally holds another

alcoholic beverage permit, the hours of operation authorized for the microbrewery-restaurant private club applies to all permits of the entity.

Section 5.85 Procedure for Obtaining Permit. A microbrewery-restaurant private club applicant may apply to obtain a microbrewery-restaurant private club through the procedures provided under Section 5.15 and Section 1.20. The application for a microbrewery-restaurant private club shall be submitted to the division and accompanied by an annual permit fee of one thousand five hundred dollars (\$1,500). In an area in which the sale of alcoholic beverages is not authorized by local option under § 3-8-201 *et seq.*, the application for a microbrewery-restaurant private club permit shall be accompanied by an additional application fee of one thousand five hundred dollars (\$1,500). The director may issue a permit as authorized in this section upon determination that the applicant is qualified and that the application is in the public interest.

The Director may issue a microbrewery-restaurant private club permit if the microbrewery-restaurant private club premises are in a dry area and the governing body has approved an applicant.

The Director may issue an additional microbrewery-restaurant private club permit after October 1, 2019, to a person or entity holding a microbrewery-restaurant private club permit as of October 1, 2019, and having more than five percent (5%) common ownership with a person or entity if the person or entity holds a permit under the Arkansas Small Brewery Act, § 3-5-1401 *et seq.*, or qualifies as a supplier under § 3-5-1102.

Section 5.85.1 Reapplication An entity denied a microbrewery-restaurant private club permit may reapply with ABC for a permit, pursuant to Section 1.30 of these Rules.

Section 5.86 Permit Scope and Restrictions. The Director of the Alcoholic Beverage Control Division may issue a microbrewery-restaurant private club permit that authorizes the permittee to:

Operate a microbrewery-restaurant private club and manufacture one (1) or more varieties of beer, malt beverage, or hard cider in an aggregate quantity not to exceed forty-five thousand (45,000) barrels per year from all facilities under common ownership with the microbrewery;

Store beer, malt beverage, and hard cider manufactured by the microbrewery-restaurant private club and any other beer, malt beverage, and hard cider that the microbrewery-restaurant private club permittee may purchase from retailers and small brewers permitted by this state on the microbrewery-restaurant private club permitted premises and on the premises of the one (1) separate brewing facility of a microbrewery-restaurant private club.

Two (2) or more microbrewery-restaurant private clubs sharing common ownership or a brewery of any size sharing common ownership with a microbrewery-restaurant private club shall be considered one (1) entity for

purposes of: calculating barrel production; and the transportation of beer, malt beverage, or hard cider produced by one (1) entity among no more than three (3) microbrewery-restaurant private clubs of the one (1) entity; Operate a restaurant that is the sales outlet for beer, malt beverage, or hard cider manufactured by the microbrewery-restaurant private club and that sells the beer, malt beverage, or hard cider and any other beer, malt beverage, hard cider, or wine that the microbrewery-restaurant private club permittee may purchase from retailers permitted by this state for consumption on the permitted premises or purchased directly from permitted small brewers allowed to distribute directly to the microbrewery-restaurant private club; Sell on the premises beer, malt beverage, or hard cider manufactured by the microbrewery-restaurant private club or commonly owned facility to a member for on-premises consumption during legal operating hours

Serve to a member on-premises complimentary samples of beer, malt beverages, or hard cider produced by the microbrewery-restaurant private club

Sell beer, malt beverage, or hard cider of its own manufacture to a wholesale dealer permitted by this state for the purpose of resale to other retail permit holders.

Section 5.87 Tastings. A microbrewery-restaurant private club may conduct beer-tasting, malt beverage-tasting, and hard cider-tasting events for educational or promotional purposes at any location in wet areas of this state if:

- (i) A request for approval to conduct a beer-tasting, malt beverage-tasting, and hard cider-tasting event is received by the Alcoholic Beverage Control Division at least two (2) weeks before the event;
- (ii) The request is approved by the division; and
- (iii) Written notice is given by the division to the permit holder at least five (5) days before the event.

The microbrewery-restaurant private club shall use only beer, malt beverage, and hard cider produced by the microbrewery-restaurant private club for an event approved.

This section does not authorize the conducting of a beer-tasting, malt beverage-tasting, and hard cider-tasting event at a separate brewing facility of a microbrewery-restaurant private club

Section 5.88 Separate Facility Authorized. A microbrewery-restaurant private club may maintain one (1) separate brewing facility for the production or storage of beer, malt liquor, and hard cider as needed to meet demand, except that each facility used by the microbrewery-restaurant private club permittee shall not in the aggregate produce more than forty-five thousand (45,000) barrels of beer, malt beverage, and hard cider per year.

Beer, malt beverage, and hard cider produced by a separate brewing facility of a microbrewery-restaurant private club permittee shall be:

- (i) Sold to a permitted wholesaler; or
- (ii) Transported:
 - (a) From the separate brewing facility to a microbrewery-restaurant private club commonly owned by the owner of the separate brewing facility for retail sale for consumption on the permitted premises; or
 - (b) To the separate brewing facility from a microbrewery-restaurant private club commonly owned by the owner of the separate brewing facility for storage, production, or packaging.

5.89 Prohibited Sales A microbrewery private club may not sell alcoholic beverages to nonmembers. A microbrewery private club shall not sell alcoholic beverages for off-premise consumption. Violation of this provision will result in the permit being revoked.

Section 5.90 Advertising for a microbrewery-restaurant private club. A microbrewery-restaurant private club may use advertising media to announce social functions of general interest, including without limitation:

- (1) A golf tournament;
- (2) A charity ball;
- (3) An entertainment event; or
- (4) A similar activity.

Such event shall be held within the confines of the microbrewery-restaurant private club property. The advertising for the social function shall be preceded by the words “Notice to Members” and the name of the club or organization sponsoring the event.

Section 5.91 Advertising for a microbrewery-restaurant private club in a dry area. A microbrewery-restaurant private club shall not use advertising media to promote the consumption and use of alcoholic beverages or to advertise or announce the price of service of alcoholic beverages for on-premises consumption in a county where voters have not authorized the sale of intoxicating liquor in a local option election.

TITLE 6

REGULATIONS OF GENERAL APPLICABILITY

Section 6.1 *Establishment of Special ABC Fund.* In order to maintain adequate funding within the Alcoholic Beverage Control Division to provide for all necessary copying and miscellaneous legal costs, and to ensure the maintenance of regulation books in sufficient quantities within existing budgetary constraints, it is necessary that a fee be charged for regulation books. Further, it is necessary that an Alcoholic Beverage Control Fund be established into which the fee charged for the books will be deposited. These revenues may be used for the purpose of printing additional books, official publications, documents, pleadings, or postage costs, as well as for paying any necessary filing fees or costs on any court appeals filed by the Alcoholic Beverage Control Division.

Therefore, a fee of ten dollars (\$10.00) shall be charged for each regulation book, and such revenues shall be deposited in the Special Alcoholic Beverage Control Fund, to be established pursuant to this Regulation, and shall be used for the purposes stated hereinabove, as such payment is deemed necessary and proper by the Director. Any other miscellaneous fees or receipts may also be deposited in the Special Alcoholic Beverage Control Fund and used as herein provided, as may be subsequently authorized by the General Assembly of Arkansas. (Adopted 1-18-84)

Section 6.2 *Tasting Rooms Authorized on Premises of Any Licensed Winery, Brewery, Distillery and Rectifying Plant; Restrictions.* As a further exception to the prohibitions contained in Section 2.28(6) of these Regulations, any winery, brewery, distillery or rectifying plant operating within the State of Arkansas and licensed by the Alcoholic Beverage Control Division is authorized to maintain a tasting room on their licensed premises where samples of their products can be given to persons touring such facilities, subject to the following restrictions: such samples may not be given to any person at any time when the retail sale of such beverages is prohibited by state law; samples may not be given to any person who is a minor, who is intoxicated or to anyone who would otherwise be disqualified from purchasing alcoholic beverages under state code provisions or these Regulations; not more than two (2) samples of a product may be given to each person; the size of spirituous or wine samples shall not exceed 200 ml and the size of malt beverage samples shall not exceed 12 (twelve) ounces. (Adopted 2-20-85)

Section 6.3 *Description of the Alcoholic Beverage Control Division and Its Methods of Operation.* Pursuant to the provisions of the Arkansas Administrative Procedure Act, the Alcoholic Beverage Control Division hereby adopts as a rule the following description of its organization as required by said law: the Alcoholic Beverage Control Division is composed of a five (5) member

Board, a Director, and staff employees. The Director is the person who is in charge of the daily operations of the Alcoholic Beverage Control Division and is also the person who is statutorily responsible for making the initial decision on whether or not an application for a permit is granted or denied; the Director is the person who also makes the initial decision on any subsequent action taken against a permit for violation of alcoholic beverage control laws and Regulations. The five (5) member Board acts as an appeal body from decisions made by the Director. The Alcoholic Beverage Control Division receives and acts upon applications for permits as authorized by law and Regulations. Once an application has been accepted, the Alcoholic Beverage Control Enforcement Division conducts a background investigation of the applicant seeking the permit, as well as an inspection of the location where the permit is sought. When this information has been returned to the Administration Division, and other statutory time periods are satisfied, an initial decision is made by the Director. This decision can be appealed to the five (5) member Board, which can be appealed in turn to the circuit courts of the State of Arkansas under the provisions of the Arkansas Administrative Procedure Act.

The rules of practice of the Alcoholic Beverage Control Division are set forth by code provisions and by Regulation, copies of which are available for inspection at the offices of the Alcoholic Beverage Control Administration. On an informal basis, without benefit of a hearing, persons may make inquiry of the Director as to the legality of certain operations which may be conducted on or around permitted premises. Application instruction sheets for each type of permit issued by the Alcoholic Beverage Control Division are available for public inspection and use at the offices of the Alcoholic Beverage Control Division, and persons wishing to seek information or make submissions or requests may address their correspondence to the Alcoholic Beverage Control Division.

All orders, decisions, and opinions adopted by the Alcoholic Beverage Control Division and the Board are available for public inspection in conformance with the Administrative Procedure Act. Files of permitted outlets are available for review by the public in the offices of the Alcoholic Beverage Control Division as well.

When a permit is issued, the permit may be disciplined according to various code provisions contained in the Acts of the General Assembly of the State of Arkansas and Regulations adopted by the Board. Discipline of a permit can include, but is not limited to, administrative sanctions of revocation, cancellation, suspension, levying of a monetary fine, the imposition of more restrictive hours of operation, placement of a warning letter in the file, or an order of reprimand. Any person aggrieved by a decision of the Director and who has legal standing to do so may appeal a decision to the Board, which is heard on a de novo basis.

Permits are renewable as provided by law on an annual basis, with a late penalty statutorily imposed for renewals tendered after the expiration of the previously issued permit. No permit may be renewed after the 28th day of October of the calendar year following when the permit expired. All permits not

renewed by that date are automatically cancelled, pursuant to code provisions. (Amended 8-20-97)

Section 6.4 Procedure for Adoption of Rules and Regulations. Pursuant to powers granted by the General Assembly of the State of Arkansas, the Alcoholic Beverage Control Division may adopt or review rules and regulations which govern the alcohol distribution business in the State of Arkansas. The Alcoholic Beverage Control Board shall meet to consider the adoption of proposed regulations every two (2) years within one hundred twenty (120) days of adjournment sine die of the Arkansas General Assembly. All interested parties may submit proposed regulations with this Agency for the Director's consideration within thirty (30) days of adjournment sine die of the Arkansas General Assembly. The Director shall review all such proposed regulations and thereupon determine which, if any, are to be submitted to the Alcoholic Beverage Control Board for adoption pursuant to notice and public hearing.

Prior to the adoption of any Alcoholic Beverage Control Division rules or regulations, a notice shall be placed in a newspaper which has general statewide circulation. The legal notice requirements will be fulfilled by the publication of a notice of a public hearing in such newspaper at least thirty (30) days prior to the date set for the public hearing.

At the public hearing, individuals who are interested in any rule or regulation that is proposed will be allowed to present either oral testimony or submit written comments for consideration by the Board as part of the rule-making process. Rules adopted by the Board shall be filed with the Legislative Council of the General Assembly, the Secretary of State, the Office of the Governor and the Arkansas State Library in conformance with the applicable provisions of the Administrative Procedure Act. (Amended 8-20-97)

Section 6.5 The Arkansas Responsible Permittee Program. The Alcoholic Beverage Control Board shall oversee a server training program designed to encourage permittees and their employees to treat the sale and service of alcoholic beverages in a responsible manner. The program shall be entitled "The Responsible Permittee Program".

A permittee who seeks to qualify under the Responsible Permittee Program must provide to the Board evidence of compliance with the requirements of this Regulation. Upon satisfactory proof that the permittee or his employees have complied with the requirements, the Board shall certify the permittee under the Responsible Permittee Program. Certification as a responsible permittee shall be renewed annually. The Board may revoke or suspend a permittee's certification for non-compliance with this Regulation.

In order to qualify for certification, the permittee shall comply with the following requirements:

- (1) Attend a course of instruction approved and certified by the Board which shall include subjects dealing with alcoholic beverages as follows:
 - A. Education on the dangers of drinking and driving;
 - B. State laws regarding the sale of alcoholic beverages for on premises consumption or for off premises consumption, or both;
 - C. Methods of recognizing and dealing with underage customers;
 - D. The development of specific procedures for refusing to sell alcoholic beverages to underage customers; for assisting employees in dealing with underage customers; for dealing with intoxicated customers; and
 - E. Such other matters as may be deemed appropriate and approved by the Alcoholic Beverage Control Board.
- (2) Require each employee who is authorized to sell alcoholic beverages in the normal course of his or her employment to complete the responsible permittee training course set out in Subsection (1) of this Section within thirty (30) days of commencing employment; and
- (3) Maintain employment records of the training of its employees required by this Section.

The Board shall consider certification of a permittee in the Responsible Permittee Program in mitigation of administrative penalties or fines for a permittee's or employee's violation of state laws and Regulations relating to the sale of alcoholic beverages.

There is imposed on each permittee and each employee who applies for certification under this program a maximum attendance fee of twenty-five dollars (\$25.00). All monies collected under this Regulation shall be payable directly to the program provider and shall be used to fund such server training programs as may be approved by the Alcoholic Beverage Control Board. Neither permittees nor employees attending such approved programs shall be charged any additional fee by the program provider.

Any applicant seeking to become a program provider under the Responsible Permittee Program must submit to the Alcoholic Beverage Control Board a course curriculum that shows how the applicant meets the requirements of Section 6.5(1) of these Regulations. The Alcoholic Beverage Control Board will send the applicant written notification of certification approval or denial.

A list of the program providers approved by the Alcoholic Beverage Control Board under the Responsible Permittee program shall be maintained by the Alcoholic Beverage Control Division and made available upon request by any permittee. (Adopted 8-19-93)

Section 6.6 *Small Farm Wineries and Liquor Wholesalers May be Authorized to Distribute Free Wine Samples in Any Area of the State.* Any small farm winery or Arkansas liquor wholesaler licensed by the Alcoholic Beverage Control Division may petition the Alcoholic Beverage Control Division for permission to conduct a wine tasting event for educational and promotional purposes in any area of the State, including areas in which the retail sale of alcoholic beverages is not authorized by law.

Application for permission to distribute wine samples must be received by the Alcoholic Beverage Control Division at least three (3) weeks prior to the event. Written notice of the application shall be mailed by the Alcoholic Beverage Control Division to the law enforcement officer who has primary jurisdiction over the site where the event will be held. If the Director finds that circumstances exist which precluded the timely filing of the application with the Alcoholic Beverage Control Division, written approval of the event by the law enforcement officer having primary jurisdiction over the site of the event must accompany any such late filed application received by the Alcoholic Beverage Control Division.

The request must be submitted with authorization from the landowner or the party exercising legal control over the area where the event will be held. The application for permission must describe the area where the event will be held, including the size and dimensions of the area, and the request must clearly describe the character of the location. No wine tasting event shall be held in any facility already licensed by the Alcoholic Beverage Control Division.

As used in this Regulation wine means any product made from grapes, fruits, berries, or other similar products which contains more than one-half of one percent (0.5%) alcohol by weight but which does not contain more than fourteen percent (14%) alcohol by weight, regardless of the location of the manufacturer. Samples may be distributed Monday through Friday between the hours of 7:00 a.m. and 1:00 a.m. of the next day. On a Saturday, samples may be distributed only between the hours of 7:00 a.m. and 12:00 midnight. No sampling activity may take place on a Sunday unless the event is taking place in an area which has voted for the sale of liquor by the drink on a Sunday and, in such event, samples may be distributed between the hours of 10:00 a.m. until 12:00 midnight, or such lesser period of time as may be provided by local ordinance for the retail sale of alcoholic beverages on a Sunday.

Any action by the Director in granting or denying such application is appealable to the Alcoholic Beverage Control Board pursuant to Section 1.51 of these Regulations, provided that such action on the part of the Director shall be effective immediately without the requirement of such action being ratified by the Alcoholic Beverage Control Board at the next Board meeting.

(Adopted 8-19-93)

Section 6.7 Arkansas Native Brewers Authorized to Distribute Samples of Alcoholic Beverages in Any Wet Area of the State. An Arkansas Native Brewery, as defined in Act 1805 of 2003, is authorized to seek permission from the Alcoholic Beverage Control Division for permission to conduct a beer tasting event for educational and promotional purposes in any wet area of the state. The request for permission to distribute beer samples must be received by the Alcoholic Beverage Control Division at least three (3) weeks prior to the event. Written notice of the request shall be mailed by the Alcoholic Beverage Control Division to the law enforcement officer who has primary jurisdiction over the site where the event will be held. If the Director finds that circumstances exist which precluded the timely filing of the request with the Alcoholic Beverage Control Division, written approval of the event by the law enforcement officer having primary jurisdiction over the site of the event must accompany any such late filed request received by the Alcoholic Beverage Control Division.

The request must be submitted with authorization from the land owner or the party exercising legal control over the area where the event will be held. The request for permission must describe the area where the event will be held including the size and dimensions of the area and the request must clearly describe the character of the location. Beer tasting events conducted by Arkansas native brewer permittees may be held in any facility in any wet area of the state permitted by the Alcoholic Beverage Control Division if written notice is given to the Alcoholic Beverage Control Division as previously described.

The criminal penalties for drinking in public as prohibited by ACA § 5-71-212 are not applicable to any beer and malt beverage tasting event approved by the Alcoholic Beverage Control Division under Act 1805 of 2003.

As used in this Regulation, beer or malt means any malt beverage product manufactured by an Arkansas native brewer permittee. Samples may be distributed Monday through Friday between the hours of 7:00 a.m. and 1:00 a.m. the next day. On a Saturday, samples may be distributed only between the hours of 7:00 a.m. and 12:00 midnight. No sampling activity may take place on a Sunday unless the event is taking place in an area which has voted for the sale of liquor by the drink on a Sunday and, in such event, samples may be distributed between the hours of 12:00 noon and 12:00 p.m. or such lesser period of time as may be provided by local ordinance for the retail sale of alcoholic beverages on a Sunday.

Any action by the Director in granting or denying such request is appealable to the Alcoholic Beverage Control Board pursuant to Section 1.51 of these Regulations, provided that such action on the part of the Director shall be

effective immediately without the requirement of such action being ratified by the Alcoholic Beverage Control Board at the next Board meeting.
(Adopted 8-20-03)

§ 3-4-401. Authorization to impose fines.

In addition to all other sanctions and penalties which may be administratively imposed by the director pursuant to the procedures outlined in this title and the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the Alcoholic Beverage Control Division Director shall have the power and authority to levy fines and suspend them against controlled beverage permit holders when the director determines the permit holder has violated the alcoholic beverage control laws of this state or regulations of the Alcoholic Beverage Control Division.

History. Acts 1981, No. 790, § 2; A.S.A. 1947, § 48-346.

§ 3-4-402. Classes of violations and fines – Multiple offenses.

(a) The following classes of alcoholic beverage control permit violations and fines are authorized to be levied and are established:

- (1) Class A permit violations: Five hundred dollars (\$500) to one thousand dollars (\$1,000);
- (2) Class B permit violations: Two hundred dollars (\$200) to five hundred dollars (\$500);
- (3) Class C permit violations: One hundred dollars (\$100) to two hundred dollars (\$200).

(b) The Director of the Alcoholic Beverage Control Division and the board are hereby authorized to levy additional fines up to double the amount for the classes of violations found in subsection (a) of this section for a second offense of the same violation within a twelve-month period, and up to three (3) times the fine authorized for the classes listed in subsection (a) of this section for a third offense of the same violation within a twelve-month period.

History. Acts 1981, No. 790, § 2; A.S.A. 1947, § 48-346; Acts 1989, No. 296, § 1; 1993, No. 172, § 1.

§ 3-4-403. Class A violations.

The following acts on the part of any permittee are Class A permit violations:

- (1) Failure to furnish access to premises by any law enforcement officer or any authorized Alcoholic Beverage Control personnel or failure to cooperate or take reasonable action to assist any such law enforcement officers or authorized Alcoholic Beverage Control personnel who are on the permitted premises in the performance of their duties;
- (2) Failure to allow inspection of books or records;
- (3) Posting permit on unauthorized premises;
- (4) Manufacture or possession of controlled beverage with excess alcoholic content;
- (5) Sale by a manufacture to other than a wholesaler. Provided, sales authorized by any law of the state relating to native wines shall not constitute a violation;
- (6) Sale by a wholesaler to other than a retailer;
- (7) Ownership or other interest in retail outlet by a manufacturer or a wholesaler. Provided, that such ownership or other interest authorized by any law of this state relating to native wines shall not be a violation;
- (8) Unauthorized gift or service to retailers by a manufacturer or a wholesaler;
- (9) Use of post-dated checks for payment of controlled beverages and merchandise;
- (10) Wholesaler making delivery to a consumer;
- (11) The permittee possessed, or knew or reasonably should have known that any agent or employee or patron of the establishment possessed on the permitted premises, any illegal drug or narcotic or controlled substance, or that any agent or employee while acting on the permittee's behalf knowingly allowed the possession on the permitted premises of any illegal drug or narcotic or controlled substance;
- (12) Selling or allowing the consumption of alcoholic beverages on the permitted premises when the permit is suspended or on inactive status;
- (13) Selling to minors;
- (14) Unauthorized employment of minors;
- (15) (a) Disorderly conduct or a breach of the peace by a patron or employee on the permitted premises; (b) as used in subdivision (15) (A) of this section, "Disorderly conduct" includes without limitation a fight, brawl, or disturbance that results in bodily injury to a person on the permitted premises;
- (16) Violation of § 3-3-218; failure to be a good neighbor;
- (17) Selling to an intoxicated person;
- (18) Unauthorized manufacturing, selling, offering, dispensing, or giving away of controlled beverages;
- (19) Conducting or permitting gambling on premises;
- (20) Violation of legal closing hours;
- (21) Possession of a weapon on the permitted premises by any person without a possessory or proprietary interest in the permitted premises.

History. Acts 1981, No. 790, § 2; A.S.A. 1947, § 48-346; Acts 1991, No. 605, § 2; 1993, No. 172, § 3; Acts 2009, No. 294, § 5.

§ 3-4-404. Class B violations.

The following acts on the part of the permittee are Class B violations:

- (1) Pledge, hypothecation, or use of a permit as collateral;
- (2) Defacing, destroying, or altering a permit;
- (3) Transporting controlled beverages in violation of regulations or law;
- (4) Manufacturing, selling, offering, dispensing, or giving away, possessing, or transporting of controlled beverages upon which tax is not paid;
- (5) Failure to maintain proper records by a manufacturer;
- (6) Failure by a wholesaler to maintain proper records;
- (7) Failure by a wholesaler to register new brands;
- (8) Giving of samples by a permittee without authorization;
- (9) Sales for anything other than cash or check;
- (10) Delivery without an invoice by a wholesaler;
- (11) Selling to the insane;
- (12) Selling to bootleggers;
- (13) Accepting food stamps in payment for controlled beverages;
- (14) Unlawful manufacture or sale in a dry area;
- (15) Sale of controlled beverages by vending machine.

History. Acts 1981, No. 790, § 2; A.S.A. 1947, § 48-346; Acts 1991, No. 605, § 2; 1993, No. 172, § 3, Acts 2009, No. 294, § 5.

3-4-405. Class C violations.

(a) The following acts on the part of any permittee are Class C permit violations:

- (1) Sale of controlled beverages when the permit is not posted;
- (2) Failure to maintain health, safety, and sanitary standards;
- (3) Removing or obliterating a container label or mark;
- (4) Consuming a controlled beverage while on duty;
- (5) Failure to surrender a permit when the business has been voluntarily inoperative for over thirty (30) days;
- (6) Storing controlled beverages in unauthorized warehouses, with each day constituting a separate offense after notice;
- (7) Failure to make proper application and obtain approval for acting as a sales agent for a manufacturer, wholesaler, or rectifier unless duly authorized by the director;
- (8) Use of an unlabeled dispensing faucet;
- (9) Failure of a retailer to keep and maintain records;
- (10) Unauthorized sale of broken packages and merchandise;
- (11) Negligently allowing prostitutes to frequent the premises;
- (12) Allowing immoral conduct on the premises;
- (13) Disposing of or receiving samples by a retailer;
- (14) Negligently selling to users of narcotics;
- (15) Delivery of controlled beverages by a retailer away from his permitted premises;

- (16) Sale of controlled beverages in a container or of a size other than that approved;
- (17) Misrepresentation of a brand, or keeping beverages in an unauthorized container, or refilling, diluting, or failing to destroy empty bottles;
- (18) Failure to maintain membership books or properly maintain guestbooks by a private club;
- (19) Allowing an unauthorized guest in a private club;
- (20) Dispensing to nonmembers or nonguests by a private club;
- (21) Unauthorized purchasing by a private club from other than a retailer;
- (22) Failure of a private club to maintain financial records;
- (23) Failure by a private club to furnish the name and address of the authorized public accountant and bookkeeper;
- (24) Unauthorized advertising by a private club;
- (25) Unauthorized transportation of alcoholic beverages through a dry area without a permit;
- (26) Failure to keep and maintain records or make a report.

(b) Any other act that is determined at an appropriate hearing by the director to be a violation will be considered a Class C permit violation and may be fined accordingly.

History. Acts 1981, No. 790, § 2; A.S.A. 1947, § 48-346; Acts 1991, No. 605. §3.

This basic body of Regulations was adopted by the Alcoholic Beverage Control Board on August 27, 1952. Since that date, the Regulations have been revised by the Board numerous times. The dates of those revisions are:

October 9, 1974; December 17, 1980; May 21, 1981;

December 18, 1982; February 17, 1983; July 19, 1984;

February 20, 1985; December 23, 1986; April 15, 1987;

July 24, 1987; August 17, 1988; December 21, 1988;

December 15, 1989; May 15, 1991; June 19, 1991;

September 18, 1991; August 19, 1993; July 19, 1995;

August 20, 1997; May 19, 1999; August 18, 1999;

August 15, 2001; September 19, 2001; August 20, 2003;

August 17, 2005; and August 15, 2007; August 19, 2009;

August 16, 2011; December 14, 2011; August 21, 2013;

September 16, 2015; September 20, 2017; January 22, 2020;

March 18, 2020; August 19, 2020; November 17, 2021;

January 19, 2022