

NOTICE OF FINAL RULEMAKING
TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING
CHAPTER 1. DEPARTMENT OF LIQUOR LICENSES AND CONTROL
PREAMBLE

1. Articles, Parts, and Sections Affected

Rulemaking Action

R19-1-108	Repeal
R19-1-110	Repeal
R19-1-112	Repeal
R19-1-113	Repeal
R19-1-302	New Section
R19-1-313	New Section
R19-1-320	New Section
R19-1-321	New Section
R19-1-324	New Section

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 4-112(A)(2) and (B)(1)

Implementing statute: A.R.S. §§ 4-101 et seq.

3. The effective date for the rules:

As prescribed under A.R.S. § 41-1032(A), the rules will be effective 60 days after this notice is filed with the Office of the Secretary of State.

a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

4. Citation to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 18 A.A.R. 3011, November 16, 2012

Notice of Proposed Rulemaking: 18 A.A.R. 2958, November 16, 2012

Notice of Proposed Rulemaking: 18 A.A.R. 2977, November 16, 2012

Notice of Supplemental Proposed Rulemaking: 19 A.A.R. 3971, December 6, 2013

5. The agency's contact person who can answer questions about the rulemaking:

Name: Pearlette Ramos

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6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

In response to a five-year-review report approved by the Governor's Regulatory Review Council on May 3, 2011, the Department is repealing existing rules and making new rules that are consistent with statute and agency practice. This rulemaking supplements a rulemaking approved by Council on May 7, 2013.

An exemption from the rulemaking moratorium contained in Executive Order 2012-03 was granted in an e-mail from Steven Killian, policy advisor to Governor Brewer, dated September 25, 2012. Mr. Killian renewed the exemption for this supplemental notice in an e-mail dated November 7, 2013.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

In this rulemaking, the Department continues the process of repealing all existing rules and replacing them with rules that are substantially similar in content to the rules being repealed. The new rules are consistent with both state and federal law regarding a general prohibition of commercial coercion and

bribery. Exceptions to the general prohibition are made giving deference to established trade customs that do not interfere with accomplishing the purpose of avoiding commercial coercion and bribery.

10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:

Changes between the proposed and supplemental proposed rulemakings were described in detail in the Notice of Supplemental Proposed Rulemaking, which was published at 19 A.A.R. 3971 on December 6, 2013. Changes between the Notice of Supplemental Proposed Rulemaking and this final notice are described in item 11. None of the changes between the Notice of Supplemental Proposed Rulemaking and this final notice is substantial under the standards specified in A.R.S. § 41-1025(B).

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to comments:

Written comments were received from Nicholas Guttilla, Adam Smith of the Distilled Spirits Council of the United States (DISCUS), Camila Alarcon on behalf of Total Wine & More, Karen Manders for Anheuser-Busch, and Don Isaacson for the Arizona Wine and Spirits Wholesale Association (AWSWA). Greg Harris, on behalf of Southern Wine and Spirits, submitted comments opposing the comments made Alarcon on behalf of Total Wine & More. An oral proceeding was held on January 10, 2014. Many stakeholders attended the oral proceeding. However, comments were only made by Don Isaacson of the AWSWA and Adam Smith of DISCUS. At the oral proceeding, Mr. Isaacson and Mr. Smith reiterated their previously submitted written comments. The comments and the Department's analysis and response follow:

COMMENT	ANALYSIS	RESPONSE
R19-1-320(C), (F), (G), (H), and (I): Eliminate the requirement that a producer or wholesaler (P/W) ensure that items of value do not remain with a retailer or at the licensed premises after an event. Guttilla and Smith	A.R.S. § 4-243(A)(4) prohibits a P/W from providing a thing of value to a retailer subject to exceptions made by the Department in rule. A.R.S. § 4-243(D) provides that within specific limitations, a wholesaler, but not a producer, may provide things of value to an on-sale retailer. Because the legislature has spoken on this subject, the Department is not	The Department amended the subsections to clarify that the statutory exception provided in A.R.S. § 4-243(D) applies.

	in position to amend the subsections as requested.	
R19-1-321: Allow producers and wholesalers, rather than only wholesalers, to engage in trade practice activities under equal terms. Producers should have the same opportunity as wholesalers to: 1. Engage in legitimate brand promotion activities such as furnishing product displays, stocking services and point-of-sale advertising, and resetting product; 2. Furnish tapping equipment and lend product display enhancers; 3. Furnish promotional items to all retailers; 4. Facilitate a special event; and 5. Sell foodstuffs to retailers. Smith	Arizona, like most states, has a three-tiered system for the distribution of spirituous liquors. The three tiers are producers, wholesalers (distributors), and retailers. The basic structure of the three-tiered system is that producers can sell only to wholesalers who call sell only to retailers. Retailers sell to customers. Each of the practices that Mr. Smith requests would allow producers to deal directly with retailers. This is not consistent with the three-tiered system. To the extent that the Department’s previous rule allowed these activities, the rule was inconsistent with statute and agency practice.	No change
R19-1-320 and 321: Expressly authorize a producer or wholesaler to use an independent contractor to engage in any permitted trade practice activity. Smith	There is no need to make this change. It is the law that a business entity can work through an employee or independent contractor.	No change
R19-1-313: Allow a producer or wholesaler to advertise the location of any public event it is conducting, sponsoring or supporting and allow use of all	The location of a public event is important information. There is nothing in the rule that restricts the media that may be used in advertising.	“Location” was added to R19-1-313(B)(2)(d). No change

types of media to advertise the events. Smith		
R19-1-320(D): Eliminate: 1. The dollar limits on items furnished to retailers' customers 2. The prohibition against leaving the items on the retailer's premises; and 3. The requirement that these items not be provided to a retailer or its employees. Smith	A.R.S. § 4-243(A)(4) prohibits a producer or wholesaler from providing a thing of value to a retailer unless an exception is specified by the Department in rule. The Department has specified the limitations in R19-1-320(D) to keep the playing field level between large and small P/Ws and large and small retailers. A large P/W is in a better position to provide more expensive items to retail customers. A P/W might favor the customers of a large retailer because the retailer is better able to purchase greater quantities of spirituous liquor. The limits are also consistent with industry practice.	No change
R19-1-313, 320, and 321: Allow identification of the retailer on exterior signs, point-of-sale advertising items, printed menus, promotional items, and holiday decorations. Smith	If a producer or wholesaler identifies a retailer in advertising, the P/W is providing something of value, advertising, to the retailer, which violates A.R.S. § 4-243(A)(4). The P/W may advertise itself or its product but not the retailer.	No change
R19-1-313 and 320: Allow a producer's advertisement to identify two or more retailers.	If a producer or wholesaler identifies multiple retailers in advertising, the P/W is	No change

Smith	providing something of value, advertising, to the retailers, which violates A.R.S. § 4-243(A)(4). This could also be viewed as an indirect payment to the retailers.	
R19-1-320(K): Allow instant rebate certificates and eliminate the prohibition against the number of coupons exceeding the number of qualifying products on hand at the time of redemption. Smith	Instant rebate certificates are coupons/rebates. The rule says that coupons must be available in <u>approximately</u> the same number of qualifying products. The P/W knows the amount of product made available to the retailer. This informs the P/W of the number of coupons to provide for customers and enables the P/W to avoid providing excess coupons, which would be a thing of value. There is no need to burden P/Ws or retailers with additional recordkeeping requirements.	No change No change
R19-1-313: Allow a producer or wholesaler to furnish, give, or sell signs to a licensed retailer rather than only lend them. Smith	A.R.S. § 4-243(A)(4) allows the Department to establish exceptions to the general prohibition that a P/W not provide something of value to a retailer. In exercising the discretion provided in A.R.S. § 4-243(A)(4), the Department decided to allow a lending relationship between a P/W and retailer because it is the least	No change

	<p>susceptible to abuse as a trade practice. Limiting a P/W to lending a sign to a retailer is the standard that has existed for many years in Arizona.</p>	
<p>R19-1-313: Eliminate the permitted/prohibited directions that interior/exterior signs may face. Smith</p>	<p>Mr. Smith’s example of a sign inside a premise that faces a window reinforces why the permitted/prohibited directions are needed. Note that an exterior sign does not have to be on the outside of a building and an interior sign does not have to be on the inside of a building. The key is whether the sign faces inside or outside the premise.</p>	<p>No change</p>
<p>R19-1-313: Eliminate the provisions that a sign:</p> <ol style="list-style-type: none"> 1. Have no utilitarian use other than as advertising; 2. Can be used only as a sign; <p>and</p> <ol style="list-style-type: none"> 3. Is not intended to be a fixture of the licensed premises. Smith 	<p>A.R.S. § 4-243(A)(4) allows the Department to establish exceptions to the general prohibition that a P/W not provide something of value to a retailer. The restrictions regarding signs are designed to ensure that something other than a sign is not disguised as a sign. The restrictions are consistent with the standard that has existed for many years in Arizona. A fixture is something fixed or attached permanently to and not removable from real property. A neon sign and a sign with a</p>	<p>No change</p>

	light that can be removed are not fixtures.	
R19-1-313: Eliminate the \$400 limit calculated using the value per square foot determined by the director for signs made of printed material. The phrase “calculated” is unclear. Smith	A.R.S. § 4-243(A)(4) allows the Department to establish exceptions to the general prohibition that a P/W not provide something of value to a retailer. The \$400 standard has existed for many years in Arizona. As used in the rule, “calculated” has its ordinary, dictionary meaning.	No change
R19-1-313: Add a provision requiring that advertising on signs include the product or industry member. Smith	To avoid providing something of value to a retailer, which would violate A.R.S. § 4-243(A)(4), a sign is required to have advertising for spirituous liquor available from the P/W and may have advertising about the P/W. If Mr. Smith includes a retailer in the phrase “industry member,” that is prohibited for previously explained reasons.	No change
R19-1-320(I): Allow producers and wholesaler to sponsor or conduct, rather than only participate in, education seminars for retailers and their employees and delete the content limitation of educational seminars. Smith	This provision is designed to level the playing field between large and small P/Ws. Large P/Ws are better able to sponsor or conduct educational seminars and this would disadvantage smaller P/Ws. P/Ws are in the business of selling spirituous liquor so this needs to be the focus of any presentation at a seminar.	No change

	Anything else would be a thing of value and violate A.R.S. § 4-243(A)(4).	
R19-1-320(J): Eliminate the requirement to make a menu available to all retail accounts that use menus. Smith	Without this provision, the playing field would tilt towards large retailers that are in position to buy the most spirituous liquor. The provision is needed to ensure equal treatment of large and small retailers.	No change
R19-1-321(L):	Note that Mr. Smith refers to P/Ws in his comment. R19-1-321(L) applies only to wholesalers for previously explained reasons.	
1. Allow a wholesaler to furnish, give, or sell, rather than only lend, shelves/bins/racks to a retailer;	This has been previously discussed. In exercising the discretion provided in A.R.S. § 4-243(A)(4), the Department decided to allow a lending relationship between a wholesaler and retailer because it is the least susceptible to abuse as a trade practice. This standard has existed for many years in Arizona.	No change
2. Add that the primary function of shelves/bins/racks is to hold and display spirituous liquor;	This is an accurate statement and provides clarifying information.	A new subsection, R19-1-321(L)(4), was added.
3. Clarify that the total value of	That is exactly what the rule	No change

<p>shelves/bins/racks loaned by a wholesaler may not exceed \$300 per brand at any one time in a licensed premises; and</p> <p>4. Allow the wholesaler to make provision of shelves/bins/racks contingent on a retailer purchasing enough product to complete an initial display.</p> <p>Smith</p>	<p>says.</p> <p>This is not prohibited. Whether to require this is a business decision to be made by each wholesaler.</p>	<p>No change</p>
<p>R19-1-321(M): Allow a wholesaler to furnish, give, or sell, rather than only lend, a product display enhancer to a retailer. Smith</p>	<p>Note that Mr. Smith refers to P/Ws in his comment. R19-1-321(M) applies only to wholesalers for previously explained reasons.</p> <p>This has been previously discussed. In exercising the discretion provided in A.R.S. § 4-243(A)(4), the Department decided to allow a lending relationship between a wholesaler and retailer because it is the least susceptible to abuse as a trade practice. This standard has existed for many years in Arizona.</p>	<p>No change</p>
<p>R19-1-321(C): Allow a wholesaler to affix a price and clean shelves for a retailer. Smith</p>	<p>Note that Mr. Smith refers to P/Ws in his comment. R19-1-321(C) applies only to wholesalers for previously explained reasons.</p>	

	A.R.S. § 4-243(A)(4) allows the Department to establish exceptions to the general prohibition that a wholesaler not provide something of value to a retailer. The Department has decided not to allow a wholesaler to engage in routine business activities of a retailer.	No change
R19-1-320(Q): Eliminate the requirement that meals, beverages, event tickets, and local ground transportation be of nominal value. It is enough to require that these expenses be deductible as business entertainment expenses. Smith	The requirement that these items be of nominal value is intended to level the playing field between large and small P/Ws. Because only a portion of a business entertainment expense is deductible, a small P/W could not compete in this area with a large P/W. This requirement also protects the P/W from possible coercion.	No change
R19-1-320(L): Allow a producer or wholesaler to furnish, give, or sell, rather than only lend, holiday decorations to a retailer.	This has been previously discussed. In exercising the discretion provided in A.R.S. § 4-243(A)(4), the Department decided to allow a lending relationship between a P/W and retailer because it is the least susceptible to abuse as a trade practice. This standard has existed for many years in Arizona.	No change
Clarify that the phrase “holiday	The phrase was changed.	The phrase “holiday-specific

<p>specific” includes decorations that a commonly used on a holiday but may not be holiday specific. Smith</p>	<p>However, the requirement that the decorations be for a specific holiday and bear substantial, conspicuous, and permanently affixed advertising remains.</p>	<p>decorations” was changed to “decorations commonly associated with a specific holiday.”</p>
<p>R19-1-320(F) and (G): Do not limit sporting events or concerts to venues of a permanent occupancy of more than 1,000 persons. Smith</p>	<p>This requirement is to protect the P/W from possible coercion from a retailer that wants sponsorship for a concert involving a disc jockey or karaoke machine or a sporting event such as a dart contest or Jell-O wrestling.</p>	<p>No change</p>
<p>R19-1-321(E): Allow producers and wholesalers, rather than only wholesalers, to furnish “equipment and supplies” used in the modern marketplace, rather than only tapping equipment. Smith.</p>	<p>This has been addressed before. Arizona, like most states, has a three-tiered system for the distribution of spirituous liquors. The three tiers are producers, wholesalers (distributors), and retailers. The basic structure of the three-tiered system is that producers can sell only to wholesalers who call sell only to retailers. Retailers sell to customers. It is not consistent with the three-tiered system to allow producers to deal directly with retailers.</p>	<p>No change</p>
<p>R19-1-313(E), 320(A), and 321(A): Eliminate the inducement/exclusion conditions for permitted trade practice activities. Smith</p>	<p>This language comes directly from A.R.S. § 4-243(A)(2). Statute does not authorize the Department to provide an exception.</p>	<p>No change</p>

<p>R19-1-320(B): Add the phrase “... or knowingly accept” following “solicit.” Isaacson</p>	<p>The change makes both the P/W and retailer responsible for engaging in lawful trade practices.</p>	<p>The phrase was added to R19-1-320(B) and R19-1-321(B).</p>
<p>R19-1-320(I): It is difficult to know the difference between a meal and a snack. Amend this subsection to allow both meals and snacks of nominal value to be provided. Isaacson and Manders</p>	<p>The suggested change is reasonable.</p>	<p>R19-1-320(I)(3) was amended in a manner consistent with that suggested.</p>
<p>R19-1-320(J)(4): Delete this subsection so a menu can list the name of a drink without listing ingredients or brands. Isaacson</p>	<p>The referenced subsection does not require a menu to list ingredients in a drink or specific brands. It requires only that a menu bear the name of the spirituous liquor available from the P/W that furnished the menu.</p>	<p>No change</p>
<p>R19-1-320(O): The amounts listed should be smaller. They are too big to be true samples. Isaacson</p>	<p>The sample sizes listed are maximums. The P/W is free to provide smaller samples. Also, the sample is being provided to a retailer that has not purchased the brand in the last 12 months. It is not a sample to be consumed by a customer of the retailer.</p>	<p>No change</p>
<p>R19-1-321(N): Delete the phrase “...maintain staff or....” before the word “occupy” and insert “... permanently....” This would enable wholesalers to</p>	<p>The Department recognizes that a wholesaler may require dedicated employees to handle accounts of some large retailers. However, it is</p>	<p>The word “permanently” was added as requested. The subsection was also amended to clarify that it is “full-time” staff that is a problem.</p>

<p>have a significant amount of staff present at a retailer to continually maintain and rotate stock. Isaacson</p>	<p>necessary for all involved to understand the line between and responsibilities of employees of the wholesaler and those of the retailer. Employees of the wholesaler cannot provide labor services that should be performed by employees of the retailer without violating the prohibition against providing things of value.</p>	
<p>R19-1-321(C)(2)(b): Delete the phrase “that is at a reasonable height.” The phrase is vague and the act of placing items on shelving is governed by OSHA. Alarcon</p>	<p>A.R.S. § 4-243(A)(4) prohibits a producer or wholesaler from providing a thing of value to a retailer unless an exception is specified by the Department in rule. The exception regarding stocking services that the Department has specified allows a wholesaler to continue to provide traditional delivery and stocking services but prohibits the wholesaler from providing labor services that are the proper responsibility of the retailer.</p>	<p>No change</p>
<p>R19-1-321(L)(4): Amend this subsection to allow cross-merchandising of items such as snack foods and soft drinks. Manders</p>	<p>The suggestion is reasonable.</p>	<p>The requested change was made in the subsection that is now R19-1-321(L)(5).</p>
<p>R19-1-313: Subsection (A)(1) , which requires a sign to</p>	<p>The rule clearly requires only that a sign bear substantial</p>	<p>No change</p>

conspicuously bear substantial advertising for a producer or wholesaler's brand is inconsistent with subsection (A)(1)(a), which says that a sign may include advertising about the producer or wholesaler. Manders	advertising for spirituous liquor available from a P/W. Subsections specifying information that is permissible are included in response to concerns raised by stakeholders.	
R19-1-313(A)(2)(a): Clarify that the value per square foot limitation applies only to banners. Manders	That is not the intent of the rule.	No change
R19-1-313(B): This subsection requires an exterior sign include a trademark, logo, etc, if applicable. This makes it inconsistent with subsection (A), which says a sign may include advertising about the producer or wholesaler. Manders	The Department disagrees that there is an inconsistency but edited subsection R19-1-313(B)(2) to address some of the concerns raised.	Minor edits were made to R19-1-313(B)(2) to address some of the concerns raised.
R19-1-313(B)(1) and (C)(1): These subsections have an unclear purpose. They simply say that an exterior sign must be outside and an interior sign must be inside. Manders	The Department's response to the comment by Mr. Smith requesting that the permitted/prohibited directions of interior/exterior signs be eliminated clarifies why the directions are necessary.	No change
R19-1-313(C)(2): It is nonsensical to require that a sign include certain information "if applicable." Manders	The point is valid.	Minor edits were made to R19-1-313(C)(2) to eliminate the phrase "if applicable."
R19-1-320(A) and R19-1-	The comment is correct.	The citation to federal law was

<p>321(A): The citation to federal law is incorrect. It should be 27 CFR, Chapter 1, Subsection A. Furthermore, this reference covers many topics irrelevant to trade practices. Limit the citation to federal law to only relevant parts and indicate that if there is a conflict, the rule governs. Manders</p>	<p>However, the Department is reluctant to specify only some parts of the federal law. The Department believes that adding the provision regarding a conflict with federal law is sufficient.</p>	<p>changed to “27 CFR, Chapter 1, Subsection A.” The following provision was added: “If there is a conflict between the practices authorized in 27 CFR, Chapter 1, Subsection A, and this Section, this Section governs.”</p>
<p>R19-1-320(D): Eliminate the requirement that novelty items include advertising for the producer, wholesaler, or spirituous liquor. This restriction makes it impossible to give items such as concert or sporting event tickets. Manders</p>	<p>A.R.S. § 4-243(A)(4) allows the Department to establish exceptions to the general prohibition that a P/W not provide something of value to a retailer. The restrictions regarding novelty items are consistent with the standard that has existed for many years in Arizona. Tickets to concerts and sporting events are not novelty items.</p>	<p>No change</p>
<p>R19-1-320(G): Eliminate the requirement that a sponsored concert involve pre-sold tickets. This precludes sponsorship of free private events not open to the public. Manders</p>	<p>The concern is valid.</p>	<p>The definition of concert was amended to include: “...or a live musical, vocal, theatrical, or comedic performance at the licensed premises that is not open to the public.”</p>
<p>R19-1-320(I): Eliminate the prohibition on having an educational seminar at a third-party location.</p>	<p>The subsection does not say that an education seminar cannot be held at a third-party location. It requires only that the third-party location be licensed.</p>	<p>No change</p>

<p>Additionally, prohibiting the provision of meals and transportation expenses is inconsistent with allowable business expenses and is inconsistent with subsection (Q). Manders</p>	<p>As indicated previously, the prohibition regarding a meal of nominal value was changed. However, transportation expenses for a seminar are a business expense of the retailer whose employees are being trained. Under subsection (Q), the transportation is the business entertainment expense of a P/W who is accompanying a retailer.</p>	<p>R19-1-320(I)(3) was amended as previously described.</p>
<p>R19-1-320(J): Eliminate the requirement that a menu may be provided only upon request from a licensed retailer. Manders</p>	<p>The comment is valid</p>	<p>The phrase "...upon request from a licensed retailer" was deleted from R19-1-320(J).</p>
<p>R19-1-320(M): The sample sizes allowed make no sense and are commercially impractical. Manders</p>	<p>The sample sizes are specified in statute, A.R.S. § 4-243(B).</p>	<p>No change</p>
<p>R19-1-321(L): Eliminate the prohibition on a shelf, bin, or rack being temperature controlled. The \$300 limit is sufficient. Manders</p>	<p>This requirement is designed to level the playing field between large and small wholesalers. A large wholesaler may be able to purchase temperature-controlled shelves, bins, or racks in sufficient quantity to bring the value under the \$300 limit.</p>	<p>No change</p>

12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

A general permit is required under R19-1-324, which implements A.R.S. § 4-244.05.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law is applicable to the subject of the rules, specifically 27 CFR, Subchapter A, Part 6, which generally prohibits inducements by a producer or wholesaler to a retailer subject to certain exceptions. This federal regulation explicitly accommodates state law: 27 CFR § 6.21 states that “nothing in this part shall operate to exempt any person from the requirements of any State law or regulation.”

Under 27 CFR § 6.21, it is unlawful for a wholesaler or producer to induce a retailer to purchase any products to the exclusion of products sold or offered for sale by another wholesaler or producer by, among other things, “furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services or other thing of value subject to certain exceptions.” A.R.S. § 4-243(A)(4) contains a nearly identical ban. A.R.S. § 4-243 (A)(4) permits, but does not require, the Department to establish exceptions to this general prohibition “having regard for established trade customs and the purposes of the subsection.” R19-1-320 and R19-1-321 provide these exceptions.

There are differences between the federal rules and rules in this Notice of Final Rulemaking. In particular, the federal rules allows a producer or wholesaler to furnish, give, rent, lend, or sell certain items such as product displays, equipment, and signs to a licensed retailer. The rules in this Notice of Final Rulemaking allow a producer or wholesaler to lend these items to a licensed retailer. The Department did this to reduce the possibility of commercial coercion or bribery, to level the playing field between large and small producers and wholesalers, and to encourage the similar treatment of large and small retailers. In doing this, the Department acted within the authority provided to it under A.R.S. § 4-243(A)(4) and by 27 CFR § 6.21.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

No materials are incorporated by reference.

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

None of the rules was previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 1. DEPARTMENT OF LIQUOR LICENSES AND CONTROL

ARTICLE 1. GENERAL PROVISIONS

Section

R19-1-108. ~~Knowledge of Law and Regulations~~ Repealed

R19-1-110. ~~Sign Limitations~~ Repealed

R19-1-112. ~~Exceptions to General Rule~~ Repealed

R19-1-113. ~~Exemptions to A.R.S. § 4-244.05~~ Repealed

ARTICLE 3. LICENSEE RESPONSIBILITIES

Section

R19-1-302. ~~Repealed~~ Knowledge of Liquor Law; Responsibility

R19-1-313. ~~Repealed~~ Sign Limitations

R19-1-320. ~~Reserved~~ Practices Permitted by a Producer or Wholesaler

R19-1-321. ~~Reserved~~ Practices Permitted by a Wholesaler

R19-1-324. ~~Reserved~~ Standards for Exemption of an Unlicensed Business

ARTICLE 1. GENERAL PROVISIONS

R19-1-108. Knowledge of Law and Regulations Repealed

All licensees and their employees whose duties require or permit the handling of spirituous liquors shall be familiar with the liquor laws and the rules and regulations of the Director and of the State Liquor Board. It is the responsibility of the licensee to ensure that all employees acquire the aforementioned knowledge.

R19-1-110. Sign Limitations Repealed

~~A. A person, firm, or corporation engaged in business as a manufacturer, distiller, brewer, vintner, or wholesaler or any officer, director, agent, or employee of such person may lend, to the retailer any sign for interior or exterior use provided:~~

- ~~1. The sign must bear conspicuous and substantial advertising matter about a product of the manufacturer, distiller, brewer, vintner, or wholesaler.~~
- ~~2. The cost of the sign may not exceed \$400.~~
- ~~3. A sign may not be utilitarian except as to its advertising or information content.~~
- ~~4. No such signs shall be offered or furnished by any manufacturer, distiller, brewer, vintner or wholesaler or by any officer, director, agent, or employee thereof, or by any other person as an inducement to the retailer to purchase or use the products of such manufacturer, distiller, brewer, vintner or wholesaler to the exclusion in whole or in part of the product of any competitor.~~

~~B. No signs or other advertising matter used in connection with the licensed premises of any retailer of alcoholic beverages shall be obscene as determined by applying contemporary state standards.~~

~~C. Licensed special events are not subject to the limitations of subsections (A)(1) through (3).~~

R19-1-112. Exceptions to General Rule Repealed

~~A. The following are exceptions in which producers/wholesalers may furnish to the retailer something of value, as long as the retailer is not induced to purchase spirituous liquor from the producer/wholesaler to the exclusion, in whole or in part, of spirituous liquor sold or offered for sale by other persons.~~

~~B. Licensed special events~~

- ~~1. A producer/wholesaler may participate in an event at which liquor is sold by furnishing advertising, sponsorship, services, or other things of value as long as:
 - ~~a. The event has been issued a special event license.~~~~

- ~~b. The special event license was issued to a civic, religious, or fraternal group, but not a political group.~~
 - ~~c. If the event is being held at a location that is a licensed retail location nothing of value is left at the location or given to the retailer or retail employees at or following the event.~~
- ~~2. A producer/wholesaler may donate, but not sell directly to the group issued the special event license as long as it is not a political group. If the special event licensee is buying spirituous liquor at retail to resell, the wholesaler may invoice the sale through a retailer following completion of the event.~~
- ~~3. At a location issued a special event license spirituous liquor sales may be handled in the following ways:
 - ~~a. In the case of an otherwise unlicensed location the nonprofit group is responsible for sales of spirituous liquor.~~
 - ~~b. In case of a licensed retail location one of the following may occur:
 - ~~i. During the special event the regular licensee ceases all sales of spirituous liquor and the nonprofit group is responsible for all sales of spirituous liquor.~~
 - ~~ii. During the special event the regular licensee conducts all dispensing/serving under the regular retail license and the nonprofit group does none. The regular licensee is responsible for proper service. The liquor dispensed is that purchased by the retailer from the wholesaler.~~
 - ~~iii. During the special event the regular licensee conducts all dispensing/serving under the special event license and the nonprofit group does none. The regular licensee and the special event licensee are responsible. The spirituous liquor dispensed is that purchased/donated by/to the special event licensee.~~
 - ~~iv. During the special event the licensed location is split into an area in which the regular licensee exclusively dispenses and is responsible for all spirituous liquor sales and another separate area in which the nonprofit group exclusively dispenses and is responsible for all spirituous liquor sales.~~~~~~

~~C. Resets; rotations; displays~~

- ~~1. The producer/wholesaler may stock, reset, and rotate at the retail establishment any product that he or she sells to the retailer. Such stocking may include pricing, cleaning shelves, furnishing point of sale written advertising that includes pricing data (as long as it complies with sign limitations), rotating product, cleaning product, or otherwise preparing the product for sale at the point of sale, but may not perform these functions in warm or cold storage areas from which the~~

~~consumers may not purchase product. Retailers shall not require stock reset or rotation as a condition of shelf space, cold box space, or product display space.~~

- ~~2. A producer/wholesaler may furnish reset services as long as a representative of each affected wholesaler is invited to attend such reset by the retailer with reasonable notice not less than 2 working days before the reset and the retailer consents to the reset. As part of the reset the producer/wholesaler may move his or her own product or that of a competitor.~~
- ~~3. A producer/wholesaler may set up a display of his or her product and may with the consent of the retailer move a competitor's product and may move nonalcoholic products or items as necessary to set up the display.~~
- ~~4. No retail display may consist of an item of potential utilitarian value to the retailer or any person after March 1, 1987, facsimiles are acceptable.~~

~~**D. Furnishing retail customers with items of value**~~

- ~~1. A producer/wholesaler may furnish to retail customers advertising novelties which are not directly utilized in the operation of the retail business. Each novelty must be of a value less than \$5.00. In addition, a producer/wholesaler may also furnish to retail customers of any retail establishment items greater than \$5.00 in value but not to exceed a total of \$100.00 in value during any 6:00 a.m. to 1:00 a.m. period per establishment. The items must be given to the customer by the producer/wholesaler employee for each retail establishment and may not pass through the retailer's hands. None of the items may be given to the retailer or the retailer's employees or be left at the retail establishment.~~
- ~~2. Sports schedules that list events at a licensed establishment are permitted.~~

~~**E. Refrigerated vehicles.** A producer/wholesaler may furnish a refrigerated vehicle for an event at a licensed or unlicensed location if a special event license has been obtained (excluding political events) for the event. If there is no special event license no approval is granted. The vehicle may be used for storage and dispensing, but no producer/wholesaler personnel may dispense.~~

~~**F. Print advertising.** Furnishing advertising copy (ad slicks) of nominal value is permissible.~~

~~**G. Sporting events.** A producer/wholesaler may provide to a licensed retailer financial or other forms of event sponsorship, including advertising, if it is in conjunction with a sporting event and no item of utilitarian value remains with the retailer or at the retail location following the conclusion of the sporting event. Signs in connection with sporting events are not subject to value limitations.~~

~~**H. Tradeshow and convention.** A producer/wholesaler may participate by sampling, sponsorship, advertising, or otherwise in tradeshow and conventions at licensed or unlicensed establishments in which there is no special event license as long as no regular licensee benefits other than by the promotion of the event itself. Sampling limitations apply, see subsection (Q).~~

- ~~I. Concerts. A producer/wholesaler may participate by sponsorship, advertising, or otherwise in a concert at a licensed location with the capacity in excess of 500 persons as long as the regular licensee does not benefit other than by the promotion of the event itself.~~
- ~~J. Wine or drink menus. A producer/wholesaler may furnish to a retailer wine or drink menus if the menus have no utilitarian value beyond that of a wine or drink menu and are made available to all retail accounts utilizing such menus.~~
- ~~K. Tapping equipment. All items authorized by R19-1-241 are permitted for all alcoholic beverages.~~
- ~~L. Driver sales. All alcoholic beverages may be sold without prior order from the retailer to the wholesaler, commonly called "driver sales".~~
- ~~M. Coupons and rebates. Coupons and rebates may be distributed by any method including via point of sale, except a producer/wholesaler may not list specific retailers or participate in a retailer's advertisement.~~
- ~~N. Incentive programs between producers and wholesalers. Arizona law does not regulate incentive programs involving only producers and wholesalers.~~
- ~~O. Participation at events without alcoholic beverages. The Department does not regulate the participation by producers/wholesalers in events at which spirituous liquor is not sold, offered or served.~~
- ~~P. Delivery to chain stores/co-ops. Quantity purchases of volume discounted products must be entirely delivered to the approved storage facility of the chain store or retail cooperative.~~
- ~~Q. Malt Beverage Product returns. At the wholesaler's discretion, malt beverage products of a retail establishment that will be closed for thirty days or more may be exchanged, credited, or refunded. With permission of the director, a wholesaler may exchange, credit or refund malt beverage product that the retailer is discontinuing.~~
- ~~R. Sampling by producers/wholesalers. Approved sampling procedures are:~~
- ~~1. Sampling operations must be conducted under the supervision of an employee of the sponsoring distiller, vintner, brewer, or wholesaler and accurate records of all sampling procedures and products must be retained.~~
 - ~~2. Sampling at on premises events or wholesaler's premises must be limited to 12 ounces of beer or "cooler" products, 6 ounces of wine, and 2 ounces of distilled spirits per person per brand.~~
 - ~~3. Sampling at off sale events must be limited to 72 ounces of beer, "cooler" or wine products, and 750 milliliters of distilled spirits per person per brand.~~
 - ~~4. Sampling from a package with a broken seal may be conducted on on sale and wholesaler's premises only. No package may be broken or contents consumed on off sale premises.~~

- ~~5. The wholesaler's representative, when requesting a retail on-sale licensee to prepare a drink for the customer, must pay the retail on-sale licensee for the sample drink.~~
- ~~6. When sampling is conducted on off-sale premises, sampling wares must be distributed to the customer in sealed original packages only.~~
- ~~7. The producer/wholesaler may not buy the retail licensee, or his or her employees, a drink during their working hours or while they are engaged in waiting on or serving customers.~~
- ~~8. The producer/wholesaler may not give a keg of beer, or any spirituous liquor, or other gifts or benefits to a retail licensee.~~
- ~~9. All sampling procedures must conform to federal sampling laws and rules.~~

~~S. Market research programs. Bona fide market research via personal or mail intercept is authorized if:~~

- ~~1. The products being distributed are shipped through or obtained from an authorized licensed wholesaler.~~
- ~~2. People handling the products are 19 years old or older.~~
- ~~3. Participants are of legal drinking age.~~
- ~~4. The total amount of product being tested does not exceed 72 ounces of beer, "cooler", or wine product or 750 milliliters of distilled spirits.~~

~~T. Registration of salespersons or solicitors A.R.S. § 4-222, which required the registration of producer/wholesaler salespersons and solicitors has been repealed. Registration applies to agents of retail cooperatives only.~~

~~U. Holiday Decorations. A distiller, vintner, brewer, importer, producer, or wholesaler may give a retailer brand identified, holiday decorations that have no utilitarian value to the retailer other than as a decoration.~~

R19-1-113. Exemptions to A.R.S. § 4-244.05 Repealed

~~Small restaurants, catering establishments, associations, and business establishments hosting private social functions are exempt from A.R.S. § 4-244.05 if the business establishment meets all of the following conditions:~~

- ~~1. The possession or consumption of spirituous liquor on the premises is limited to wine and beer and is permitted as an incidental convenience to patrons of the business establishment.~~
- ~~2. The business establishment limits possession or consumption of wine or beer on the premises to the hours between noon and 10 p.m.~~
- ~~3. The business establishment or premises allows a patron to possess no more than 24 ounces of beer per person, or 6 ounces of wine per person to be consumed on the premises.~~

- ~~4. The business establishment notifies the Department on a form prescribed by the Department that it permits patrons to consume or possess beer or wine on the premises.~~
- ~~5. The business establishment and/or its proprietor, manager, comptroller, controlling person, or employee shall comply with A.R.S. Title 4, Chapters 1, 2, and 3, and 19 A.A.C. 1.~~
- ~~6. The business establishment and/or its proprietor, manager, comptroller, controlling person, or employee shall not permit the number of patrons within the business establishment to exceed the maximum occupancy limitations. The maximum occupancy limitations are:
 - ~~a. Small restaurant: shall not exceed 40 patrons.~~
 - ~~b. Catering establishment: shall not exceed 300 patrons.~~
 - ~~c. Associations: shall not exceed 300 patrons.~~
 - ~~d. Business establishments hosting private social functions: shall not exceed 300 patrons.~~~~
- ~~7. If any clause, sentence, subsection, Section, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subsection, Section or part thereof directly involved in the controversy in which such judgment shall have been rendered.~~

ARTICLE 3. LICENSEE RESPONSIBILITIES

R19-1-302. Repealed Knowledge of Liquor Law; Responsibility

- A.** A licensee shall take reasonable steps to ensure the following individuals acquire knowledge of A.R.S. Title 4 and this Chapter:
 1. The licensee;
 2. The manager;
 3. Any employee who serves, sells, or furnishes spirituous liquor to a retail customer; and
 4. Any individual who will be physically present and operating the licensed premises.
- B.** This Section is authorized by A.R.S. § 4-112(G)(2).

R19-1-313. ~~Repealed~~ Sign Limitations

A. A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler may directly or indirectly lend to a retail licensee a sign or signs for exterior or interior use if the signs:

1. Conspicuously bear substantial advertising for spirituous liquor available from the producer, domestic microbrewery, wholesaler, or domestic farm winery licensee. An exterior or interior sign may include:

a. Advertising about the producer, domestic microbrewery, wholesaler, or domestic farm winery licensee;

b. Information about a period of time during which the retail licensee offers a special price on spirituous liquor, the special price, and the spirituous liquor; and

c. Information identifying spirituous-liquor drinks specials.

2. Have a cost of no more than:

a. \$400 as calculated using the value per square foot determined by the Director if made of material such as, but not limited to, banner material, cardboard, or poster board, on which the advertising is printed; and

b. \$400 if not included within the provision of subsection (A)(2)(a);

3. Have no utilitarian value other than as advertising;

4. Can be used only as signs;

5. Are not intended to be a fixture of the licensed premises;

6. Are not painted on the licensed premises; and

7. Remain the property of the producer, domestic microbrewery, wholesaler, or domestic farm winery licensee.

B. A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler shall ensure that an exterior sign:

1. Faces away from a building on a licensed premise or, if located on a patio area of the licensed premises, is visible primarily by customers outside of the patio area;

2. Except as allowed under subsection (A)(1), includes the name of the spirituous liquor available from the producer, domestic microbrewery, wholesaler, or domestic farm winery licensee and may include:

- a. The price at which the spirituous liquor is being sold;
 - b. A trademark, logo, or slogan associated with the spirituous liquor;
 - c. The name of a regulated sporting association that has a sponsorship relationship with the spirituous liquor advertised; and
 - d. Identification and location of a community event, concert, or convention lasting no more than 30 days that has a sponsorship relationship with the spirituous liquor advertised.
3. Except as specified in subsection (A)(1)(b), does not include:
- a. Advertising about the retail licensee,
 - b. Advertising about events occurring on the licensed premises, or
 - c. The retailer's name, trademark, slogan, or logo.
- C.** A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler shall ensure that an interior sign:
- 1. Faces the interior of a building on licensed premises or, if located on a patio area of the licensed premise, is visible primarily by customers inside the patio area;
 - 2. Includes applicable informational content such as food pairings or drink specials featuring spirituous liquor available from the producer, domestic microbrewery, wholesaler, or domestic farm winery licensee; and
 - 3. Includes the licensed retailer's name or logo only if the licensed retailer's name or logo is shown in conjunction with at least one of the following:
 - a. The spirituous liquor available from the producer, domestic microbrewery, wholesaler, or domestic farm winery licensee; or
 - b. The name or logo of the producer, domestic microbrewery, wholesaler, or domestic farm winery licensee
- D.** A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler and the retail licensee to which a sign is lent shall make a reasonable effort to ensure that the sign is used in a manner consistent with A.R.S. Title 4 and this Section. The licensed retailer shall cooperate with a request that the sign be removed if the request is made by the producer, domestic microbrewery, wholesaler, or domestic farm winery licensee that lent the sign.

- E. A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler shall not lend a sign or signs to a retail licensee as an inducement to the retail licensee to purchase or use a product available from the producer, domestic microbrewery, wholesaler, or domestic farm winery licensee to the exclusion, in whole or in part, of a product available from a competitor of the producer, domestic microbrewery, wholesaler, or domestic farm winery licensee.
- F. A licensee shall ensure that a sign or other advertising matter displayed at the licensed premises is not obscene when evaluated by contemporary community standards and does not violate A.R.S. Title 4.
- G. This Section is authorized by A.R.S. §§ 4-112(G)(4) and 4-243(A)(4).

R19-1-320. ~~Reserved~~ Practices Permitted by a Producer or Wholesaler

- A. In addition to practices specifically authorized under A.R.S. Title 4 and 27 CFR, Chapter 1, Subchapter A, the practices outlined in subsections (B) through (Q) allow a distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler to furnish something of value to a licensed retailer or other specified licensee as long as the producer or wholesaler does not furnish something of value to induce the licensed retailer or other specified licensee to purchase spirituous liquor from the producer or wholesaler to the exclusion, in whole or in part, of another producer or wholesaler. A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler shall not furnish something of value to a licensed retailer or other specified licensee unless specifically authorized under A.R.S. Title 4, 27 CFR, Chapter 1, Subchapter A, or this Chapter. If there is a conflict between the practices authorized in 27 CFR, Chapter 1, Subsection A and this Chapter, this Chapter governs.
- B. A licensed retailer shall not solicit or knowingly accept from a distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler any activity not outlined in subsections (C) through (Q) unless the activity is specifically authorized under A.R.S. Title 4 or this Chapter.
- C. Participating in a special event.
 - 1. A producer or wholesaler may furnish advertising, sponsorship, services, or other things of value at a special event at which spirituous liquor is sold if:
 - a. A special event license is issued for the special event. A producer or wholesaler shall not pay for advertising, sponsorship, services, or other things of value until the wholesaler or producer confirms that a special event application has been submitted for approval under A.R.S. § 4-203.02;
 - b. The special event license is issued to a charitable, civic, religious, or fraternal organization;

- c. The special event license is not issued to a political committee or organization;
 - d. The producer or wholesaler ensures that nothing of value given to a licensed retailer or employees of a licensed retailer during or after the special event or is left on the licensed premises of a licensed retailer except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D); and
 - e. The producer or wholesaler pays financial sponsorship, if any, to the organization to which the special event license is issued.
- 2. A producer or wholesaler may donate spirituous liquor to a special event licensee identified under subsection (C)(1)(b).
 - 3. A producer or wholesaler may dispense spirituous liquor donated by the producer or wholesaler at a special event.
 - 4. A producer or wholesaler may provide a sign to a special event licensee identified under subsection (C)(1)(b). If the producer or wholesaler provides a sign to a special event licensee, the sign is not subject to R19-1-313.
 - 5. A producer or wholesaler may furnish a vehicle for use by a special event licensee identified under subsection (C)(1)(b). The producer or wholesaler shall ensure the vehicle is used to dispense spirituous liquor only during the days of the special event.
- D.** Providing an item of value to a customer of a licensed retailer. A producer or wholesaler or its employee or independent contractor may provide an item of value to a customer of a licensed retailer if:
- 1. The item is provided directly to the customer of the licensed retailer by the producer or wholesaler or an employee or independent contractor of the producer or wholesaler except that a schedule of sporting events, as defined in subsection (F), may be provided to the customer through the licensed retailer;
 - 2. The item provided has a value less than \$5 and bears advertising about the producer, wholesaler, or spirituous liquor available from the producer or wholesaler. The producer or wholesaler may provide an unlimited number of items;
 - 3. The item provided has a value more than \$5 and bears advertising about the producer, wholesaler, or spirituous liquor available from the producer or wholesaler. The producer or wholesaler shall

ensure that the total value of all items provided does not exceed \$100 during any 6:00 a.m. to 2:00 a.m. period per licensed premises; and

4. The producer or wholesaler ensures that no item of value is provided to the licensed retailer or an employee of the licensed retailer or is left on the licensed premises;

E. Furnishing advertising. A producer or wholesaler may furnish advertising copy in the form of a digital file or camera- or internet-ready images of nominal value to a licensed retailer.

F. Sponsoring a sporting event. If the licensed premises of a licensed retailer has a permanent occupancy of more than 1,000 people and is used primarily for live sporting events, a producer or wholesaler may sponsor and provide advertising to the licensed retailer in conjunction with a live sporting event or telecast of a sporting event at the licensed premises. If the producer or wholesaler provides a sign as part of the sponsorship of a sporting event, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure no item of value remains with the licensed retailer or at the licensed premises after the sporting event except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D). For the purpose of this subsection, live sporting event means an athletic competition governed by a set of rules or customs to which pre-sold tickets are made available to the public. For nationally recognized sporting events that are seasonal, including but not limited to baseball, football, basketball, soccer, and NASCAR, the conclusion of a live sporting event occurs when the season ends rather than after each individual event of the season. A golf tournament is not a live sporting event unless:

1. The golf tournament is regulated by a golf association; or

2. The golf tournament is held for the benefit of an unlicensed organization and the sponsoring producer or wholesaler ensures that:

a. All sponsorship proceeds are provided to the unlicensed organization, and

b. Nothing of utilitarian value or other consideration is provided to a licensed retailer.

G. Sponsoring a concert. If the licensed premises of a licensed retailer has a permanent occupancy of more than 1,000 people and is used primarily as a concert or live sporting event venue, a producer or wholesaler may sponsor and provide advertising to the licensed retailer in conjunction with a concert at the licensed premises. For the purpose of this subsection, “concert” is a live event with pre-sold tickets for a musical, vocal, theatrical, or comedic performance at the licensed premises or a live

musical, vocal, theatrical, or comedic performance at the licensed premises that is not open to the public. If the producer or wholesaler provides a sign as part of the sponsorship of a concert, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure that no item of value remains with the licensed retailer or at the licensed premises after the conclusion of the concert event except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D).

H. Participating in a tradeshow or convention. A producer or wholesaler may provide for a licensee sampling, advertising, and event sponsorship to a trade association in conjunction with a tradeshow or convention if the trade association consists of five or more retail licensees that have no common ownership. If the producer or wholesaler provides a sign as part of the sponsorship of a tradeshow or convention, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure the sign is physically placed at the location where the tradeshow or convention is held. The producer or wholesaler shall remove the sign within one business day after the conclusion of the tradeshow or convention and ensure that no item of value remains with the licensed retailer after the conclusion of the tradeshow or convention event except that the wholesaler may leave items of value with the licensed retailer if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D).

I. Participating in an educational seminar. A producer or wholesaler may participate in an educational seminar for employees of a licensed retailer if:

1. The educational seminar occurs on the licensed premises of a producer, wholesaler, or retailer;
2. Content of the educational seminar is substantially related to spirituous liquor available from the producer or wholesaler;
3. Lodging and transportation expenses incurred by employees of the licensed retailer or the licensed retailer to attend the educational seminar are not paid or reimbursed by the producer or wholesaler. The producer or wholesaler may provide a meal and snacks of nominal value to participants in the education seminar;
4. The retailer's expenses associated with organizing, producing, or hosting the educational seminar are not paid or reimbursed by the producer or wholesaler; and
5. No item of value remains with the licensed retailer after the conclusion of the educational seminar event except that the wholesaler may leave items of value with the licensed retailer if the retailer

is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D).

J. Furnishing a printed menu. A producer or wholesaler may furnish a printed menu for use by a retailer if:

1. All printed menus furnished to the licensed retailer during a calendar year have a fair market value within the limit prescribed by A.R.S. § 4-243(D).
2. A similar menu is made available to all retail accounts that use menus.
3. The menu has no utilitarian value to the licensed retailer except as a menu, and
4. The menu conspicuously bears the name of spirituous liquor available from the producer or wholesaler or the name of the producer or wholesaler.

K. Distributing coupons or rebates. A producer or wholesaler may distribute coupons or rebates to consumers by any means including providing the coupons or rebates to a licensed retailer if the coupons or rebates:

1. Can be used only for an off-sale purchase by the consumer from a licensed retailer,
2. Do not specify a licensed retailer at which the coupons or rebates are required to be used, and
3. Are available in approximately the same number of qualifying products the licensed retailer has available for customers if the coupons or rebates are ultimately redeemed by the licensed retailer.

L. Providing holiday decorations. A producer or wholesaler may lend decorations commonly associated with a specific holiday to a licensed retailer for use on the licensed premises if the decorations:

1. Bear advertising about a brand, producer, or wholesaler that is substantial, conspicuous, and permanently inscribed or securely affixed; and
2. The decorations have no utilitarian value to the licensed retailer other than as decorations for a specific holiday.

M. Providing a sample to a customer of a licensed retailer. A producer or wholesaler may provide a sample of spirituous liquor to a customer of a licensed:

1. On-sale retailer without off-sale privileges if the producer or wholesaler complies with the procedures at A.R.S. § 4-243(B)(2)(b), which limit sampling to 12 ounces of beer or cooler product, six ounces of wine, or two ounces of distilled spirits per person, per brand to be consumed on the licensed premises;

2. Off-sale retailer if the producer or wholesaler complies with the procedures at A.R.S. § 4-243(B)(3)(c), which limit sampling to three ounces of beer, one and one-half ounces of wine, or one ounce of distilled spirits per person, per day. If the sample provided is for off-sale consumption, the producer or wholesaler shall ensure the sample is in an unbroken package;
or
3. On-sale retailer with off-sale privileges if the producer or wholesaler complies with subsection (M)(1) when providing samples under the on-sale portion of the license and subsection (M)(2) when providing samples under the off-sale portion of the license.

N. Conducting market research. A producer or wholesaler may participate in market research regarding spirituous liquor under the following conditions:

1. The spirituous liquor is provided to research participants by personal delivery or through a delivery service provider;
2. The spirituous liquor provided to research participants is obtained from or shipped through a wholesaler;
3. All research participants are of legal drinking age;
4. Any employee of the producer or wholesaler and any employee of a marketing research business conducting the market research that handles the spirituous liquor is at least 19 years old; and
5. The amount of spirituous liquor provided to each research participant does not exceed 72 ounces of beer, cooler product, or wine or 750 milliliters of distilled spirits.

O. Providing a sample to a licensed retailer. A producer or wholesaler may provide a licensed retailer with a sample of a brand of spirituous liquor that the licensed retailer has not purchased for sale within the last 12 months if the sample does not exceed the following:

1. Wine. Three liters;
2. Beer. Three gallons; and
3. Distilled spirits. Three liters.

P. Providing a shelf plan or schematic. A producer or wholesaler may provide a recommended shelf plan or schematic for use by a licensed retailer in displaying spirituous liquor or other product in a point-of-sale area.

- Q.** Providing meals, beverages, event tickets, and local ground transportation. Except as provided under subsection (I), a producer or wholesaler may provide a licensed retailer with meals, beverages, event tickets, and local ground transportation if:
1. The producer or wholesaler accompanies the licensed retailer while meals and beverages are consumed and ground transportation is used;
 2. The value of the meals, beverages, event tickets, and local ground transportation is nominal; and
 3. The value of the meals, beverages, event tickets, and local ground transportation is deductible as a business entertainment expense under the Internal Revenue Code.
- R.** A producer or wholesaler that sells spirituous liquor to another producer or wholesaler is exempt from the credit prohibition in A.R.S. § 4-242.
- S.** Section is authorized by A.R.S. §§ 4-242, 4-243 and 4-244(3).

R19-1-321. Reserved Practices Permitted by a Wholesaler

- A.** In addition to practices specifically authorized under A.R.S. Title 4 and 27 CFR, Chapter 1, Subchapter A, the following practices allow a wholesaler to furnish something of value to a licensed retailer or other specified licensee as long as the wholesaler does not furnish something of value to induce the licensed retailer or other specified licensee to purchase spirituous liquor from the wholesaler to the exclusion, in whole or in part, of another wholesaler. A wholesaler shall not furnish something of value to a licensed retailer or other specified licensee unless specifically authorized under A.R.S. Title 4, 27 CFR, Chapter 1, Subchapter A, or this Chapter. If there is a conflict between the practices authorized in 27 CFR, Chapter 1, Subsection A and this Chapter, this Chapter governs.
- B.** A licensed retailer shall not solicit or knowingly accept from a wholesaler any activity not outlined in subsections (C) through (N) unless the activity is specifically authorized under A.R.S. Title 4 or this Chapter.
- C.** Providing stocking services. A wholesaler may stock any spirituous liquor or other product that the wholesaler sells to a licensed retailer. The stocking service provided by a wholesaler:
1. Shall not alter or disturb any spirituous liquor or other product of another wholesaler;
 2. Shall be performed only at a point-of-sale area, including a cold box, from which a consumer may purchase spirituous liquor sold by the retailer. A wholesaler may move spirituous liquor to or from the following locations on the licensed premises:

- a. A designated delivery entrance, and
 - b. A storage area that is at a reasonable height; and
- 3. May include:
 - a. Rotating, cleaning, or otherwise preparing the spirituous liquor or other product for sale at a point-of-sale area; and
 - b. Furnishing advertising materials displayed at a point-of-sale area as authorized under R19-1-313.
- D.** Providing resetting services. A wholesaler may reset spirituous liquor sold to a licensed retailer if requested by the licensed retailer and the resetting does not alter or disturb the product of another wholesaler. The resetting services provided by a wholesaler:
 - 1. Shall be performed only in a point-of-sale area, including a cold box;
 - 2. Shall not be performed unless at least two working days' notice is provided to any other wholesaler whose product will be affected by the resetting; and
 - 3. Shall not be performed more frequently than once per year if the resetting involves a substantial reconfiguration of the spirituous liquor department of a retailer.
- E.** Furnishing tapping equipment. A wholesaler may furnish tapping equipment under R19-1-326 to a retail licensee.
- F.** Making a driver sale. A wholesaler may sell to a licensed retailer, through a driver sale, at the current market price, spirituous liquor not previously ordered.
- G.** Delivering a specially discounted quantity purchase. A wholesaler may provide a licensed retailer with a specially discounted price for a quantity purchase if the wholesaler delivers the entire quantity purchased to an approved storage facility of the licensed retailer.
- H.** Accepting returned spirituous liquor products.
 - 1. A wholesaler may allow a licensed retailer that intends to be closed for at least 30 days to exchange beer or other malt beverage products purchased from the wholesaler or to receive a credit for or refund of the amount paid for the malt beverage products;
 - 2. With permission from the Director, a wholesaler may allow a licensed retailer that is discontinuing sale of a particular beer or other malt beverage product to exchange the product purchased from the wholesaler or to receive a credit for or refund of the amount paid for the beer or other malt beverage product; and

3. A wholesaler may exchange or accept return of other spirituous liquors as permitted under 27 U.S.C. 205(d) and 27 C.F.R. Subchapter A, Part 11.
- I.** Selling tobacco products or foodstuffs. A wholesaler may sell tobacco products or foodstuffs to a licensed retailer if the price paid by the retailer equals or exceeds the cost to the wholesaler.
 - J.** Furnishing promotional items. A wholesaler may provide promotional items to an on-sale retailer. Promotional items, as defined and limited by A.R.S. § 4-243(D) does not include spirituous liquor.
 - K.** Facilitating a special event. A wholesaler may facilitate a special event by:
 1. Donating spirituous liquor directly to the special event licensee and issuing a net zero cost billing invoice in the name of the special event licensee,
 2. Leaving a delivery vehicle and other equipment necessary for the sale or service of spirituous liquor on the premises of the special event for the duration of the special event and up to one business day before and after the special event,
 3. Leaving spirituous liquor at the special event if:
 - a. The spirituous liquor is properly described on a preliminary billing invoice issued in the names of both the off-sale retailer from which the special event licensee is purchasing the spirituous liquor and the special event licensee,
 - b. The wholesaler issues a final billing invoice in the names of both the off-sale retailer from which the special event licensee is purchasing the spirituous liquor and the special event licensee within five business days after the special event ends, and
 - c. The spirituous liquor is stored securely to ensure only intended persons gain access to the spirituous liquor; and
 4. Selling spirituous liquor directly to the special event licensee at the same price the wholesaler sells the spirituous liquor to on-sale retailers. If the wholesaler sells spirituous liquor directly to the special event licensee, both the preliminary and final billing invoices shall be in the name of the special event licensee.
 - L.** Providing shelves, bins, or racks. A wholesaler may lend a shelf, bin, or rack to a licensed off-sale retailer if the following conditions are met:
 1. The shelf, bin, or rack lent to the licensed off-sale retailer is located in a point-of-sale area.
 2. The shelf, bin, or rack lent to the licensed off-sale retailer does not have an actual cost of more than \$300 per brand, as defined at 27 C.F.R. Subchapter A, Section 6.11, at any one time in the

licensed premises. The cost of the shelf, bin, or rack excludes the cost of transporting and installing the shelf, bin, or rack. The wholesaler shall not pool or combine dollar limitations to provide the licensed off-sale retailer with a shelf, bin, or rack that exceeds the dollar limitation in this subsection;

3. The shelf, bin, or rack bears advertising regarding spirituous liquor available from the wholesaler that is conspicuous, substantial, and permanently inscribed or securely affixed. The name and address of the licensed off-sale retailer may appear on the shelf, bin, or rack;
4. The primary function of the shelf, bin, or rack is to hold and display spirituous liquor available from the wholesaler;
5. The spirituous liquor on the shelf, bin, or rack is only the spirituous liquor advertised on the shelf, bin, or rack by the wholesaler. The shelf, bin, or rack may also hold non-spirituous-liquor products that are being promoted or advertised with the spirituous liquor available from the wholesaler; and
6. The shelf, bin, or rack is not temperature controlled.

M. Providing product display enhancers. A wholesaler may lend to a licensed off-sale retailer a non-functional copy or reproduction of an item that enhances the display of spirituous liquor sold from the display.

N. Providing staff assistance. A wholesaler may use its staff to provide a licensed retailer with assistance in performing the activities outlined in this Section. A wholesaler shall not maintain full-time staff or permanently occupy office space on the licensed premises or at the corporate office of a licensed retailer.

O. This Section is authorized by A.R.S. §§ 4-203.02(H) through (J) and 4-243.

R19-1-324. Standards for Exemption of an Unlicensed Business

A. The owner of a business establishment, business premises, or association hosting a private social function or a small restaurant may act under A.R.S. § 4-244.05 if the owner of the business establishment, business premises, or association hosting a private social function or small restaurant:

1. Submits a Request for Exemption form, which is available from the Department and on its web site;
2. Pays the inspection fee specified in R19-1-102(J); and

3. Ensures that:
- a. Possession or consumption of spirituous liquor on the business premises is permitted only as an incidental convenience to customers;
 - b. Possession or consumption of spirituous liquor on the business premises is limited as follows:
 - i. Small restaurant: between noon and 10:00 p.m.; and
 - ii. Business establishment, business premises, or association hosting a private social function: between 4:00 p.m. and 2:00 a.m.
 - c. A customer is allowed to possess or consume no more than:
 - i. Forty ounces of beer,
 - ii. Seven hundred fifty milliliters of wine, or
 - iii. Four ounces of distilled spirits;
 - d. The occupancy limitation of the business establishment, business premises, or association hosting a private social function or small restaurant does not exceed the following maximum:
 - i. Small restaurant: 50; and
 - ii. Business establishment, business premises, or association hosting a private social function: 300; and
 - e. The owner, manager, comptroller, controlling person, and any employee of the business establishment, business premises, or association hosting a private social function or small restaurant complies with all applicable provisions of A.R.S. Title 4 and this Chapter.
- B.** As provided under A.R.S. § 4-244.05 (J)(4), the Director, agent of the Director, or peace officer empowered to enforce A.R.S. Title 4 and this Chapter may visit and inspect a business establishment, business premises, association, or small restaurant operating under A.R.S. § 4-244.05 and this Section during business hours of the premises.
- C.** This Section is authorized by A.R.S. § 4-244.05.