

**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
R19-1-112	Repeal
R19-1-113	Repeal
R19-1-302	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 Final Rulemaking: 19 A.A.R. 1355, May 24, 2013

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

Address: Department of Liquor Licenses and Control  
800 West Washington, 5th floor  
Phoenix, AZ 85007

Telephone: (602) 542-9021

Fax: (602) 542-6799

E-mail: Pearlette.ramos@azliquor.gov

Web site: www.azliquor.gov

**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 An agency's justification and reason why a rule should be made, amended, repealed , or renumbered, to include an explanation about the rulemaking:**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 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 made in response to public comments are described in item 11.

The Department also clarified language as follows:

R19-1-313(A)(6) to indicate that it is the use of a permanent medium rather than use of only paint that is not allowed; and

R19-1-321(D)(2) to indicate that before a resetting is done by a wholesaler, it is the retailer who must provide notice to another wholesaler if the other wholesaler's product needs to be moved before the resetting is done. 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).

**NOTE: At its meeting on May 6, 2014, the Council approved the rule package submitted by the Department with the following changes:**

- **The repeal of R19-1-110 was to be deleted;**
- **The new Section R19-1-313 was to be deleted; and**
- **The phrase “that is at a reasonable height” was to be deleted from R19-1-321(C)(2)(b).**

**The Department made all of the required changes. The comments regarding the Sections and subsection involved in these changes and the Department's analysis have not been changed in item 11.**

**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 Issacson for the Arizona Wine and Spirits Wholesale Association (AWSWA). Greg Harris, on behalf of Southern Wine and Spirits, submitted comments opposing the comments made by 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
<p>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</p>	<p>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 in position to amend the subsections as requested.</p>	<p>The Department amended the subsections to clarify that the statutory exception provided in A.R.S. § 4-243(D) applies.</p>
<p>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:</p> <ol style="list-style-type: none"> <li>1. Engage in legitimate brand promotion activities such as furnishing product displays, stocking services and point-of-sale advertising, and resetting product;</li> <li>2. Furnish tapping equipment and lend product display enhancers;</li> </ol>	<p>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</p>	<p>No change</p>

<p>3. Furnish promotional items to all retailers; 4. Facilitate a special event; and 5. Sell foodstuffs to retailers. Smith</p>	<p>the extent that the Department's previous rule allowed these activities, the rule was inconsistent with statute and agency practice.</p>	
<p>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</p>	<p>There is no need to make this change. It is the law that a business entity can work through an employee or independent contractor.</p>	<p>No change</p>
<p>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 types of media to advertise the events. Smith</p>	<p>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.</p>	<p>"Location" was added to R19-1-313(B)(2)(d). No change</p>
<p>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</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 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</p>	<p>No change</p>

	able to purchase greater quantities of spirituous liquor. The limits are also consistent with industry practice.	
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. Smith	If a producer or wholesaler identifies multiple retailers in advertising, the P/W is 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.	No change
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 <b><u>approximately</u></b> 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	No change  No change

	coupons, which would be a thing of value. There is no need to burden P/Ws or retailers with additional recordkeeping requirements.	
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 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.	No change
R19-1-313: Eliminate the permitted/prohibited directions that interior/exterior signs may face. Smith	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.	No change
R19-1-313: Eliminate the	A.R.S. § 4-243(A)(4) allows	No change

<p>provisions that a sign:</p> <ol style="list-style-type: none"> <li>1. Have no utilitarian use other than as advertising;</li> <li>2. Can be used only as a sign; and</li> <li>3. Is not intended to be a fixture of the licensed premises. Smith</li> </ol>	<p>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 light that can be removed are not fixtures.</p>	
<p>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</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 \$400 standard has existed for many years in Arizona. As used in the rule, “calculated” has its ordinary, dictionary meaning.</p>	<p>No change</p>
<p>R19-1-313: Add a provision requiring that advertising on signs include the product or industry member. Smith</p>	<p>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</p>	<p>No change</p>

	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.	
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. Anything else would be a thing of value and violate A.R.S. § 4-243(A)(4).	No change
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,	This has been previously	No change

<p>give, or sell, rather than only lend, shelves/bins/racks to a retailer;</p>	<p>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>2. Add that the primary function of shelves/bins/racks is to hold and display spirituous liquor;</p>	<p>This is an accurate statement and provides clarifying information.</p>	<p>A new subsection, R19-1-321(L)(4), was added.</p>
<p>3. Clarify that the total value of shelves/bins/racks loaned by a wholesaler may not exceed \$300 per brand at any one time in a licensed premises; and</p>	<p>That is exactly what the rule says.</p>	<p>No change</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. Smith</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.  This has been previously</p>	<p>No change</p>

	<p>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>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> <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.</p>	<p>No change</p>
<p>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</p>	<p>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</p>	<p>No change</p>

	area with a large P/W. This requirement also protects the P/W from possible coercion.	
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 specific” includes decorations that a commonly used on a holiday but may not be holiday specific. Smith	The phrase was changed. However, the requirement that the decorations be for a specific holiday and bear substantial, conspicuous, and permanently affixed advertising remains.	The phrase “holiday-specific decorations” was changed to “decorations commonly associated with a specific holiday.”
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	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.	No change
R19-1-321(E): Allow producers and wholesalers, rather than only wholesalers, to furnish “equipment and supplies” used in the modern marketplace,	This has been addressed before. Arizona, like most states, has a three-tiered system for the distribution of spirituous liquors. The three tiers are	No change

rather than only tapping equipment. Smith.	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.	
R19-1-313(E), 320(A), and 321(A): Eliminate the inducement/exclusion conditions for permitted trade practice activities. Smith	This language comes directly from A.R.S. § 4-243(A)(2). Statute does not authorize the Department to provide an exception.	No change
R19-1-320(B): Add the phrase "... or knowingly accept" following "solicit." Isaacson	The change makes both the P/W and retailer responsible for engaging in lawful trade practices.	The phrase was added to R19-1-320(B) and R19-1-321(B).
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	The suggested change is reasonable.	R19-1-320(I)(3) was amended in a manner consistent with that suggested.
R19-1-320(J)(4): Delete this subsection so a menu can list the name of a drink without listing ingredients or brands. Isaacson	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	No change

	from the P/W that furnished the menu.	
R19-1-320(O): The amounts listed should be smaller. They are too big to be true samples. Isaacson	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.	No change
R19-1-321(N): Delete the phrase "...maintain staff or...." before the word "occupy" and insert "... permanently...." This would enable wholesalers to have a significant amount of staff present at a retailer to continually maintain and rotate stock. Isaacson	The Department recognizes that a wholesaler may require dedicated employees to handle accounts of some large retailers. However, it is 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.	The word "permanently" was added as requested. The subsection was also amended to clarify that it is "full-time" staff that is a problem.
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	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	No change

	<p>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>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 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</p>	<p>The rule clearly requires only that a sign bear substantial advertising for spirituous liquor available from a P/W. Subsections specifying information that is permissible are included in response to concerns raised by stakeholders.</p>	<p>No change</p>
<p>R19-1-313(A)(2)(a): Clarify that the value per square foot limitation applies only to banners. Manders</p>	<p>That is not the intent of the rule.</p>	<p>No change</p>
<p>R19-1-313(B): This subsection requires an exterior sign include a trademark, logo, etc, if applicable. This makes it inconsistent with subsection</p>	<p>The Department disagrees that there is an inconsistency but edited subsection R19-1-313(B)(2) to address some of the concerns raised.</p>	<p>Minor edits were made to R19-1-313(B)(2) to address some of the concerns raised.</p>

(A), which says a sign may include advertising about the producer or wholesaler. Manders		
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 Department initially made the requested change but GRRC staff believed the rule was clearer with “if applicable” at the beginning of the subsection.	No change
R19-1-320(A) and R19-1-321(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	The comment is correct. 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.	The citation to federal law was 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.”
R19-1-320(D): Eliminate the requirement that novelty items include advertising for the producer, wholesaler, or spirituous liquor. This	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	No change

<p>restriction makes it impossible to give items such as concert or sporting event tickets. Manders</p>	<p>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, which generally exceed the value limitations in rule, are not novelty items.</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>Additionally, prohibiting the provision of meals and transportation expenses is inconsistent with allowable business expenses and is inconsistent with subsection (Q). Manders</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>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>No change</p> <p>R19-1-320(I)(3) was amended as previously described.</p>

R19-1-320(J): Eliminate the requirement that a menu may be provided only upon request from a licensed retailer. Manders	The comment is valid	The phrase "...upon request from a licensed retailer" was deleted from R19-1-320(J).
R19-1-320(M): The sample sizes allowed make no sense and are commercially impractical. Manders	The sample sizes are specified in statute, A.R.S. § 4-243(B).	No change
R19-1-321(L): Eliminate the prohibition on a shelf, bin, or rack being temperature controlled. The \$300 limit is sufficient. Manders	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.	No change

As part of its review of the submitted rule package, GRRC staff asked the Department to clarify the meaning of "nominal value" as used in R19-1-320(Q) asserting that the phrase "is patently ambiguous." The Department decided to delete the phrase from the rule. This change is not substantial under the standards established at A.R.S. § 41-1025(B). The persons affected by the rule, producers and wholesalers, understood, as a result of participating almost seven years in the rulemaking process, that the rule affected them. The subject matter, practices permitted by a producer or wholesaler, remains the same as that published in the proposed rule. The effect of the rule without the "patently ambiguous" provision regarding nominal value remains the same as the effect with the provision because the overarching law, that it is unlawful for a producer or wholesaler to provide things of value to a retailer, controls (See A.R.S. § 4-243(A)(4)).

At the suggestion of GRRC staff and to remove an apparent contradiction between the first and second sentences of R19-1-321(C)(2), the word "only" was deleted. This change is not substantial under the standards established at A.R.S. § 41-1025(B).

As allowed under A.R.S. § 41-1052(I), the following individuals submitted comments to the Council after the Department submitted the rule package to the Council for its review and action: Karen Manders on behalf of Anheuser-Busch, Camila Alarcon on behalf of Total Wine and More, Adam Smith on behalf of the Distilled Spirits Council of the United States (DISCUS), and Lorene Ely on behalf of Jazz in Arizona. Except for the comments submitted by Ms Ely, the other comments were substantially similar to those the same individuals submitted previously. The comments and the Department’s analysis and response follow:

<p>R19-1-313: The sign limitations are unconstitutionally vague under the Central Hudson Gas &amp; Electric Corp. case.</p> <p>Ms Manders analyzes the rule using the four-prong test provided in the Central Hudson case. She indicates the signs regulated are protected speech, a lawful activity, and not misleading (prongs one and two of the test). She concedes that the Department’s interest in reducing commercial coercion and bribery is substantial (prong three of the test). She concedes that the old and new rules are substantially similar in content and that most of the limitations are directly related to the Department’s substantial interest. She expressed uncertainty regarding whether the distinction between interior and exterior signs was related to</p>	<p>Ms Manders has made similar comments numerous times during the rulemaking process and the Department has addressed them repeatedly. It was P/Ws that specifically asked the Department to:</p> <ol style="list-style-type: none"> <li>1. Make a distinction between interior and exterior signs,</li> <li>2. Provide a way to determine the value of a sign that was independent of the P/Ws’ ability to produce signs, and</li> <li>3. Specify clearly conduct that is required, permitted, and prohibited regarding signs.</li> </ol> <p>Ms Manders argument that the rule is unconstitutional under the Central Hudson case rests primarily on the fourth prong of the test—that the rule is more extensive than necessary to advance the state’s substantial interest. She asserts the rule is more extensive than necessary</p>	<p>No change</p>
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<p>the Department’s substantial interest. This brings the analysis to the fourth prong—whether the regulation is more extensive than necessary to advance the state’s interest. Although she previously said the old and new rules are substantially similar in content, Ms Manders now says the new rule substantially changes the current law by adding numerous ambiguous and unclear restrictions. Ms Manders’s confusion apparently results from the fact the rule specifies conduct that is required, permitted, and prohibited regarding signs. Ms Manders also indicates that the rule is far more restrictive than federal law although she concedes the additional regulation is within the Department’s statutory authority.</p>	<p>because of the addition of numerous” ambiguous and unclear restrictions.” The Department respectfully disagrees.</p> <p>One of the new restrictions is a way to calculate the value of a sign that is independent of the P/Ws’ ability to produce signs. This restriction is necessary to level the playing field between large and small P/Ws. A large P/W frequently has its own print shop and can produce signs at almost no cost. Without the method of calculating cost specified in the rule, smaller P/Ws, which have to have signs produced by a third-party, are at a competitive disadvantage.</p> <p>The distinction between interior and exterior signs is added to clarify that a sign that includes information about the retailer is a thing of value (advertising) if it is placed in a manner to encourage people to enter the licensed premises. However, after people have entered the licensed premises, a sign that provides some information about the retailer does not have</p>	
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	<p>the same effect.</p> <p>Ms Manders argues that the language regarding what is required, permitted, and prohibited regarding signs is confusing, attempts to apply the rule to an Anheuser-Busch neon sign, and claims to be uncertain whether the sign would be allowed under the rule because the sign contains no informational content and the rule provides that an interior sign shall include informational content that is applicable. The Department disagrees that the language is confusing. The rule clearly indicates that if no informational content is applicable, none is needed on an interior sign.</p>	
<p>R19-1-321(L): The restriction on temperature controlled shelves, racks, or bins should be deleted. The \$300 limitation per brand is sufficient. Further, the term “temperature controlled” is vague and ambiguous because it does not say whether it applies to an electric bin or simply one that has a thermostat. Manders</p>	<p>This restriction is part of the Department’s effort to level the playing field between large and small wholesalers, a goal that Ms Manders questions is appropriate in spite of the fact the Department is required under A.R.S. § 41-1035 to reduce the impact of its rulemakings on small businesses.</p>	<p>No change</p>

	<p>A large wholesaler can use its considerable buying power to purchase numerous temperature-controlled shelves, racks, or bins at a price that is much less than that available to a small wholesaler. This enables the large wholesaler to provide multiple temperature-controlled units to retailers and ensure that the large wholesaler’s product receives prime display space.</p> <p>The term “temperature controlled” is clear. A bin with ice is not temperature controlled because ice melts. A thermostat is simply a component of a control system that senses the temperature of the system—it is not the control system. A temperature-control system may be electrical or mechanical. The key is that it is a system that controls temperature.</p> <p>It should be noted that Ms Manders comments on behalf of Anheuser-Busch, which is a producer rather than a wholesaler so the provision regarding temperature-controlled shelves, bins, and racks does not apply to</p>	
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	Anheuser-Busch.	
R19-1-320(D): It is inconceivable that an item given to a consumer could bribe a retailer. Even if the permitted items could be used as a bribe, the cost limitations protect against any inappropriate influence. Manders	Retailers frequently advertise that small items will be given to customers hoping this will encourage more customers. So, it is clear that if a P/W provides these items to customers, the P/W is also providing something of value to the retailer, which could be used as a bribe. Ms Manders is correct that the cost limitations and the requirement that the items contain advertising for the P/W minimize the opportunity for inappropriate influence. That is why the requirements are in rule.	No change
R19-1-321(C)(2)(b): Remove “that is at a reasonable height” from this subsection so a wholesaler may move spirituous liquor for retailers. The phrase is vague, inconsistent with current practices, and specifically targets, at the request of other members of the alcohol industry, the practices of Total Wine. Alarcon	It should be noted that the rule to which Total Wine objects regulates the conduct of wholesalers. No wholesalers have objected to the rule.  The rule is being amended to allow wholesalers greater flexibility in stocking and to make it consistent with industry practice in Arizona. The current rule only allows stocking of “...product for sale at the point of sale but ... not ... in warm or	No change

<sup>1</sup> The May 13, 2013, advisory notice is attached.

	<p>cold storage areas from which consumers may not purchase product.” The new rule allows a wholesaler to move product to and from a delivery entrance or storage area that is at a reasonable height. The movement must still be to a point-of-sale area.</p> <p>The phrase “at a reasonable height” is designed to provide flexibility. The Department considered and rejected a provision that stocking could not involve use of assistive devices because use of a small stool or stepping onto a case of beer seemed reasonable. The Department also determined that specifying a particular height would unnecessarily burden businesses. The Department recognized that different retailers have different business needs and models and wanted the rule to provide only limited regulation of different business practices regarding storage. The flexibility in the rule allows wholesalers to provide stocking services from different kinds of delivery entrances or storage areas to</p>	
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	<p>point-of-sale areas. Because no wholesalers have objected to the rule, the Department believes wholesalers understand the flexibility intended by the phrase “at a reasonable height.”</p> <p>The new rule is consistent with current practices in Arizona, most wholesalers comply with the current practice, and the Department seldom has to take enforcement actions regarding the practice. However, on May 13, 2013, after becoming aware that some wholesalers were not complying with the practice, the Department issued an advisory notice<sup>1</sup> that said “The Department considers the labor of a wholesaler’s employee to be a thing of value. A wholesaler violates A.R.S. § 4-243 when its employees provide an off-sale retailer stocking services in storage areas...”</p> <p>The new rule regulates the point at which a wholesaler’s act of delivering and stocking product at a point-of-sale area ceases to be stocking and becomes the act of providing labor services to the retailer. If the wholesaler</p>	
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	<p>uses fork lifts or ladders to lift product above a reasonable height, regardless of how safe the fork lifts or ladders are, the wholesaler is providing labor services, a thing of value, for which the retailer would have to pay if the retailer had its employees provide the labor.</p> <p>OSHA regulations, which are concerned with employee safety, are not applicable in this case. The “reasonable height” provision is not about safety—it is about a wholesaler providing a thing of value, i.e., wholesaler-employee services, to a retailer.</p> <p>The rule is consistent with federal law that allows a wholesaler to provide stocking. Federal law clearly says that “the act by an industry member of furnishing ...<b>services</b>, or other things of value to a retailer constitutes a means to induce...” When providing stocking becomes providing labor services, it becomes a means to induce and is not allowed under either the current or new rule.</p>	
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	<p>The Department’s rules apply to all industry members. No rule specifically targets Total Wine.</p>	
<p>R19-1-320 and R19-1-321: Producers should be afforded the same opportunities as wholesalers to engage in trade practices with retailers. We respectfully disagree that allowing a producer to support its brand is inconsistent with the three-tier system. Smith</p>	<p>The Department addressed substantially similar comments earlier in the Preamble. Mr. Smith submitted the substantially similar comments before the Department submitted the rule package to GRRC.</p> <p>The distinction made between R19-1-320 and R19-1-321 is necessary to be consistent with the three-tier system for production and distribution of spirituous liquor. Under the three-tier system, a producer sells spirituous liquor to a wholesaler who sells the spirituous liquor to a retailer who sells the spirituous liquor to the consumer. Allowing producers to have the same opportunities as a wholesaler would collapse the first tier. Independence of the three tiers is necessary to prevent formation of vertical monopolies. Additionally, when a producer sells spirituous liquor to a wholesaler, the</p>	<p>No change</p>

	<p>producer no longer owns the spirituous liquor and is not in position to engage in the activities permitted under R19-1-321, all of which involve servicing spirituous liquor sold to a retailer.</p> <p>If a producer believes that a particular distributor is not promoting its product sufficiently, the solution is to change distributors.</p> <p>Mr. Smith correctly indicates that the Department’s current rule does not make the distinction between producers and wholesalers that is made in R19-1-320 and R19-1-321. To the extent that the Department’s previous rule allowed producers to engage in activities not allowed under R19-1-321, the rule was inconsistent with statute and agency practice.</p>	
<p>R19-1-324: The rule change will have the effect of excluding Jazz in Arizona from acting under A.R.S. § 4-244.05. Ely</p>	<p>Under the current rule, small restaurants, catering establishments, associations, and business establishments hosting private social functions” may act under A.R.S. § 4-244.05. It was never the Department’s intent that a small restaurant could act under</p>	<p>No change</p>

	<p>A.R.S. § 4-244.05 only if hosting a private social function. In the new rule, small restaurants may act under A.R.S. § 4-244.05 without hosting a private social function. Contrary to Ms Ely’s belief, the rule has not changed regarding the requirement that associations act under A.R.S. § 4-244.05 only if hosting a private social function.</p> <p>It appears the Department indicated Jazz in Arizona could act under A.R.S. § 4-244.05 when, as the Department now understands Jazz in Arizona’s business model, that clearly is not the case. The Department has met with representatives of Jazz in Arizona to clarify ways in which the association can be authorized to act under A.R.S. § 4-244.05 or apply for a license.</p>	
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**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 § 6.1 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

R19-1-112. ~~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

R19-1-320. ~~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.~~

### **R19-1-112. 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. Tradeshows and convention. A producer/wholesaler may participate by sampling, sponsorship, advertising, or otherwise in tradeshows 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).

**R19-1-320. ~~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 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; and
  2. 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 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; 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 the retailer provides at least two working days' notice to any other wholesaler whose product needs to be affected so the resetting can be performed; 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 small restaurant or business establishment, business premises, or association hosting a private social function may act under A.R.S. § 4-244.05 if the owner of the small restaurant or business establishment, business premises, or association hosting a private social function:

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 small restaurant or business establishment, business premises, or association hosting a private social function 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 small restaurant or business establishment, business premises, or association hosting a private social function 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 small restaurant, business establishment, business premises, or association 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.