



Industry Advisory
November 6, 2012

Wholesale Licensee Industry Practices

The purpose of this industry advisory is to address questions that have been raised since the September 19, 2012 wholesaler licensee meeting. The September wholesale licensee meeting was held so that laws, rules and industry practices would be reviewed to ensure an open and competitive market in Arizona where no advantage is given to one liquor-licensed business over another.

Below you will find follow-up questions, Department of Liquor responses, and applicable statute/rule references (including TTB and the State of Arizona). We hope you find this helpful.

If, after reviewing the content of this Industry Advisory, you wish to discuss these matters further, please contact our office.

Sincerely Yours,

Alan Everett
Director

Question - Channel Pricing: You stated that the two types of lawful liquor pricing in Arizona include on- and off-premise. Are subcategories of on- and off- premise lawful? Examples of subcategories include: off-premise chain grocery, off-premise chain convenience, off-premise independent, and off-premise mass merchandise.

DLLC Response: No. The director permits two pricing categories, commonly referred to by the industry as "channels". The two "channels" are on-sale and off-sale. Without exception, there are no additional categories or sub-categories of liquor pricing in Arizona. Discount prices must be volume-based and must be made available to all licensees in that respective category, A.R.S. §4-227.

Question – Are CQDs allowed?:

DLLC Response: No. CQD is an acronym for Cumulative Quantity Discount. Cumulative Quantity Discounts are a violation of R19-1-226(A)(8).

Please see the previous question (**Channel Pricing**) for lawful price discount practices.

Question - Increasing Shelf Space: What types of shelving and racks may a wholesale licensee provide at retail locations?

DLLC Response: The Department of Liquor looks to the Code of Federal Regulations (27 CFR 6.83) regarding product displays.

The TTB defines “products displays” as wine racks, bins, barrels, casks, shelving, or similar items with a primary function of holding and displaying consumer products.

Under Arizona law, product displays have the fair market value of the actual cost to the wholesaler or producer who initially purchased the display. Transportation and installation costs are not included.

A wholesale licensee may give or sell a product display to a retail licensee if:

- 1) the total fair market value does not exceed \$300 per brand per retail establishment at one time;
- 2) the wholesale licensee did not pool or combine dollar limitations to provide a retail licensee with a product display in excess of the \$300 fair market value; and
- 3) all product displays must bear conspicuous advertising for the product, wholesale licensee or producer licensee (i.e. name, logo) which is a permanent part of the product display.
- 4) In addition, product displays must hold and display:
 - a. The product permanently advertised on the display, OR
 - b. Products from the wholesale licensee or producer licensee permanently advertised on the display.

The wholesale licensee may deny a retail licensee the use of the product display if the retail licensee does not purchase enough product to fill the display. No other condition can be imposed by the wholesaler on the retailer in connection with the product display.

Question – Buy Backs: Under what circumstances can a wholesale licensee buy back, refund, credit, or in some way compensate a retailer for unused product?

DLLC Response: Liquor, when discontinued by the wholesale or producer licensee, can be returned to the wholesale licensee and the retail licensee can be refunded, commonly referred to by the industry as a “buy back”.

When the decision to discontinue the sale of liquor is made by the retail licensee, the wholesale “buy back” transaction becomes a consignment sale. Also, prior to delivering the products to the retail licensee, if a wholesale licensee agrees to reclaim unsold product, the transaction is a consignment sale. Consignment sale of liquor is unlawful with one exception for malt beverages:

Arizona Administrative Code R-19-1-228(Q) addresses malt beverage returns as follows:

“...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.”

A malt beverage return, prior to the return, may be granted to the wholesale licensee by the director unless it is a shelf and floor reset or excessive over ordering at the retail location has occurred.

The Department of Liquor looks to federal statutes (27 U.S.C. § 205) and the Code of Federal Regulations (27 CFR 11.32 through 11.39) regarding the sale of liquor on consignment. Use this link for the 9/4/2012 Federal Alcohol Administration Act on consignment sales:

http://www.ttb.gov/trade_practices/consignment_sales.shtml.

Question – Merchandising: The practice of wholesale licensee staff stocking product on shelves and on displays at a retail location is commonly referred to by the industry as “merchandising”. That said, is it legal for a retail licensee to demand that a wholesale licensee provide personnel to stock shelves at specified times that do not coincide with scheduled deliveries, order taking (sales call), or quality checks?

DLLC Response: No. A wholesale licensee may fill shelves during normal deliveries, order taking (sales call), and make quality checks to ensure that, when applicable, the product has not expired. A retail licensee’s demand for a wholesale licensee to provide a stocking, reset, or rotate service (as described in A.A.C. R19-1-228(C)(1)) as a condition for shelf space or placement would be unlawful.

NOTE: A wholesale licensee may not provide in-house staff or have permanent office space at any retail location, A.R.S. §4-243(A)(9) and (E).

Question – \$500 Promotional Merchandise Limit: Does A.R.S. §4-243(D) mean that a licensed wholesaler may give \$500.00 per producer represented by the wholesaler to a licensed retailer per year? And, is it true that items such as patio umbrellas, pool table lights, logoed pool table felt, clocks, bar stools, tables, draft dispensing equipment, free product, etc., may not lawfully be provided to a retail licensee by a wholesale licensee under this law?

DLLC Response: The response to the first question is that the \$500.00 promotional item limit applies to each wholesale licensee, per licensed retail location, per year. This \$500.00 cap does NOT allow the wholesale licensee a \$500.00 limit per brand and does NOT allow the wholesale licensee a \$500.00 limit per producer that it represents, A.R.S. §4-243(D).

Transactions between the producer and the retail establishment are limited, A.R.S. §4-243.04(B).

In response to the question about promotional items, A.R.S. §4-243(D) defines “promotional items” as equipment, supplies, novelties or other advertising specialties that conspicuously display the brand name of a liquor product.

Examples of unlawful promotional items provided by producer and wholesale licensees to retail licensees include patio umbrellas, pool table lights, logoed pool table felt, clocks, bar stools, tables, draft dispensing equipment, free product, glassware, coasters, bar mats, and other items potentially useful to the retail licensee in the conduct of business, R19-1-226(A)(1).

Examples of acceptable “promotional items” provided by producer and wholesale licensees to retail licensees include key chains, recreational guides, sports schedules and other items which are not directly useful to the retailer in the conduct of business, R19-1-226(B)(3).

It is important to note that Title 4 applies to all licensees, their 3rd-party promoters, ad agencies, and any other representatives engaged in increasing product sales. A.R.S. §4-243(A)(5) and R19-1-226(A)(4)

Accurate and complete documentation of compliance with the \$500.00 promotional items limit

is the responsibility of all licensees, A.R.S. §4-119 and A.A.C. R19-1-218.

Question – Items of Utilitarian Value: May a wholesale licensee alter an item to eliminate possible utilitarian value so it may be displayed at a retail location? Some examples are: cutting a hole into a boat or cooler, removing bike pedals or chains.

DLLC Response: No. A wholesale licensee-provided display using a bicycle, boat, cooler, umbrella, etc. is unlawful. Using a facsimile, for example a cardboard cut-out of a bike, boat, cooler or umbrella, is permitted, A.R.S. §4-243(E), A.A.C. R19-1-226(A)(1) and A.A.C. R19-1-228(C)(4)

NOTE: Retail licensees will be cited for requesting and knowingly receiving anything of value from a producer or wholesale licensee except for lawful quantity discounts, A.R.S. §4-243 (E) and A.R.S. §4-227.

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, R19-1-228(U).

Question – 3rd Party Liquor Advertising and Promotion Companies: Can an advertising agency or promotional firm that is working directly or indirectly for a producer licensee or wholesale licensee provide items of utilitarian value that are representational or exclusively for the promotion/advertising of a liquor product to a retailer? Examples: giving away, selling or loaning coupon printing devices, digital advertising displays and equipment that assists consumers in applying in-store discounts.

DLLC Response: No. Items of value may not be furnished to retail licensees directly or indirectly by a producer licensee or wholesale licensee, A.A.C. R19-1-226(A)(4) and A.R.S. §4-243(A)(5).

Question – \$400 Sign Limitation: An interior or exterior sign provided to a retail licensee may not exceed \$400.00 in value. When a sign is printed in a wholesale licensee's on-premise sign shop, is the sign value based on the fair market value as if the retail licensee had purchased the sign from a commercial sign shop not owned by the wholesale licensee?

DLLC Response: Yes. Sign valued at \$400.00 or less may be LOANED to a retail licensee by a wholesale licensee. The Department of Liquor will determine the "Fair Market Value" of a sign by receiving pricing of similar signage from local, commercial sign companies. Volume discount pricing will be factored in when applicable, A.A.C. R19-1-210.

Signage does not include patio umbrellas, pool table lights, logoed pool table felt, clocks, bar stools, tables and other items of utilitarian value.

When a wholesale licensee donates signs for a special event, the cost may be declared as a donation to the event licensee. Accurate documentation and record keeping are required, A.R.S. §4-119 and A.A.C. R19-1-218

Question – Loaning Equipment, Extension of Premise: May a wholesale licensee loan/rent equipment to a retail licensee who has been granted an extension of premise license?

DLLC Response: No. Whether it's a temporary or permanent extension of premise, the law does not change: a permanently licensed retail location may receive equipment limited to the

items identified in A.R.S. §4-243 (D), A.A.C. R19-1-210, A.A.C. A.A.C. R19-1-226(B), A.A.C. R19-1-228, A.A.C. R19-1-230.

Under a licensed special event, a wholesale licensee may furnish limited things of value, A.A.C. R19-1-228(B)(1). This includes refrigerated vehicles for storing and dispensing, R19-1-228(E).

Under a licensed special event, a wholesale licensee may donate (not sell directly) liquor to an event licensed to a non-political group, A.A.C. R19-1-228(B)(2)

Question – Loaning Equipment, Large Event: May wholesale licensees loan/rent equipment to a retail licensee who is having an event with over 500 people attending?

DLLC Response: No. The only exception is when the event is a licensed special event, A.A.C. R19-1-228(E).

When a concert is held at a permanently licensed location with a capacity in excess of 500 persons, the wholesale licensee may participate by sponsorship, advertising, A.A.C. R19-1-228(I). A.A.C. R19-1-228(I) does not apply to a licensed event held at a location with a capacity of less than 500 people.

Question – Signage and Banners - Content: Is it correct that interior and exterior banners and signage may not contain utilitarian content?

DLLC Response: Yes. Whether interior or exterior, loaned or donated, the sign may only advertise information directly related to product(s) and/or price information. "Utilitarian content" includes information such as the name or logo of the retail establishment, and words that provide directional information such as "drive-through", "enter here", A.A.C. R19-1-210.

The wholesale licensee may LEND the sign to the retail licensee, A.A.C. R19-1-210(A), or donate the sign to a special event licensee, A.A.C. R19-1-228(B).

Question –Delivery after License Renewal/Expiration: May a wholesale licensee deliver product to a retail location after the retail license has expired?

DLLC Response: No. A wholesale licensee must deliver only to licensed retail locations. Wholesale delivery staff may use the "Deliverable Locations" database posted on the Department of Liquor website: <http://www.azliquor.gov/query/deliverable.cfm>, A.R.S. §4-209(A) and A.R.S. §4-244(3).

Question – Foodstuffs and Non-alcoholic "cocktail mixer" products: What are the rules regarding wholesale licensees that deal in non-alcoholic products?

DLLC Response: Malt products, wines, and cocktail mixers, that are non-alcoholic, may only be sold to retailers under the same rules that apply to the sale of spirituous liquors. "Cocktail mixers" are pre-prepared liquid or solid mixtures marketed primarily for mixing with spirituous liquor to prepare a beverage, A.R.S. §4-243(C), R19-1-229, R19-1-231.

Relevant Statutes and Rules

(Only portions of A.A.C. R19-1-228 and A.A.C. R19-1-230 are included below, though some answers reference the entire rule content.)

A.R.S. §4-119.	Records
A.R.S. §4-209.	Fees for license, application, issuance, renewal and transfer; late renewal penalty; seasonal operation; surcharges
A.R.S. §4-227.	Spirituous liquor pricing; prohibition; definitions

A.R.S. §4-243.	Commercial coercion or bribery unlawful; exceptions
A.R.S. §4-243.01.	Purchasing from other than primary source of supply unlawful; definitions
A.R.S. §4-243.04.	On-site retail licensees; ownership interests; conditions
A.R.S. §4-244.	Unlawful Acts
A.A.C. R19-1-206.	Inducements, Prohibited
A.A.C. R19-1-210.	Sign Limitations
A.A.C. R19-1-218.	Records, Keeping of
A.A.C. R19-1-226.	Commercial Coercion and Bribery
A.A.C. R19-1-228.	Exceptions to General Rule
A.A.C. R19-1-229.	Non-alcoholic Malt Beverages, Wines, and Cocktail Mixers
A.A.C. R19-1-230.	Tapping Equipment, Furnishing, Selling, and Servicing
A.A.C. R19-1-231.	Foodstuffs
27 CFR 11.32-11.39	Consignment Sales
27 CFR 6.83	Product Displays

A.R.S. §4-119. Records

A licensee shall keep records of licensed business activity in a manner and location and for such duration as prescribed by the director. The rules of the director shall require that each on-sale retailer maintain at the licensed premises a copy of all required records including a current log of all persons employed at the licensed premises including each employee's full legal name, date of birth, address and responsibilities. A licensee shall retain records for two years.

A.R.S. §4-209. Fees for license, application, issuance, renewal and transfer; late renewal penalty; seasonal operation; surcharges

A. A fee shall accompany an application for an original license or transfer of a license, or in case of renewal, shall be paid in advance. Every license expires annually, **EXCEPT THAT A LICENSE MAY BE RENEWED FOR A TWO-YEAR PERIOD PURSUANT TO SUBSECTION M OF THIS SECTION IF NO COMPLIANCE PENALTIES HAVE BEEN ISSUED TO THAT LOCATION DURING THE YEAR BEFORE THE RENEWAL.** A licensee who fails to renew the license on or before the due date shall pay a penalty of one hundred fifty dollars which the licensee shall pay with the renewal fee. A license renewal that is deposited, properly addressed and postage prepaid in an official depository of the United States mail on or before the due date shall be deemed filed and received by the department on the date shown by the postmark or other official mark of the United States postal service stamped on the envelope. If the due date falls on a Saturday, Sunday or other legal holiday, the renewal shall be considered timely if it is received by the department on the next business day. The director may waive a late renewal penalty if good cause is shown by the licensee. A licensee who fails to renew the license on or before the due date may not sell, purchase or otherwise deal in spirituous liquor until the license is renewed. A license **THAT** is not renewed within sixty days after the due date is deemed terminated. The director may renew the terminated license if good cause is shown by the licensee. An application fee for an original license or the transfer of a license shall be one hundred dollars, which shall be retained by this state.

A.R.S. §4-227. Spirituous liquor pricing; prohibition; definitions

- A. Subject to subsection B of this section, a wholesaler shall sell its product to a qualified retail cooperative without regard to the volume of the product purchased by the cooperative at the lowest price at which the wholesaler sells the product to any other retail licensee at or near the location of the cooperative.
- B. The provisions of subsection A of this section shall apply only to a purchase by a retail cooperative of fifty cases or more of a product on a single occasion.
- C. As used in this section:
 1. "Product" means a particular brand of spirituous liquor in a designated size container or a mix of brands and containers when sold on a combined basis established by the wholesaler which is offered on quantity discount terms established by the wholesaler.
 2. "Qualified retail cooperative" means a retail cooperative of twenty retail licensees or more established pursuant to section 4-222.

A.R.S. §4-242. Sale of liquor on credit prohibited; exceptions

It is unlawful for a licensee, or an employee or agent of a licensee, to sell or offer to sell, directly or indirectly, or to sanction the sale on credit of spirituous liquor, or to give, lend or advance money or anything of value for the purpose of purchasing or bartering for spirituous liquor, except that sales of spirituous liquor consumed on the licensed premises may be included on bills rendered to registered guests in hotels and motels, and spirituous liquor sales for on or off premises consumption may be made with credit cards approved by the director, and sales of spirituous liquor consumed on the premises of private clubs may be included on bills rendered to bona fide members.

A.R.S. §4-243. Commercial coercion or bribery unlawful: exceptions

- A. It is unlawful for a person engaged in the business of distiller, vintner, brewer, rectifier OR blender or any other producer or wholesaler of any spirituous liquor, directly or indirectly, or through an affiliate:
1. To require that a retailer purchase spirituous liquor from the producer or wholesaler to the exclusion, in whole or in part, of spirituous liquor sold or offered for sale by other persons.
 2. To induce a retailer by any form of commercial bribery to purchase spirituous liquor from the producer or wholesaler to the exclusion, in whole or in part, of spirituous liquor sold or offered for sale by other persons.
 3. To acquire an interest in property owned, occupied or used by the retailer in the retailer's business, or in a license with respect to the premises of the retailer.
 4. To furnish, give, rent, lend or sell to the retailer equipment, fixtures, signs, supplies, money, services or other things of value, subject to such exception as the rules adopted pursuant to this title may prescribe, having regard for established trade customs and the purposes of this subsection.
 5. To pay or credit the retailer for advertising, display or distribution service, except that the director may adopt rules regarding advertising in conjunction with seasonal sporting events.
 6. To guarantee a loan or repayment of a financial obligation of the retailer.
 7. To extend credit to the retailer on a sale of spirituous liquor.
 8. To require the retailer to take and dispose of a certain quota of spirituous liquor.
 9. To offer or give a bonus, a premium or compensation to the retailer or any of the retailer's officers, employees or representatives.
- B. This section does not prohibit any distiller, vintner, brewer, rectifier, blender or other producer or wholesaler of any spirituous liquor from:
1. Giving financial and other forms of event sponsorship assistance to nonprofit or charitable organizations for purposes of charitable fund-raising which are issued special event licenses by the department. This section does not prohibit such suppliers from advertising their sponsorship at such special events.
 2. Providing samples to retail consumers at on-sale premises establishments according to the following procedures:
 - (a) Sampling operations shall be conducted under the supervision of an employee of the sponsoring producer or wholesaler.
 - (b) Sampling shall be limited to twelve ounces of beer or cooler products, six ounces of wine or two ounces of distilled spirits per person per brand.
 - (c) If requesting the on-sale retailer to prepare a drink for the consumer, the producer's or wholesaler's representative shall pay the retailer for the sample drink.
 - (d) The producer or wholesaler may not buy the on-sale retailer or the retailer's employees a drink during their working hours or while they are engaged in waiting on or serving customers.
 - (e) The producer or wholesaler may not give a keg of beer or any spirituous liquor or any other gifts or benefits to the on-sale retailer.
 - (f) All sampling procedures shall comply with federal sampling laws and regulations.
 3. Providing samples to retail consumers on an off-sale retailer's premises according to the following procedures:
 - (a) Sampling shall be conducted by an employee of the sponsoring producer or wholesaler.
 - (b) The producer or wholesaler shall notify the department in writing or by electronic means not less than ten days before the sampling of the date, time and location of the sampling.
 - (c) Sampling shall be limited to three ounces of beer, one and one-half ounces of wine or ONE ounce of distilled spirits per person per day.

- (d) An off-sale retailer shall not permit sampling to be conducted on a licensed premises on more than twelve days in any calendar year.
 - (e) Sampling shall be limited to one wholesaler or producer at any one off-sale retailer's premises on any day and shall not exceed three hours on any day.
 - (f) A producer conducting sampling shall buy the sampled product from a wholesaler.
 - (g) The producer or wholesaler shall not provide samples to any person who is under the legal drinking age.
 - (h) The producer or wholesaler shall designate an area in which sampling is conducted that is in the portion of the licensed premises where spirituous liquor is primarily displayed and separated from the remainder of the off-sale retailer's premises by a wall, rope, door, cable, cord, chain, fence or other barrier. The producer or wholesaler shall not permit persons under the legal drinking age from entering the area in which sampling is conducted.
 - (i) The producer or wholesaler may not provide samples to the retailer or the retailer's employees.
 - (j) Sampling shall not be conducted in retail premises with a total of under five thousand square feet of retail space unless at least seventy-five per cent of the retailer's shelf space is dedicated to the sale of spirituous liquor.
 - (k) The producer or wholesaler may not give spirituous liquor or any other gifts or benefits to the off-sale retailer.
 - (l) All sampling procedures shall comply with federal sampling laws and regulations.
- C. Notwithstanding subsection A, paragraph 4, any wholesaler of any spirituous liquor may sell tobacco products or foodstuffs to a retailer at a price not less than the cost to the wholesaler.
- D. Notwithstanding subsection A, paragraph 4, and subsection B, paragraph 2, subdivision (e), any wholesaler may furnish without cost promotional items to an on-sale retailer, except that the total market value of the promotional items furnished by that wholesaler to that retailer in any calendar year shall not exceed five hundred dollars. For the purposes of this subsection, "promotional items" means items of equipment, supplies, novelties or other advertising specialties that conspicuously display the brand name of a spirituous liquor product. Promotional items do not include signs.
- E. It is unlawful for a retailer to request and knowingly receive anything of value that a distiller, vintner, brewer, rectifier or blender or any other producer or wholesaler is prohibited by subsection A or D from furnishing to a retailer, except that this subsection shall not prohibit special discounts provided to retailers and based on quantity purchases.

A.R.S. §4-243.04. On-sale retail licensees; ownership interests; conditions

- B. Notwithstanding section 4-243, a distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor may directly or indirectly furnish, give, rent, lend or sell to an on-sale retail licensee equipment, fixtures, signs, furnishings, money or other things of value if each of the following conditions are met:
1. The retail licensee purchases all spirituous liquor for sale at the premises from wholesalers that are licensed in this state.
 2. The retail licensee does not purchase or sell any brand of spirituous liquor produced by the distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor or by any of its subsidiaries or affiliates.
 3. The retail licensee is a franchisee of a person that is affiliated with the distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor and the compensation paid by the retail licensee as a franchise fee or royalty is not based on revenue derived from the sale of spirituous liquor.4-243.04

A.R.S. §4-244. Unlawful acts

It is unlawful:

3. For a distiller, vintner, brewer or wholesaler knowingly to sell, dispose of or give spirituous liquor to any person other than a licensee except in sampling wares as may be necessary in the ordinary course of business, except in donating spirituous liquor to a nonprofit organization which has obtained a special event license for the purpose of charitable fund raising activities or except in donating spirituous liquor with a cost to the distiller, brewer or wholesaler of up to five hundred dollars in a calendar year to an organization that is

exempt from federal income taxes under section 501(c) **(3), (4), (6) OR (7)** of the internal revenue code and not licensed under this title.

R19-1-210. Sign Limitations

- 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).

R19-1-218. Keeping of Records

All licensees shall keep for a period of not less than 2 years all invoices, records, bills and other papers and documents relating to the purchase, sale and delivery of alcoholic beverages. Such records and papers shall be kept in such conditions of storage as to be easily accessible to the Director or any peace officer designated by the Director for examination or audit.

R19-1-226. Commercial Coercion and Bribery

- A. It shall be unlawful for a wholesaler, distiller, vintner, brewer, or importer to induce a retailer to purchase spirituous liquor from the producer or wholesaler to the exclusion, in whole or in part, of spirituous liquor sold or offered for sale by other persons through any of the following means:
 - 1. By furnishing, giving, renting, lending, or selling to a retail licensee, articles of primary utilitarian value including, but not limited to, the following: clocks, service lamps, ash trays, coasters, napkins, beer mats, book matches, menu cards, folders, meal checks, container mats, back bar mats, thermometers, jiggers, stirring spoons, pouring spoons, glasses, glassware, or any other item potentially useful to the retailer in the conduct of his or her business except as provided elsewhere in these rules.
 - 3. By providing any service, including the stocking and pricing of merchandise, to a retail licensee; provided, however, that the practices set forth in subsection (B) of this rule shall not be unlawful.
 - 4. By paying or crediting a retail licensee for any promotion, advertising, displaying, public relations, or distribution services or by participating or sharing with a retail licensee any promotion or advertising costs through any media.
 - 8. By directly or indirectly engaging in practices promising or granting a retail licensee a bonus, premium or other compensation by a distillery, vintner, brewery, rectifier, blender, or other producer or the wholesaler.
- B. The following practices are not unlawful inducements as defined by A.R.S. § 4-243(2)(b):
 - 1. Stocking a limited supply of spirituous liquors in what is commonly known as "cold box".
 - 2. Rotating spirituous liquors.
 - 3. Furnishing advertising novelties of nominal value, such as key chains, sports schedules, recreation guides, cocktail specialty books, or other items which are not directly utilized in the operation of a retail licensee's business by the wholesaler to the retailer.
 - 4. Furnishing on-sale retail licensees with equipment necessary to operate a draft box and servicing and repairing those items of equipment to retain the quality of the product

R19-1-228. Exceptions to General Rule

- 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.
- 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.
- 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.
- 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.
- 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.
- 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.

R19-1-229. Non-alcoholic Malt Beverages, Wines, and Cocktail Mixers

Malt products, wines, and cocktail mixers, that are non-alcoholic, may only be sold to retailers under the same rules that apply to the sale of spirituous liquors. For purpose of this Section "cocktail mixers" shall mean pre-prepared liquid or solid mixtures marketed primarily for mixing with spirituous liquor to prepare a beverage.

R19-1-230. Tapping Equipment, Furnishing, Selling, and Servicing

- A. Beer manufacturers may sell to beer wholesalers and beer wholesalers may furnish to on-sale retail licensees the following items of equipment in the case of either an initial installation for a new account or a change over of equipment from one tapping system to another. Such equipment shall remain the property of the wholesaler.

Approved equipment systems:

<i>Peerless</i>	<i>Golden Gate</i>
a. Tap Rod	a. CO ₂ Hose
b. Valve	b. Beer Hose
c. Beer Hose	c. Couplings
d. CO ₂ Hose	d. Vent
e. Washers	e. Taps
f. Couplings	f. Valves (Golden Gate)
g. Clamps	g. Clamps
	h. Washers
<i>Jet Western</i>	<i>Hoff-Stevens</i>
a. Jet Tap Assembly	a. CO ₂ Hose
b. Draw Tube	b. Beer Hose
c. Beer Hose	c. Couplings
d. CO ₂ Hose	d. Vent
e. Tail Pieces	e. Clamps or Wire
f. Shut-off Valve	f. Washers
g. Washers	
h. Clamps	

2. Other equipment systems -- Manufacturers may qualify other tapping systems by submitting the trade name and collateral apparatus to the Department for approval.
- B. Beer wholesalers may sell to on-sale licensees for cash only the following items of equipment at a price not less than the cost for which the wholesaler purchased the equipment:
1. CO₂ Gas;
 2. CO₂ Regulators;
 3. Facets;
 4. Shanks or Bent Tubes;
 5. Air Distributors;
 6. Blower assembly, beer switches, complete faucet standard, drip pan, P.V.C. pipe, or any item that is necessary to prepare a draught system for proper operation.
- C. A wholesaler may replace, at no charge to the retailer, bonnet washers, friction rings, valve stems, and coupling gaskets.
- D. If 1 wholesaler is splitting an account with another wholesaler, the wholesaler initiating the split will supply, if necessary, the inline regulator which will remain the wholesaler's property and will be removed if the account is discontinued.
- E. The wholesaler may maintain periodic cleaning schedules of on-sale retailers' draught equipment and may sell to the retailer any sanitizing materials utilized in the cleaning of draught beer equipment, at not less than cost.

R19-1-231. Foodstuffs

A producer/wholesaler may sell foodstuffs to a retailer at a price agreed upon, but not less than the cost to the producer/wholesaler.

27 United States Code, Chapter 8, Subchapter I, Section 205
(d) Consignment sales

[It shall be unlawful ...] To sell, offer for sale, or contract to sell to any trade buyer engaged in the sale of distilled spirits, wine, or malt beverages, or for any such trade buyer to purchase, offer to purchase, or contract to purchase, any such products on consignment or under conditional sale or with the privilege of return or on any basis otherwise than a bona fide sale, or where any part of such transaction involves, directly or indirectly, the acquisition by such person from the trade buyer or his agreement to acquire from the trade buyer other distilled spirits, wine, or malt beverages--if such sale, purchase, offer, or contract is made in the course of interstate or foreign commerce, or if such person or trade buyer engages in such practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products or if the direct effect of such sale, purchase, offer, or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce: Provided, That this subsection shall not apply to transactions involving solely the bona fide return of merchandise for ordinary and usual commercial reasons arising after the merchandise has been sold.

27 United States Code, § 6.83 Product displays.

(a) General. The act by an industry member of giving or selling product displays to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act provided that the conditions prescribed in paragraph (c) of this section are met.

(b) Definition. "Product display" means any wine racks, bins, barrels, casks, shelving, or similar items the primary function of which is to hold and display consumer products.

(c) Conditions and limitations.

(1) The total value of all product displays given or sold by an industry member under paragraph (a) of this section may not exceed \$300 per brand at any one time in any one retail establishment. Industry members may not pool or combine dollar limitations in order to provide a retailer a product display valued in excess of \$300 per brand. The value of a product display is the actual cost to the industry member who initially purchased it. Transportation and installation costs are excluded.

(2) All product displays must bear conspicuous and substantial advertising matter on the product or the industry member which is permanently inscribed or securely affixed. The name and address of the retailer may appear on the product displays.

(3) The giving or selling of such product displays may be conditioned upon the purchase of the distilled spirits, wine, or malt beverages advertised on those displays in a quantity necessary for the initial completion of such display. No other condition can be imposed by the industry member on the retailer in order for the retailer to receive or obtain the product display.

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