

# DEPARTMENT OF LIQUOR LICENSES AND CONTROL

5YRR

19 A.A.C. 1, Articles 1 through 7

Submitted January 2016

Approved June 2016

## INTRODUCTION

The Department of Liquor Licenses and Control, which is created by A.R.S. § 4-111, consists of the State Liquor Board and the Office of the Director of the Department. The Board is responsible for granting or denying licenses and holding hearings regarding appeals. The Director is responsible for administering the statutory provisions regarding liquor licenses and control. The legislature created the Department to regulate the liquor industry through the license control process, collect fees and taxes for the maintenance of government, and enforce statutes to maintain the health and welfare of the community. The mission of the Department is to protect public safety, support economic growth through the responsible sale and consumption of liquor, and license qualified applicants efficiently.

Arizona, like most states, has a three-tiered system for the distribution of spirituous liquors. The three tiers, which have been in effect since the repeal of prohibition, include 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.

The sale of spirituous liquor is highly regulated at both the state and federal levels. Production and sale of spirituous liquor is a multi-billion dollar industry that employs thousands and provides millions in tax revenue. There are some complaints that the three-tiered system is antiquated and not consistent with today's global markets, international producers, and the explosion of craft producers that seek to sell directly to their customers. In spite of marketplace changes, the industry has potential for public harm and continued regulation is needed. Over-service, under-age drinking, and potential corruption within the regulated industry harm public health and safety and make the three-tiered system necessary. The Department balances competing interests in the industry to minimize negative impacts.

In a rulemaking that took effect on July 6, 2013, the Department repealed rules that existed at that time and made new ones. In a second rulemaking that took effect on July 6, 2014, the Department made five additional rules. Since 2013, the Department's statutes have been amended six times (See Laws 2013, Chapter 207; Laws 2013, Chapter 47; Laws 2013, Chapter 1345; Laws 2014, Chapter 253; Laws 2015, Chapter 112; and Laws 2015, Chapter 131).

Laws 2013, Chapter 207, was enacted to comply with federal law requiring states that receive funds for Temporary Assistance for Needy Families to prevent the funds from being used in an electronic benefit

transfer transaction at a liquor store. Statute requires the Department to ensure that licensed liquor stores disable the ability of terminals on the licensed premises to accept a TANF EBT card or process a TANF EBT card transaction.

Laws 2013, Chapter 47, authorized the director to issue a domestic microbrewery license on the same parcel of land as a domestic farm winery.

Laws 2013, Chapter 1345, amended the definition of “dangerous drug” as it applies to unlawful acts by a liquor licensee to conform to the definition used in the criminal code.

Laws 2014, Chapter 253 was an omnibus law that made numerous changes to A.R.S. Title 4. The more significant changes include:

- Removed the word “domestic” as an adjective of “farm winery” and “microbrewery;”
- Created three new licenses: craft distiller license and craft distillery festival and fair licenses;
- Made changes to requirements for a special event license;
- Increased the number of wine festival licenses and the number of days of wine festival per licensed farm winery and increased the fee for a wine festival or fair license;
- Added state agencies to the list of government entities to which a government license may be issued;
- Established new grounds for suspending, revoking, or refusing to issue a license;
- Clarified that a wholesaler may employ channel pricing;
- Strengthened regulation of direct shipment licensees;
- Authorized farm winery licensees to enter into custom crush arrangements;
- Authorized alternating proprietorships; and
- Authorized remote tasting rooms for farm wineries.

Laws 2015, Chapter 112 created a new Section, A.R.S. § 4-214, regarding the information a licensed farm winery may put on a label to indicate the origin of the wine.

Laws 2015, Chapter 131 made changes regarding microbreweries including increasing the annual production limit per location to 6,200,000 gallons from 1,240,000 gallons.

Statute that generally authorizes the agency to make rules: A.R.S. § 4-112(A)(2) and (B)

1. Specific statute authorizing the rule:

R19-1-101: A.R.S. § 4-112(B)(1)(a)

R19-1-102: A.R.S. §§ 4-112(G)(10), 4-205.02, 4-206.01, 4-207.01(B), 4-209, 4-244.05, and 35-142(K)

R19-1-103: A.R.S. § 4-112(G)(2)

R19-1-104: A.R.S. § 4-112(B)(1)(a)

R19-1-105: A.R.S. § 4-101(27)

R19-1-106: A.R.S. § 4-112(B)(1)(b)

R19-1-107: A.R.S. § 4-112(G)(11)

R19-1-110: A.R.S. §§ 4-112(G)(4) and 4-243(A)(4)

R19-1-201: A.R.S. §§ 4-202(A) and 41-1080

R19-1-202: A.R.S. §§ 4-201, 4-202, 4-203, 4-203.01, 4-203.04, and 4-228

R19-1-203: A.R.S. §§ 4-112(B)(1)(d) and 4-222

R19-1-204: A.R.S. §§ 4-206.01

R19-1-205: A.R.S. § 4-203.02

R19-1-206: A.R.S. § 4-205.02(E)

R19-1-207: A.R.S. §§ 4-101(27) and 4-203(B)

R19-1-208: A.R.S. § 4-201(B)

R19-1-209: A.R.S. §§ 41-1073, 4-101(9), 4-201(E), and 4-202(B)

R19-1-302: A.R.S. § 4-112(G)(4)

R19-1-303: A.R.S. § 4-203(B)(1)

R19-1-304: A.R.S. § 4-203(B)

R19-1-305: A.R.S. §§ 4-112(B)(1)(c), 4-205.04(I)(1), 4-205.08(H)(1), 4-205.10(F)(1), and 4-210(A)(5)

R19-1-306: A.R.S. § 4-112(B)(1)(a)

R19-1-307: A.R.S. § 4-244(21), (32), and (45)

R19-1-308: A.R.S. § 4-112(G)(6)

R19-1-309: A.R.S. § 4-112(B)(1)(b)

R19-1-310: A.R.S. § 4-112(B)(1)(b)

R19-1-312: A.R.S. § 4-243

R19-1-314: A.R.S. § 4-112(B)(1)(b)  
R19-1-315: A.R.S. §§ 4-112(B)(1)(d), 4-203(J) and (M), and 4-205.04(C)(9) and (D)  
R19-1-316: A.R.S. § 4-244(19)  
R19-1-317: A.R.S. §§ 4-205.01 and 4-205.02  
R19-1-318: A.R.S. §§ 4-112(B)(1)(b) and 4-203.02(E)  
R19-1-319: A.R.S. § 4-243(A)  
R19-1-320: A.R.S. §§ 4-242, 4-243, and 4-244(3)  
R19-1-321: A.R.S. §§ 4-203.02(G) – (N) and 4-243  
R19-1-322: A.R.S. § 4-222  
R19-1-323: A.R.S. §§ 4-210(M) and 4-244(22)  
R19-1-324: A.R.S. § 4-244.05  
R19-1-325: A.R.S. §§ 4-229, 4-261, and 4-262  
R19-1-326: A.R.S. § 4-243(A)(4)  
R19-1-327: A.R.S. § 4-244.04  
R19-1-401: A.R.S. §§ 4-203, 4-203.01, 4-205.02, and 4-210(I)  
R19-1-402: A.R.S. § 4-222  
R19-1-403: A.R.S. § 4-205.02(F)  
R19-1-404: A.R.S. §§ 4-243(B)(3)(b) and 4-244.04  
R19-1-405: A.R.S. § 4-203  
R19-1-406: A.R.S. § 4-202(C)  
R19-1-407: A.R.S. §4-112(B)(3)  
R19-1-408: A.R.S. § 4-112(B)(1)(a)  
R19-1-501: A.R.S. §§ 4-210(A)(7), 4-119, and 4-241(K)  
R19-1-502: A.R.S. § 4-119  
R19-1-503: A.R.S. § 4-222  
R19-1-504: A.R.S. §§ 4-112(B)(1)(d), 4-203(J) and (M), 4-203.04(H) and (J), 4-205.04(C)(9)  
and (H), and 4-205.10(C)(7) and (E)  
R19-1-505: A.R.S. § 4-244(37)  
R19-1-601: A.R.S. § 4-210(H)  
R19-1-602: A.R.S. § 4-244(I)  
R19-1-603: A.R.S. §§ 4-244 and 4-244.05(F)

R19-1-604: A.R.S. § 4-210

R19-1-701: A.R.S. § 4-111(C)

R19-1-702: A.R.S. § 4-201(I)

R19-1-703: A.R.S. §§ 4-210.02 and 41-1092.09

R19-1-704: A.R.S. §§ 4-112(A)(2) and 4-201(E)

R19-1-705: A.R.S. §§ 4-211 and 12-901 et seq.

2. Objective of the rule including the purpose for the existence of the rule:

R19-1-101: Definitions. The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition. The definitions are designed to facilitate understanding by those who use the rules.

R19-1-102: Fees and Surcharges; Service Charges. The objective of the rule is to inform applicants of the licensing fees, surcharges, and service charges authorized by statute and collected by the Department. This increases efficiency in the licensing process by enabling an applicant to anticipate the expense of obtaining a license.

R19-1-103: A.R.S. Title 4 Training Course: Minimum Standards. The objective of the rule is to establish minimum standards for various training courses regarding A.R.S. Title 4. This increases efficiency in the approval process by enabling training providers to design courses that meet the standards and can be approved by the Department.

R19-1-104: Shipping Container Labeling; Shipping Requirements. The objective of the rule is to establish requirements regarding shipping or transporting spirituous liquor into or within the state designed to ensure there is a chain of custody of the spirituous liquor. This protects public health and safety.

R19-1-105: Standards for Non-contiguous Area of a Licensed Premise. The objective of the rule is to establish standards for approving inclusion of a non-contiguous area in a licensed premise. This increases efficiency in the licensing process by enabling an applicant to anticipate whether a proposed non-contiguous area will be approved.

R19-1-106: Severability. The objective of the rule is to state the principle that each rule provision is separate from the others and can be applied separately. This ensures an invalid provision does not impair the Department's ability to carry out the provisions of A.R.S. Title 4.

R19-1-107: Electronic Signatures. The objective of the rule is to indicate the Department may accept all required communications electronically. This increases efficiency in the Department's ability to fulfill its licensing and regulatory responsibilities.

R19-1-110: Sign Limitations. The objective of the rule is to establish limits on the signs a producer or wholesaler of spirituous liquor may lend to a retailer. The rule is to prevent commercial coercion or bribery by a producer or wholesaler.

R19-1-201: Who May Apply for a License. The objective of the rule is to clearly specify the pre-requisites for licensure. This increases efficiency in the licensing process by enabling an individual or entity to anticipate whether the pre-requisites for licensure are met.

R19-1-202: Application Required. The objective of the rule is to specify that obtaining a license or other approval from the Department requires that application be made. This increases efficiency in the licensing process.

R19-1-203: Registration of a Retail Agent. The objective of the rule is to establish pre-requisites for being a retail agent and the requirements for registering with the Department. This increases efficiency in the registration process and enables retail licensees to enjoy the efficiencies of cooperative purchasing.

R19-1-204: Obtaining a Quota License. The objective of the rule is to indicate the manner in which the Department will choose among persons interested in obtaining a quota license. The random procedure provides fairness and increases efficiency in the licensing process.

R19-1-205: Requirements for a Special Event License. The objective of the rule is to indicate how application for a special event license is to be made and establish a limit on the number of special event licenses that will be issued annually to an entity.

R19-1-206: Criteria for Issuing a Restaurant License. The objective of the rule is to establish criteria the Department uses to determine whether there is sufficient evidence of an ability to operate a restaurant. This increases efficiency in the licensing process by encouraging only qualified entities to make application.

R19-1-207: Extension of Premises. The objective of the rule is to emphasize that spirituous liquor may be served only on a licensed premises and that an application is required to extend a previously licensed premise. This protects public health and safety by controlling the locations at which spirituous liquor is served.

R19-1-208: Notice of Application for a Conveyance License. The objective of the rule is to ensure that those who apply for a conveyance license know notice is required to be posted at the applicant's principal place of business. This protects public health and safety by ensuring interested parties have notice that application for a license has been made.

R19-1-209: Licensing Time-frames. The objective of this rule is to specify time frames within which the Department will act on a license or other approval application. This enables an applicant to anticipate when the Department approval process will be completed.

R19-1-302: Knowledge of Law. The objective of this rule is to specify the individuals required to have knowledge of A.R.S. Title 4, and related rules. This protects public health and safety by ensuring there is always someone on a licensed premise aware of the law regarding spirituous liquor.

R19-1-303: Authorized Spirituous Liquor. The objective of this rule is to emphasize that a license authorizes the licensee to manufacture, sell, or deal in only the spirituous liquor



specified on the license. This protects public health and safety by controlling the availability of spirituous liquor.

R19-1-304: Storing Spirituous Liquor on Unlicensed Premises. The objective of this rule is to state the general principle that spirituous liquor may be stored on only licensed premises and to provide a procedure for obtaining authorization to store spirituous liquor on unlicensed premises. This protects public health and safety by ensuring that spirituous liquor is safeguarded from possible misuse.

R19-1-305: Paying Taxes Required. The objective of the rule is to provide notice that all taxes must be paid before a quota license may be transferred. This protects the state's taxpayers by ensuring licensees pay their share of taxes.

R19-1-306: Bottle Labeling Requirements. The objective of the rule is to require licensees to comply with federal law regarding bottle labeling. This protects public health and safety by ensuring a consumer knows what is being purchased or consumed.

R19-1-307: Bottle Reuse or Refilling Prohibited. The objective of the rule is to indicate that a bottle may not be reused for packaging spirituous liquor, the label on a bottle may not be altered, and the spirituous liquor in a bottle may not be adulterated. This protects public health and safety by ensuring a consumer purchases and consumes the spirituous liquor intended.

R19-1-308: Age Requirement for Erotic Entertainers. The objective of the rule is to establish a minimum age requirement for erotic entertainers who perform on licensed premises. This protects minors who are on premises on which spirituous liquor is sold and consumed.

R19-1-309: Prohibited Acts. The objective of the rule is to define a clear limit to behavior that is prohibited on licensed premises. This protects public health and safety by not exposing the public to conduct that violates public norms.

R19-1-310: Prohibited Films and Pictures. The objective of the rule is to define a clear limit regarding the nature of films and pictures that are prohibited on licensed premises. This protects public health and safety by not exposing the public to material that violates public norms.

R19-1-312: Accurate Labeling of Dispensing Equipment Required. The objective of the rule is to require that dispensing equipment be accurately labeled regarding the spirituous liquor dispensed. This protects the public from possible fraud regarding the spirituous liquor purchased.

R19-1-314: Prohibited Inducement to Purchase or Consume Spirituous Liquor. The objective of the rule is to establish a clear limit to conduct that might induce a customer to purchase or consume spirituous liquor. This protects public health and safety by not allowing consumption of spirituous liquor to be rewarded.

R19-1-315: Responsibilities of a Licensee that Operates a Delivery Service. The objective of the rule is to require that a licensee that delivers spirituous liquor delivers only to an individual and at a time consistent with the law. This protects public health and safety by ensuring delivery is not made to a minor or intoxicated or disorderly individual.

R19-1-316: Responsibilities of a Liquor Store or Beer and Wine Store Licensee. The objective of the rule is to require that, except in limited circumstances, licensed liquor or beer and wine stores make spirituous liquor available to consumers only in unopened bottles. This protects public health and safety and ensures that an off-sale retailer does not engage in on-sale retailing.

R19-1-317: Responsibilities of a Hotel-Motel or Restaurant Licensee. The objective of the rule is to specify the standards for a hotel-motel or restaurant licensee and the manner in which a hotel-motel or restaurant licensee is required to maintain records. This ensures a hotel-motel or restaurant licensee does not operate as a bar while not becoming licensed as one.

R19-1-318: Responsibilities of a Special Event Licensee. The objective of the rule is to specify the manner in which spirituous liquor is to be dispensed, sold, or served at a special event depending on whether the special event occurs on or off the premises of a licensed retailer. This ensures that spirituous liquor is dispensed, sold, or served in a manner consistent with the license under which it is dispensed, sold, or served and protects the three-tiered system.

R19-1-319: Commercial Coercion or Bribery Prohibited. The objective of the rule is to specify conduct that amounts to bribery of a licensed retailer by a producer or wholesaler and conduct that amounts to commercial coercion by a licensed retailer. This provides a level playing field among producers and wholesalers and retailers.

R19-1-320: Practices Permitted a Producer or Wholesaler. The objective of the rule is to specify conduct that is permitted by a producer or wholesaler because it does not amount to bribery of a licensed retailer. This provides a level playing field among producers and wholesalers and protects the public from the consequences of bribery in the spirituous liquor industry.

R19-1-321: Practices Permitted a Wholesaler. The objective of the rule is to specify conduct that is permitted by a wholesaler because it does not amount to bribery and is a permitted industry practice. This provides a level playing field among wholesalers and protects the public from the consequences of bribery in the spirituous liquor industry.

R19-1-322: Responsibilities of a Registered Retail Agent. The objective of the rule is to specify the manner in which a registered retail agent is to fulfill the purchases of those in the cooperative. This protects licensed retailers that enter a cooperative agreement and wholesalers that provide spirituous liquor under a cooperative agreement.

R19-1-323: Underage Individuals on Licensed Premises. The objective of the rule is to specify the circumstances under which an underage individual is allowed to be on licensed

premises. This protects public health and safety by not exposing underage individuals to consumption of spirituous liquor.

R19-1-324: Standards for Exemption of an Unlicensed Business. The objective of the rule is to specify the circumstances and conditions under which spirituous liquor may be served and consumed on unlicensed premises. This protects public health and safety by imposing limitations of serving and consuming spirituous liquor on unlicensed premises and protects the value of on-sale retail licenses.

R19-1-325: Display of Warning Sign Regarding Consumption of Alcohol; Posting Notice Regarding Firearms. The objective of the rule is to require that all licensed retailers post a sign warning about consumption of alcohol during pregnancy and licensed on-sale retailers that wish to prohibit possession of weapons on the licensed premises. This protects public health and safety.

R19-1-326: Tapping Equipment. The objective of the rule is specify the tapping equipment a wholesaler may provide to a licensed retailer without the tapping equipment amounting to bribery and without the wholesaler being subject to commercial coercion. This provides a level playing field among wholesalers and retailers.

R19-1-327: Domestic Farm Winery Sampling. The objective of the rule is to specify limits of sampling offered by a farm winery on the premises of an off-sale retailer or on-sale retailer with off-sale privileges. This is to protect public health and safety by ensuring that only a sample is provided to each consumer.

R19-1-401: Notice of License Surrender or Application Withdrawal. The objective of the rule is to inform a licensee that notice is required if the licensee intends to surrender the license and inform an applicant that notice is required to withdraw an application. The rule also specifies the circumstances under which a license will be deemed surrendered and the circumstances under which surrender will be denied. This protects public health and safety by ensuring the Department knows which licensees are not operating.

R19-1-402: Registered Retail Agent: Notice of Change in Cooperative-purchase Agreement; List of Cooperative Members. The objective of the rule is to inform a registered retail agent that notice is required when a member of a cooperative-purchase agreement changes. This protects licensed retailers that enter a cooperative agreement and wholesalers that provide spirituous liquor under a cooperative agreement.

R19-1-403: Hotel-Motel or Restaurant Licensee: Notice of Change to Restaurant Facility. The objective of the rule is to inform hotel-motel or restaurant licensees that notice is required before the seating capacity or dimensions of a restaurant are changed. This protects public health and safety by ensuring that a hotel-motel or restaurant licensee is operating as a hotel-motel or restaurant and not as a bar.

R19-1-404: Notice of Sampling on a Licensed Off-sale Retail Premises. The objective of the rule is to inform licensed producers and wholesalers that notice is required before conducting a sampling on licensed off-sale retail premises. This protects public health and safety by limiting the circumstances under which consumption of spirituous liquor is allowed on licensed off-sale retail premises.

R19-1-405: Notice of Change in Status: Active or Nonuse. The objective of the rule is to inform all licensees that notice is required to move the license from active to nonuse status or vice versa. This protects public health and safety by ensuring the Department knows which licensees are not operating.

R19-1-406: Notice of Change in Manager. The objective of the rule is to inform all licensees that notice is required when there is a change in the designated manager. This protects public health and safety by ensuring the Department knows who is responsible for managing licensed premises.

R19-1-407: Notice of Legal or Equitable Interest. The objective of the rule is to inform all persons having a legal or equitable interest in a license that notice of the interest is required.

This protects public health and safety by ensuring the Department knows who owns a license. It also protects the holder of the legal or equitable interest by enabling the Department to provide notice to the holder of actions affecting the license.

R19-1-408: Notice of Change in Business Name, Address, or Telephone Number. The objective of the rule is to provide notice that the Department communicates with a licensee using the information the licensee has provided. This ensures that a licensee knows it is important to keep the Department apprised of changes in contact information.

R19-1-501: General Recordkeeping. The objective of the rule is to establish minimum standards for maintenance of licensee records. This protects public health and safety by enabling the Department to conduct audits to determine whether a licensee is complying with A.R.S. Title 4 and related rules.

R19-1-502: On-sale Retail Personnel Records. The objective of the rule is to establish minimum standards for records regarding on-sale retail personnel. This protects public health and safety by enabling the Department to ensure minors are not being employed by on-sale retailers.

R19-1-503: Records Regarding Cooperative Purchases. The objective of the rule is to establish minimum standards for records regarding cooperative-purchase agreements and cooperative purchases. This protects licensed retailers that enter a cooperative agreement and wholesalers that provide spirituous liquor under a cooperative agreement.

R19-1-504: Record of Delivery of Spirituous Liquor. The objective of the rule is to establish minimum standards for recordkeeping by licensees authorized to deliver spirituous liquor. This protects public health and safety by tracking deliveries and ensuring delivery is not made to an underage individual.

R19-1-505: Report of Act of Violence. The objective of the rule is to inform licensees that an act of violence on licensed premises must be reported to the Department or a law

enforcement agency. This protects public health and safety by enabling an appropriate response to be taken to an act of violence.

R19-1-601: Appeals and Hearings. The objective of the rule is to inform a party that a decision by the Director is not final when made and that all hearings are conducted according to the procedures in A.R.S. Title 41, Chapter 6, Article 10. This protects the due process rights of a party.

R19-1-602: Actions During License Suspension. The objective of the rule is to inform the holder of a suspended license of actions prohibited and required during the time of suspension. This protects public health and safety by ensuring that only actively licensed premises are operating and by providing notice to the public regarding a suspension.

R19-1-603: Seizure of Spirituous Liquor. The objective of the rule is to provide notice that a peace officer is required to seize spirituous liquor if there is probable cause to believe the spirituous liquor is being or is intended to be used contrary to law. This protects public health and safety by ensuring that spirituous liquor is used only as provided by law.

R19-1-604: Closure Due to Violence. The objective of the rule is to provide notice that the Director is authorized to order a licensed premise closed if the Director determines an act of violence is apt to occur at the licensed premise. This protects public health and safety by minimizing the chance of an act of violence occurring on a licensed premise.

R19-1-701: Election of Officers. The objective of the rule is to specify the Board officers and how the Board elects officers. This provides transparency regarding Board actions.

R19-1-702: Determining Whether to Grant a License for a Certain Location. The objective of the rule is to specify the criteria considered by the Board to determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license to a specific unlicensed location. This provides transparency regarding Board actions.

R19-1-703: Rehearing or Review of Decision. The objective of the rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision. This enables a licensee to know how to exhaust the licensee's administrative remedies before making application for judicial review under A.R.S. § 12-901.

R19-1-704: Submitting Documents to the Board. The objective of the rule is to specify the format and time for submitting documents for Board review and action. This increases efficiency in the operation of the Board.

R19-1-705: Judicial Review. The objective of the rule is to inform a party of the right to judicial review of a Board decision and to require that a complaint for judicial review be served on the Director. This increases efficiency in the operation of the Board.

3. Effectiveness of the rule in achieving the objective including a summary of any available data supporting the conclusion:

When the Department's rules were made in 2013 and 2014, they were consistent with statute and agency and industry practice. Although statutory changes have occurred since 2014, the changes, which have resulted in some of the rules having minor inconsistencies with statute, have not interfered with the effectiveness of the rules. The Department believes the rules are effective in achieving their objectives because the Department is able to fulfill its statutory responsibility to regulate and license the manufacture, sale, and distribution of spirituous liquor while protecting the health, safety, and welfare of Arizona citizens.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency:

State statutes applicable to the rules are found at A.R.S. Title 4. Applicable federal law is found at 27 CFR, Chapter 1, Subchapter A. The rules are consistent with federal law. As a result of recent changes to A.R.S. Title 4, there are minor inconsistencies between the statutes and rules.

- A.R.S. § 4-244(32)(c) was amended so a container into which a licensee dispenses beer for consumption off-sale no longer has to be made of glass. This requires that R19-1-101(2)(c), (3)(c), and (4)(b) be amended.



- Statutes regarding farm wineries and microbreweries were amended so the word “domestic” was deleted. This requires that the following rules be amended: R19-1-101(15), (16), and (46); R19-1-104; R19-1-315; R19-1-327; and R19-1-504.
- A.R.S. § 4-209 was amended so a limited out-of-state producer license became a limited out-of-state winery license and the amount of wine authorized for production by a licensee was changed to 240 gallons. This requires that R19-1-101(26) be amended.
- The legislature removed the Department’s authority to charge for a restaurant continuation authorization. This requires that R19-1-102(D) be deleted.
- The legislature removed the dates previously specified in A.R.S. §§ 4-205.02(G), 4-207.01(B), 4-206.01(J), and 4-244.05(J)(4). This requires that R19-1-102(G) through (J) be amended.
- The legislature amended A.R.S. §§ 4-205.08 regarding microbreweries and added 4-205.10 regarding craft distillers so each can ship spirituous liquor to a retail licensee. This requires that R19-1-104 be amended.
- Because the legislature added definitions to A.R.S. § 4-101, the following internal cross references to that statute need to be amended: R19-1-105(B) and R19-1-207.
- Because of legislative changes regarding microbreweries and craft distillers, amendments are needed to R19-1-305, R19-1-315, and R19-1-504.
- The legislature amended A.R.S. § 4-205.08 to increase the maximum amount of beer a microbrewery may produce and to allow manufacturing as well as producing. This requires that R19-1-101(16) be amended.
- The legislature amended A.R.S. § 4-243(B)(3)(c) regarding a wholesaler or producer providing samples of spirituous liquor on an off-sale retailer’s premises. This requires that R19-1-320(M) be amended.
- The legislature created three new licenses that need to be addressed in the rules: craft distillery license, craft distiller festival and fair license, and custom crush license. The legislature also added provisions requiring Department approval of remote tasting rooms for a licensed craft distillery or farm winery.
- A.R.S. § 4-221 requires a person possessing or having custody of a still or distilling apparatus to register with the Director. The Department has no rule providing

information about the procedure for registering. The Department previously had a rule on this topic but it was allowed to expire at the time a 5YRR was done in 2006.

- A.R.S. § 4-203.02 authorizes the Director to issue special event licenses. R19-1-205(B) and (C) require the Department to issue a special event license in specified circumstances.

5. Agency enforcement policy including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement:

The Department enforces the rules. When there is an inconsistency with statute, such as the production limit for an out-of-state winery or a microbrewery, the material out of which a growler is made, and the addition of three new licenses, the Department enforces the statute.

6. Clarity, conciseness, and understandability of the rule:

The rules are generally clear, concise, and understandable and consistent with current rule writing standards. Statutory changes such as deletion of “domestic” when referring to a farm winery or microbrewery require that the rule language be updated but the rules are still understandable.

7. Summary of written criticisms of the rule received by the agency with the past five years, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and, written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings:

In an e-mail dated August 28, 2015, Mr. Peter Schelstraete indicates use of the phrase “complaint for judicial review” in R19-1-705(A) and (B) is inconsistent with the statutory phrase “notice of appeal” used in A.R.S. § 12-904. Mr. Schelstraete is correct and the Department will amend the rule to use the correct phrase at the time of its next rulemaking.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule:

In the rulemaking completed in 2013, the Department indicated it expected the following changes to have minimal economic impact:

- Requiring an applicant to submit an application that does not contain a non-technical error;
- Requiring that individuals who take a Department-approved training course take an examination;
- Requiring that the provider of a Department-approved training course allow course participants to evaluate the course and course instructor;
- Requiring that the provider of a Department-approved training course submit updated course materials to the Department annually;
- Establishing standards for a non-contiguous area of a licensed premises;
- Establishing standards for a restaurant to maintain records in auditable form; and
- Establishing several new fees that are specifically authorized by statute.

In the rulemaking completed in 2014, the Department indicated it expected the following changes to have minimal economic impact:

- Clarifies the individuals required to have knowledge of A.R.S. Title 4;
- Clarifies practices of a wholesaler or producer that do not violate the general prohibition against providing an item of value to a retailer; and
- Clarifies standards for operating an unlicensed business.

The Department believes it correctly estimated the rulemakings would have minimal economic impact. The validity of this conclusion is reflected in the fact that members of industry have not asked for additional amendments of the rules.

The Department currently has 12,006 active licensees. The Department issues 23 different kinds of licenses. Out-of-state licensees comprise 15.5 percent of the total. In FY 2015, it issued 4,888 new licenses, including special event permits and interim permits. Twenty-two of the applications were for quota licenses, which are issued through a random-selection process. Eight new quota licenses were issued. A successful applicant for a quota license pays the fair-market value for the license. In 2015, the fair-market value for a bar license was \$71,500 in Maricopa County, \$27,650 in Pima County, and \$57,900 in Yuma County; for a beer and wine bar license, \$13,700 in Maricopa County and \$10,500 in Pima County; and for a liquor store license, \$226,500 in Maricopa County and \$71,500 in Pima County. Restaurants, bars, and liquor stores account for approximately 77 percent of the Department's licensees. Because of a statutory change, the Department no longer issues restaurant

continuation authorizations. There were 40 licensees that registered as retail agents so they and the licensees with which they contracted could make bulk purchases of spirituous liquor.

Because restaurant licensees are required to obtain at least 40 percent of revenue from the sale of food, the Department regularly audits restaurant licensees. The rules require a restaurant to maintain records in auditable form. This requirement imposes some cost on restaurant licensees but there has been no objection to the requirement. In FY 2015, the Department conducted 91 audits of restaurants. There is no charge to those audited. Of those audited, 25 licensees failed to meet the required food sale percentage. An additional three restaurants conceded failure to meet the 40% food sale requirement before an audit was conducted and either surrendered the license or obtained a different kind of license. Of the restaurants audited, there were 243 actionable violations. A violation involving failure to comply with a provision of statute or rule is actionable. The action taken depends on the seriousness of the violation and can range from a warning to a fine or temporary license suspension.

Enforcing statute and rule is a major responsibility of the Department. During 2015, the Department received an agency of the year award from the National Liquor Law Enforcement Association. In 2015, the ratio of enforcement officers to licensees was 1:1,095. These officers conducted 2,710 random inspections of licensed premises. The Department's investigators initiated disciplinary action as a result of 521 violations. These violations resulted in \$472,490 in fines.

At the end of FY 2015, there were 35 liquor-law training providers including six that provide in-house training. These providers taught 65 approved courses. There is no charge to apply to have a training course approved. On average, an individual is charged \$25 to participate in the basic liquor-law training course and \$35 for the management training course. Last year the Department audited 57 approved training courses for compliance with standards. Six courses were found not to be in compliance, modifications were made by the providers and they were authorized to continue providing training. Additionally, the Department provided 94 training events for 2,462 individuals.

In FY2015, the Department collected \$7,246,392 in fees, \$107,700 in penalty fees for late renewal, and \$472,490 in fines for law violations. The Department also collected \$65,208 in fingerprint fees. For FY2015, the Department, which is an appropriated self-funded agency, was appropriated \$2,962,500 (38% of that collected) and received \$1,012,228 in collected surcharges and fingerprint fees (13% of that collected). Under A.R.S. § 4-115 monies collected but not appropriated are deposited in the general fund. In 2015, this amounted to \$3,362,334 (42% of that collected). A.R.S. § 4-115 also provides that a portion of the funds collected from a county be returned to the county. In 2015, \$554,728 (seven percent of that collected) was returned to the counties and other state agencies.

The Department currently has 38 employees.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states:

No analysis has been submitted.

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

In the 5YRR approved by Council on May 3, 2011, the Department indicated it would amend all of its rules. It has done so.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

Most of the cost for licensure by the Department results from legislative action. Indeed, the legislature set most of the licensing fees (See A.R.S. § 4-209). It is the legislature that requires those who manufacture, sell, or deal in spirituous liquor to obtain a license from the Department and requires the Department to prescribe a form for making application for a license (See A.R.S. § 4-201). It is the legislature that prescribes the qualifications for obtaining a license (See A.R.S. § 4-202). The legislature prescribes restrictions on the location of a licensed premise (See A.R.S. § 4-207), requires that a floor plan be submitted with an application (See A.R.S. § 4-207.01), and establishes grounds for revocation, suspension, and refusal to renew a license (See A.R.S. § 4-210). It is the legislature that

requires a licensee to post a sign warning of the dangers of consuming spirituous liquor while pregnant and the license issued by the Department (See A.R.S. §§ 4-261 and 4-262). In addition to the cost related to state legislative action, there are costs related to federal regulation. For example, federal law addresses labeling and advertising requirements, tied-house restrictions, and commercial bribery.

The following rule requirements result in minimal costs to licensees or others:

- Completing and submitting an initial and renewal license application;
- Complying with the minimum standards for a liquor law training course, some of which require that records be maintained, updated materials be submitted to the Department, and Department review of records and course audits be allowed;
- Labeling shipping containers;
- Making application before extending license premises;
- Storing spirituous liquor only on licensed or otherwise approved premises;
- Ensuring an erotic entertainer is at least 19 years old;
- Taking steps to ensure no prohibited acts occur on the licensed premises;
- Accurately labeling dispensing equipment;
- Avoiding actions that might induce purchase or consumption of spirituous liquor;
- Complying with the specific responsibilities applicable to each type of licensee;
- Avoiding service to underage individuals;
- Maintaining records of tapping equipment sold to a licensed retailer;
- Providing notice to the Department when changes are made;
- Maintaining required records; and
- Submitting documents to the Board in the required format and at the specified time.

The Department concludes that these requirements impose the least burdens and costs possible while enabling the Department to fulfill its statutory responsibility to protect public health and safety. The number of persons that have chosen to obtain a license from the Department indicates they have concluded the benefits from doing so outweigh the costs.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law:

None of the rules is more stringent than the applicable federal law, 27 CFR, Chapter 1, Subchapter A.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

All the licenses defined in R19-1-101 and other authorizations and registrations required under A.R.S. Title 4 comply with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule or to make a new rule. If no issues are identified for a rule in the report, the agency may indicate that no action is necessary for the rule:

When this 5YRR is approved by the Council, the Department intends to seek an exception to EO2016-03 to enable it to address the issues identified by this review. Assuming the Department is able to obtain an exception, it will amend the following rules: R19-1-101, R19-1-102, R19-1-104, R19-1-105, R19-1-202, R19-1-205, R19-1-207, R19-1-305, R19-1-315, R19-1-320, R19-1-327, R19-1-504, R19-1-603, R19-1-704, and R19-1-705.

Additionally, the Department will make a rule regarding registration of stills as required under A.R.S. § 4-221. It is the Department's intention to complete the rulemaking by June 30, 2017.