



STATE OF ARIZONA
DEPARTMENT OF LIQUOR LICENSES AND CONTROL

Douglas A. Ducey
GOVERNOR

John Cocca
DIRECTOR

March 20, 2020

On March 19, 2020, Governor Ducey issued Executive Order 2020-09, which contained provisions dealing with the sale and service of spirituous liquor, and directed the Department to publish guidance to the public on its website. This is that guidance.

This guidance is subject to change depending on questions and comments that the Department may receive and shall apply for only so long as the Governor's Executive Order 2020-09 remains in place. Interested persons should check the Department's website regularly for updated guidance.

This guidance does not create any rights or privileges for licensees or the public. It does not constitute legal advice. Interested persons should consult with their own legal counsel for questions related to the Order, this guidance, or compliance with Title IV liquor laws generally.

Non-Restaurant Retailers May Deliver Spirituous Liquor

The Governor's Executive Order 2020-09 closes bars. This restriction applies to all retail licensees that do not hold an active restaurant (series 12) license. This is not a cease of operations. This restriction does not prevent retail licensees with off-sale privileges from selling spirituous liquors in unbroken packages for delivery under A.R.S. § 4-203(J) or direct shipment under A.R.S. § 4-203.04.

- The Department will consider the sale of spirituous liquor by non-restaurant retailers with off-sale privileges under A.R.S. § 4-209(B) using pick-up, delivery, or drive-thru options as a delivery of alcohol under A.R.S. § 4-203(J) and not in violation of the Executive Order.

Temporarily Modified Licensed Premises and Restaurant Deliveries that include Alcohol.

The Governor has ordered the closure of restaurants except for pick-up, delivery, or drive thru options. This is not a cease of operations. The Governor has also ordered, however, that the Department shall not enforce regulations such as A.R.S. § 4-209(B)(12) that prohibit restaurants from serving spirituous liquors off the licensed premises.

800 WEST WASHINGTON, 5th FLOOR PHOENIX, ARIZONA 85007-2934 PHONE (602) 542-5141 FAX (602) 542-5707

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- Restaurant licensees may therefore temporarily use delivery services including themselves under A.R.S. § 4-203(J) and are responsible for complying with related Title IV regulations except as provided in this guidance.
- All retail licensees that because of the configuration of their licensed premises cannot sell or deliver spirituous liquor for off-sale consumption without first removing it from the licensed premises will not be disciplined under A.R.S. § 4-207.01 for operating outside of the licensed premises, unless the Department determined that the licensee otherwise violated Title IV. Licensees should use their best judgment to deliver spirituous liquor in a manner that is controlled, direct, and short in distance. Curb-side service will be considered pick-up.
- Restaurant licensees that use pick-up and curb-side services that include alcohol must comply with A.R.S. § 4-244(10), which prohibits licensees from employing individuals under the age of eighteen to sell or dispose of spirituous liquors.

Gross Food-Sales Percentage and Volume Limitations

- The Executive Order does not permit a restaurant licensee from failing to continue to maintain 40% gross food-sales percentages as required in A.R.S. § 4-205.02 and A.R.S. § 4-213, but rather is intended to mitigate the loss of a restaurant's on-premises sales.
- Licensees holding growler permits under A.R.S. § 4-205.02 and § 4-244(32) must still comply with all applicable regulations including limiting the volume of spirituous liquor to no more than one gallon and total sales to no more than 10% of the licensee's total spirituous liquor sales.
- The Executive Order does not permit retailers of any type from exceeding applicable volume limitations regarding the percentage of alcohol sold off the licensed premises. Off-sale retailers (not including restaurants under the Executive Order) that use A.R.S. § 4-203(J) delivery services must continue to maintain records of these sales for this purpose.

Sealed Containers

The Governor's Executive Order 2020-09 permitted restaurants to make sales for consumption off the premises in only "sealed containers." The Department has confirmed that the Order permits the sale of mixed drinks that meet this requirement.

- Licensees should be mindful of Arizona's Open Container laws. Under A.R.S. § 4-251(A)(2), it is unlawful for any person to: "[p]ossess an open container of spirituous liquor within the passenger compartment of a motor vehicle that is located on any public highway or right-of-way of a public highway in this state."

Questions may arise regarding how a licensee can seal a mixed drink to comply with the Order. Under existing law in A.R.S. § 4-101(7), "a 'broken package' means any container of spirituous liquor on which the United States tax seal has been broken or removed, or from which the cap, cork or seal placed thereupon by the manufacturer has been removed." Also, in A.R.S. § 4-244(32)(a), if purchased with a meal, a consumer may remove an opened bottle of wine "if a cork is inserted flush with the top of the bottle or the bottle is otherwise securely closed." Lastly, existing Department and TTB guidance permitted the use of a "plastic adhesive" to seal growler bottles.

- Licensees selling any mixed drinks must seal the container before removing it from their designated licensed premises and ensure that the seal remains in place until the time the consumer takes possession.
- Licensees may apply any number methods to seal containers to include the use of capping and applying a plastic adhesive seal or corking flush with the top of a bottle as is already permitted in some circumstances. Merely placing a plastic cap on top of a Styrofoam or paper cup as one might expect with a non-alcoholic fountain drink is not sealing the container.

Age-Verification and Documentation

- All licensees providing services such as curbside pick-up and take-out should continue to comply with A.R.S. § 4-241's age-verification requirements. A licensee that has reason to question that a person ordering spirituous liquor is under the legal drinking age must still examine identification, but may do so in a manner consistent with social distancing such as by requiring the consumer to display the front and back of a license but not taking possession of it.
- All licensees using delivery services including themselves under A.R.S. § 4-203(J) should comply with Arizona Administrative Code R19-1-504 (https://azliquor.gov/forms/inv_recdelivery_access.pdf). To promote social distancing, however, **licensees may, however, temporarily dispense with the requirement in subsection 504(B)(4) to obtain the consumer's signature.**
- All licensees remain responsible for any sale to a person under the legal drinking age or that otherwise violates Title IV.

Accepting Returns of Spirituous Liquor

The Governor's Executive Order 2020-09 required that the Department shall not enforce restrictions on the return of spirituous liquors. On March 13, 2020, the Department issued guidance on the return of spirituous liquor to wholesalers and producers, respectively, that is due to the impact of COVID-19. Copies of the Department's earlier guidance are available on the Department's website at https://azliquor.gov/assets/documents/homepage_docs/COVID-19_returns_March13.pdf. That guidance is consistent with the Executive Order and shall remain in place to enforce the Order.

- The Executive Order does not permit licensees to otherwise violate A.R.S. § 4-243(A)(4) and give or lend to retailers any goods or services of value, such as by engaging in new contracts involving credit or consignment terms.
- The Executive Order does not permit licensees to violate A.R.S. § 4-244(7) by purchasing spirituous liquor other than from wholesalers, subject to several exceptions already existing in Title IV, such as limited producer self-distribution privileges.

For the Public

The Governor's Executive Order 2020-09 allows for restaurants to sell alcohol for consumption off the premises in sealed containers. It also closes all non-restaurant retail licensees to the public, which will result in these licensees likely engaging in increased sales for consumption off the premises. The Executive Order does not modify existing Title IV consumer regulations about the purchase or consumption of spirituous liquor.

Open Containers

The Executive Order and existing law permits the sale of only sealed containers of alcohol for consumption off the premises. Consumers are responsible to follow Arizona's open-container laws when transporting spirituous liquor. Consumers should not unseal containers before or during transport.

A handwritten signature in black ink, appearing to read "John Cocca". The signature is fluid and cursive, with the first name "John" and the last name "Cocca" clearly distinguishable.

John Cocca
Director