AGENDA

IOWA ALCOHOLIC BEVERAGES COMMISSION MEETING

Boardroom
Iowa Alcoholic Beverages Division
1918 Hulsizer Road
Ankeny, Iowa 50021
June 23, 2016 – 1:00 PM
Dial in Number: 1.866.685.1580
Conference Code Number: 0009991572

Call to Order ..... Chairperson Doll

I. Introductions/Opening Remarks

II. Approval of Agenda – **ACTION ITEM**

III. Approval of April 19, 2016, Minutes – **ACTION ITEM**

Administrator's Report ..... Administrator Larson

IV. Regulatory Update
   a. RAGBRAI
   b. Current Regulatory Issues
   c. FY17 Compliance Program

V. Technology Update

VI. Operations Update
   a. Mission and Vision Statement

VII. Administrative Rules Update
   a. Trade Practices

VIII. Attorney General's Report

Public Comment… .....Chairperson Doll

Old Business.....Chairperson Doll

New Business .....Chairperson Doll

- Growlers and Tastings
- Election of Officers – **ACTION ITEM**

Next Meeting Date .....Chairperson Doll

- To Be Determined

Adjournment.....Chairperson Doll

NOTE: Committee and Board agendas may be amended any time up to 24 hours before the meetings. Agenda items may be considered out of order at the discretion of the chair. Meetings will not convene earlier than stated above. If you require accommodations to participate in this public meeting, call 515.281.7407 or TTY at (toll-free) 866.IowaABD to make your request. Please notify ABD at least 48 hours in advance.

The Iowa Alcoholic Beverages Division Presents:

Rules and Regulation for
Alcohol Compliance
During RAGBRAI

Introduction

Iowa's alcoholic beverages industry operates within the confines of a carefully cast partnership between the Iowa Alcoholic Beverages Division (Division), licensees and law enforcement officials. Close cooperation among these three entities is essential for regulation and enforcement of Iowa's alcoholic beverages laws in order to achieve compliance.

This manual was developed to provide information for licensees/permittees, their employees and agents to have a general understanding of the laws and regulations governing the alcoholic beverages license/permit. Knowledge may be the least expensive insurance against the imposition of administrative civil penalties, license suspension or revocation, criminal fines, and civil lawsuits.

The Division hopes that this manual will provide licensees/permittees, their employees and agents with the information necessary for the responsible sale of alcoholic beverages and will assist in their effort to:

- Comply with alcoholic beverages laws and regulations.
- Curb underage drinking and illegal use of alcoholic beverages.
- Support the responsible consumption of alcoholic beverages by people of legal drinking age.

Timeline

The Division will be putting requirements in place to provide a clear overview of what are acceptable practices regarding alcohol licensing, sales of alcohol and trade practices. Each licensee/permittee will be required to follow the timeline outlined below for ***any changes, updates or new applications to their license/permit***. Licensees/permittees who are not making any changes or updates to their license/permit may continue to sell alcoholic beverages permitted by their license/permit type.

***** Friday, July 8: *****

All new applications and updates to a current license must be submitted to The Division and be in "approved by local authority" status in eLicensing.

Monday, July 11 – Friday, July 15: Grace period for licensee/permittee

If an application was submitted ahead of the July 8 deadline, but local authority approval was delayed by an insurance carrier or city council/board of supervisors meeting, licensees permittees may submit an electronic explanation to The Division explaining why the application was delayed. The Division will then review the explanation and approve or deny the application.

Submit all electronic explanations to:
Hohn@IowaABD.com

Monday, July 18 – Friday, July 22:

No new or updated applications will be accepted from licensees/permittees along the RAGBRAI route. All applications submitted to The Division will be denied.

Licensing

Current license/permit holders may continue to sell alcoholic beverages in their licensed premises along the RAGBRAI route. It will need to operate within the parameters of their original license/permit type (Example: class "B" beer permittees can only sell beer and coolers - NOT ALCOHOLIC LIQUOR) and follow all alcohol laws required by Iowa Code chapter 123. However, if a new or existing business wishes to make changes to an existing license/permit or acquire a new alcohol license/permit during RAGBRAI, the following three options are available.

1. Outdoor Service Areas (patios, beer gardens, etc.)

Outdoor service areas are designated areas which are connected to a licensed premises. Outdoor service areas are considered extensions of existing licensed premises, however, they are not automatically included as part of the licensed premises. Only products permitted by the license/permit may be served. Licensees/ permittees may not sell or serve any alcoholic beverages in an outdoor area until they have met licensing requirements by filing the following documents with the local authority:

Outdoor Service Area Picture

- Online application for outdoor service area.
- Sketch of the outdoor area clearly showing boundaries of the area and its relationship to the licensed premises.
- Online endorsement from the licensees/permittees insurance company certifying that the dram shop liability insurance policy covers the outdoor service area.

The words "outdoor service area" will be reflected at the bottom of the license if the licensee has met all requirements for an outdoor service area. ("Outdoor service area" will not be reflected on the license if the outdoor area is to be used for less than a two-week period; a letter will be sent to the local authority.) Outdoor service areas are not stand-alone licenses. They expire with the license and must be renewed annually.

Iowa Code section 123.3 and 185 Iowa Administrative Code

2. License Transfers

Although liquor, wine and beer licenses may not be transferred from one person to another, they may only be transferred from one location to another. Licenses may only be transferred to a location within the boundaries of the approving local authority. If the license is approved by a county board of supervisors, the license may be transferred only to a location within the unincorporated area of the same county – not to an incorporated city within that county. If the license is approved by a city council, the license may be transferred only to a location within the same city – not to an unincorporated area of that county or to another incorporated city.

Licensees/permittees may transfer their license/permit to another qualified premises by filing the following documents:

- Online application for transfer of liquor license, wine permit or beer permit.
- Sketch of the new location showing the bar, openings to other rooms, exits, restrooms, tables and seats, and storage area.
- Online endorsement from the licensee's/permittee's insurance company certifying that the dram shop

liability insurance is transferred to the new location for the same period that the license/permit is transferred. (Endorsement is required only when dram shop liability insurance is required for the class of license/permit that is transferred.)

The above documents must be approved by the local authority and The Division before selling and dispensing alcoholic beverages in the new location. Licensees/permittees must limit the selling and serving of alcoholic beverages in the new location to the dates of transfer which have been approved by the local authority (city council or county board of supervisors). *All selling and serving of alcoholic beverages must cease at the original location during the period of the transfer, 24 hours to seven days.* Only those alcoholic beverages permitted by the license/permit may be sold on the premises to which the license has been transferred. Transfers may be temporary (24 hours to seven days) or permanent. If the transfer is permanent, The Division will issue an amended license reflecting the new address. If the transfer is temporary, a letter will be sent to the local authority issuing the transfer for the temporary dates.

Iowa Code section 123.38 and 185 Iowa Administrative Code

3. Five-day Licenses

Qualified persons wanting to sell and dispense alcoholic beverages at a town celebration or other special event must obtain a five-day license. Five-day licenses are valid for a period of five consecutive days. License applicants wanting to sell alcoholic beverages on a Sunday within the five-day period must also obtain a Sunday sales privilege. Licensing requirements for five-day licenses are the same as the requirements for annual licenses of the same class. Five day licenses may be issued for on-premises locations only.

Iowa Code section 123.34

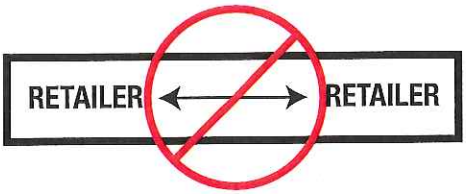
Five Day License Types:

Class "B" Beer	Beer & Coolers
Special Class "C" Liquor	Beer, Wine & Coolers
Class "C" Liquor	Liquor, Wine, Beer & Coolers

Laws and Regulation

Transfer of Alcoholic Beverages Between Licensed Premises

Liquor, wine and beer inventory cannot be transferred from one retail premises to another even if all of the premises are owned by the same person, partnership, corporation or association.



Exceptions: Inventory can be transferred when the retail license is transferred from one location to another.

Iowa Code sections 123.22, 123.30, 123.123, 123.130, 123.131, 123.132, 123.173, 123.177, 123.178, 123.178A and 123.178B

Buying Alcoholic Beverages For Resale

Iowa's alcoholic beverages industry operates under a three-tier system – manufacturer (importer) to wholesaler to retailer. All liquor, wine and beer purchases must be made through the three-tier system.

Off-premises licensees (liquor stores, grocery stores, convenience stores, etc.) must purchase the liquor, wine and beer for resale in their licensed establishments from the following sources:

- ***Liquor:*** From the Iowa Alcoholic Beverages Division only. The Division is the sole wholesaler of liquor in Iowa. **Iowa Code sections 123.22 and 123.30**
- ***Wine:*** From Iowa licensed wine wholesalers only. **Iowa Code sections 123.173, 123.177, 123.178, 123.178A and 123.178B**
- ***Beer and wine coolers:*** From Iowa licensed beer wholesalers only. No exceptions! **Iowa Code sections 123.130 and 123.132**

LICENSE	MUST PURCHASE FROM
Beer Off-Premises Beer On-Premises	BEER WHOLESALER
Wine Off-Premises	WINE WHOLESALER
Wine On-Premises	WINE WHOLESALER (Or less than one case per brand, per day from Class E retailer)
Liquor Off-Premises	IOWA ALCOHOLIC BEVERAGES DIVISION
Liquor On-Premises	CLASS E RETAILER

On-premises licensees (bars, restaurants, hotels, motels, etc.) must purchase the liquor, wine and beer for resale in their licensed establishments from the following sources:

- ***Liquor:*** From off-premises class "E" liquor licensees (liquor stores, grocery stores, etc.) that hold federal wholesale permits. **Iowa Code sections 123.22 and 123.30**
- ***Wine:*** From Iowa licensed wine wholesalers. On-premises licensees also may purchase limited quantities of wine (less than one case per brand, per day) from off-premises class "E" liquor licensees (liquor stores, grocery stores, etc.) who also are licensed to sell bottles of wine. **Iowa Code sections 123.30, 123.173, 123.177, 123.178 and 123.178B**
- ***Beer and wine coolers:*** From Iowa licensed beer wholesalers. No exceptions! **Iowa Code sections 123.123 and 123.130**

Record Keeping Requirements

Iowa law requires licensees/permittees to make their records available to law enforcement officials and to members of the Iowa Alcoholic Beverages Division during business hours and when the licensee/permittee, their employees, agents or patrons are on the licensed premises. During RAGBRAI, licensees/permittees are expected to have receipts on hand for any equipment, furnishings, or fixtures that have been rented.

Iowa Code sections 123.14, 123.21, 123.33 and 123.138 Also Internal Revenue Code 26 U.S. 5121-5123

Bootlegging

Selling liquor, wine, beer and other alcoholic beverages without a license is bootlegging. Whenever liquor, wine or beer are sold or there is a cost to obtain access to the alcohol, a license/permit is required. Bootlegging is a criminal offense (serious misdemeanor). Bootlegging includes:

- Selling alcohol without a license.
- Allowing your liquor license to expire without renewing.
- **Selling or serving outdoors without an outdoor service area privilege.**
- **Bringing spirits, wine or beer across the state border to sell in your licensed establishment.**
- **Retailer buying from someone other than a wholesaler.**

Iowa Code sections 123.59, 123.60 through 123.88 and 123.119

Display of License

Licensees/permittees must prominently display their liquor, wine or beer license/permit so that it is in full view of the public.

Iowa Code section 123.21 and 185 Iowa Administrative Code

Ages to Sell, Serve and Deliver

A licensees/permittees employees and agents must be at least 16 years of age to sell (in original unopened containers) liquor, wine and beer for off- premises consumption (grocery stores, convenience stores, liquor stores, etc.). ***Employees must be at least 18 to sell and dispense liquor, wine and beer for on-premises consumption (restaurants, bars, clubs, etc.).*** Employees must be at least 16 to deliver to on-premises licensed retailers. Employees must be at least 21 to deliver to consumers and they must do so in a vehicle insured and owned, leased or under the control of the licensee or permittee.

Iowa Code sections 123.46, 123.47 and 123.49 and 185 Iowa Administrative Code

Iowa's Legal Drinking Age

Iowa's 21-year-old legal drinking age applies to everyone, including patrons, agents, employees and the licensees/permittees family members. Licensees/permittees, their employees and agents must exercise reasonable care to assure that a person is of legal drinking age before selling or serving them an alcoholic beverage.

Iowa Code sections 123.47 and 123.49

Age to be in Licensed Establishments

Iowa law does not prohibit minors from being in licensed establishments. However, licensees/ permittees should check with their local authority to determine if there is an ordinance governing minors in licensed establishments. If the local authority has such an ordinance, the ordinance applies.

Iowa Code section 123.39 and 185 Iowa Administrative Code

Hours of Sale

The hours during which alcoholic beverages may be legally sold and served are:

Monday through Saturday 6 AM to 2 AM.
Sunday 8 AM to 2 AM.

A Sunday sales privilege is required for all off-premises beer and all on-premises liquor, wine and beer Sunday sales and service. Only class "E" liquor licensees, class "B" wine permittees, class "B" native wine permittees and class "C" native wine permittees have a Sunday sales privilege as part of their basic license/permit.

Iowa Code sections 123.36, 123.49 and 123.134

Outside Advertising

Licensees/permittees may advertise price and brand names of liquor, wine and beer in the following manner:

- Media (newspapers, radio, television, etc.).
- Inside signs (neon signs, mirrors, etc.) may face outward through a window.
- Outside signs (billboards, reader boards, etc.) which are not located on the licensed premises.

Licensees/permittees cannot advertise specific brand names on signs located on the outside of their licensed premises (in the parking lot, on the outside of the building, etc.). ***Exception: Outside signs with specific brand names of liquor, wine and beer are legal when located in enclosed or partially enclosed areas (patio umbrellas with specific name brands in a fenced outdoor beer garden, etc.).*** **Signs in the outdoor service area must face inward.**

Iowa Code section 123.51

Trade Practices

There are state and federal laws and rules that regulate marketing practices between industry members and retailers. When an industry member provides unfair or unlawful services, benefits and gifts to a retailer in order to obtain a better position in the marketplace, it can be referred to as unfair competition or unlawful trade practices. Gifts, services and benefits are examples of areas that are regulated in marketing practices. Retailers should be aware of which marketing practices are considered to be fair and allowable as well as practices deemed to be unfair or inducements. The handout provided in your packet provides answers to frequently asked questions about marketing practices.

Iowa Code section 123.45, 123.186 and 185 Iowa Administrative Code

Infused and Premixed Drinks

On-premises liquor control licensees may mix, store, and dispense mixed drinks, cocktails and alcohol infusions which are not for immediate consumption. The rules define "immediate consumption" to mean the mixing and fulfilling of a mixed drink or cocktail order only after receiving the order. Examples are margaritas, daiquiris, bloody mary's, Jell-O shots, and martinis that have been premixed and contain alcoholic liquor. Licensees who intend to serve premixed drinks should become familiar with the record keeping and label requirements. For more information reference the handout provided in your packet or visit **https://abd.iowa.gov/alcohol/infused-and-premixed-drinks.**

Iowa Code section 123.49 and 185 Iowa Administrative Code

Gambling

A social gambling license permits betting in small stakes card and parlor games between individuals who have a social relationship (other than for the purpose of gambling). Participants must be at least 21 years old and cannot win or lose more than a total of $50 in a 24-hour period. General admission fees or cover charges may not be charged at any time social gambling is allowed. Licensees/permittees, their employees and agents may not promote, sponsor, conduct or act as a banker or cashier for social games. For more information or information on how to apply for a social gambling license reference the handout provided in your packet, visit **www.DIA.Iowa.gov** or contact the **Social and Charitable Gaming Division** at 515-281-6848.

Iowa Code sections 99B.6, 123.49 and 123.50 and 481 Iowa Administrative Code chapter 102

Sales to Intoxicated Persons

It is unlawful to sell or serve liquor, wine or beer to a person who is, or appears to be, intoxicated. The laws governing the sale of alcoholic beverages to an intoxicated person apply to both on- and off-premises licensees – bars, restaurants, hotels, motels, liquor stores, convenience stores, grocery stores, etc.

Although it may be difficult to refuse the sale or service of alcoholic beverages, the consequences that may occur if appropriate action is not taken are significant. People who become intoxicated put themselves and others at risk of injury and harm. Licensees/permittees, their employees and agents who sell or serve an alcoholic beverage to an intoxicated person must realize that their failure to intervene may indirectly injure or kill someone.

Laws governing an intoxicated person also apply to licensees/permittees. Intoxication impairs judgment and interferes with sound business decisions. For this reason, licensees/permittees may find it a good business practice not to drink while working.

Licensees/permittees who sell or serve an alcoholic beverage to an intoxicated person are subject to criminal penalties. In addition, administrative proceedings may be initiated for suspension or revocation of the license/ permit. Licensees/permittees also may be held civilly liable under Iowa's Dram Shop Act for serving an alcoholic beverage to an intoxicated person who causes damage, injury or death of an innocent party. Licensees/ permittees can minimize their risk by never serving an alcoholic beverage to a person who is or appears to be intoxicated.

Iowa Code sections 123.49, 123.92, 123.93 and 321J.2

Iowa Program for Alcohol Compliance Training

The Iowa Program for Alcohol Compliance Training (I-PACT) is an alcohol retailer training course for on- and off-premises licensees. The training is online and free of charge. I-PACT covers the Alcoholic Beverages Control Act (Iowa Code chapter 123), valid forms of identification, and how to spot altered and fake IDs. For more information reference the handout provided in your packet or visit **https://abd.iowa.gov/education/i-pact.**

I-PLEDGE Tobacco, Alternative Nicotine and Vapor Products Retailer Training

All individuals who sell tobacco, alternative nicotine and vapor products as well as holders of retail licenses should take the I-PLEDGE training. The core objective of the I-PLEDGE program is to prevent illegal sales of tobacco, alternative nicotine and vapor products by educating retailers and increasing awareness of changes in Iowa's tobacco, alternative nicotine and vapor products laws. The program focuses on preventing underage sales and when not to make a sale. Participants will learn techniques for refusing the sale of tobacco, alternative nicotine and vapor products with minimal confrontation and how to legally confiscate an altered or fake ID. Establishments choosing to participate in the I-PLEDGE training are granted an affirmative defense, which may be used once in a four-year period. The training is offered online at no cost. For more information reference the handout provided in your packet or visit **https://abd.iowa.gov/i-pledge.**

Smokefree Air Act

The Smokefree Air Act prohibits smoking in almost all public places and enclosed areas within places of employment, as well as some outdoor areas. The law applies to: restaurants, bars, outdoor entertainment events and amphitheaters.

For more information reference handouts provided in your packet or contact Iowa Department of Public Health. **Phone:** 1-888-944-2247 **DEAF RELAY:** (Hearing or Speech Impaired) 711 or 1-800-735-2942. **Website:** http://www.iowasmokefreeair.gov/

Overnight Towns

GLENWOOD

CITY HALL

5 N Vive Street

Glenwood, IA 51534

Tel: 712-527-4717

SHENANDOAH

CITY HALL

500 W. Clarinda Avenue

Shenandoah, IA 51601

Tel: 712-246-1213

CRESTON

CITY HALL

116 West Adams Street

PO BOX 449

Creston, IA 50801

Tel: 641-782-2000

LEON

CITY HALL

104 W 1st Street

Leon, IA 50144

Tel: 641-446-6221

CENTERVILLE

CITY HALL

312 East Maple

Centerville, IA 52544

Tel: 641-437-4339

OTTUMWA

CITY HALL

105 E. Third Street

Ottumwa, IA 52501

Tel: 641-683-0621

WASHINGTON

CITY HALL

215 E. Washington Street

Washington, IA 52353

Tel: 319-653-6584

MUSCATINE

CITY HALL

215 Sycamore Street

Muscatine, IA 52761

Tel: 563-264-1550

Contact the Division

IOWA ALCOHOLIC BEVERAGES DIVISION

1918 SE HULSIZER RD

Ankeny, IA 50021

Tel : 515-281-7400

Website: https://abd.iowa.gov/

Local Authority Talking Points

Local Authority: _____

Phone: _____ Date: _____

Spoke with: _____

Title: _____

Talking Points

- ☐ Hours of Sale
- ☐ Different ways to sell alcohol (existing license, outdoor service, transfer license, 5 day license)
- ☐ Posting license
- ☐ Licensing process - **Reminder to have sketch**
- ☐ DRAM
- ☐ Timeline for licensees - **Reminder to have meetings more often (if applicable)**
- ☐ Smokefree Air Act - Give handouts from Jessica

Questions

Any special/unique events happening during RAGBRAI? _____

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Any special ordinance during RAGBRAI? _____

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Notes

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Licensee Talking Points

Licensee: _____

Phone: _____ Date: _____ City/Town: _____

Spoke with: _____ Position : _____

Time In/Out: _____ Investigator Name: _____

Talking Points

- ☐ Application timeline
- ☐ Different ways to sell alcohol (outdoor service, license transfer, 5 day license)
- ☐ Transfer of alcohol between licensed premises
- ☐ Buying alcoholic beverages for resale
- ☐ Record keeping requirements
- ☐ Bootlegging
- ☐ Display of license
- ☐ Age to sell, serve and deliver
- ☐ Hours of sale
- ☐ Outside advertising
- ☐ Trade practices
- ☐ Infused and premixed drinks
- ☐ Sales to intoxicated persons
- ☐ I-PACT
- ☐ I-PLEDGE
- ☐ Smokefree Air Act

Notes

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Things of Value

1. Can industry members give, sell, or rent coolers/cooler bags/dump bins to on- or off-premises licensees?

   No. Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving or paying for any equipment used in the storage, handling, serving or dispensing of alcoholic beverages and food. Iowa Code § 123.45 and 185 IAC 16.40.

2. Can industry members give, sell, or rent logoed buckets or pitchers to on- or off-premises licensees?

   No. Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving or paying for any equipment used in the storage, handling, serving or dispensing of alcoholic beverages and food. Iowa Code § 123.45 and 185 IAC 16.40.

3. Can industry members give, sell, or rent tents, tables and/or chairs to on- or off-premises licensees?

   No. Manufacturers and wholesalers are prohibited from directly or indirectly giving, selling, renting, or lending equipment, furnishings or fixtures to a retailer for use by the retailer or in the retail establishment. Iowa Code §123.45, 185 IAC 16.40 and 27 CFR 6.21.

4. Can industry members give, sell, or rent dispensing equipment, coil boxes or draft trucks with tapping equipment on the side to on- or off-premises licensees?

   No. Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving or paying for any equipment used in the storage, handling, serving or dispensing of alcoholic beverages and food. Iowa Code § 123.45 and 185 IAC 16.40.

5. Can industry members park a refrigerated truck on an on- or off-premises licensed premises to store extra product in?

   No. Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving or paying for any equipment used in the storage, handling, serving or dispensing of alcoholic beverages and food. Iowa Code § 123.45 and 185 IAC 16.40.

6. Can industry members give, sell, or rent a draft system or walk-in cooler to on- or off-premises licensees?

   No. Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving or paying for any equipment used in the storage, handling, serving or dispensing of alcoholic beverages and food. Iowa Code § 123.45 and 185 IAC 16.40.

7. Can industry members give, sell, or loan t-shirts to on- or off-premises licensees for their employees to wear?

   Yes. Manufacturers and wholesalers may give, sell or loan t-shirts to retailer's employees as point-of-sale items. The t-shirts must bear substantial advertising matter about the product or the manufacturer or wholesaler. Anything offered to one retailer must be uniformly offered to all retailers. Iowa Code §§ 123.45, 123.123, 123.135, 123.172, 123.180 and 123.186; 27 C.F.R § 6.84.

8. Can industry members sponsor a band or concert on licensed premises?

   Yes, as long as the sponsorships are not offered as an inducement to exclude a competitor's product. Anything offered to one retailer must be uniformly offered to all retailers. Iowa Code §§ 123.45, 123.123, 123.135, 123.172 and 123.180.

9. Can beer or wine industry members give disposable glassware to on- or off-premises licensees?

   No. Manufacturers and wholesalers must sell – not give – one-time usage cups made of paper, paper laminate, or plastic. Iowa law requires wholesalers to charge the retailer an amount equal to or greater than the cost of the one-time usage cups. Iowa Code § 123.45.

10. Can a retailer demand industry members provide kegs, glasses, etc., at no cost prior to agreeing to carry the industry member's product?

    While retailers may try to negotiate benefits from wholesalers, the law prohibits the granting of some requests. For all items not expressly prohibited, anything an industry member offers to one retailer must be uniformly offered to all retailers. Iowa Code §§ 123.45, 123.123, 123.135, 123.172, 123.180 and 123.186.

Advertising

11. Can industry members provide outside banners with brand names and/or logos to on- or off-premises licensees?

    No. Iowa law prohibits advertising on the outside of licensed premises if the advertising contains a brand name or other matter readily identified with the brand. Thus, a manufacturer or wholesaler may provide outside banners to retailers as long as the banners do not contain a brand name, logo or other advertising manner readily identified

with a brand name. Anything offered to one retailer must be uniformly offered to all retailers. Iowa Code §§ 123.51, 123.123, 123.135, 123.172 and 123.180.

12. Can industry members give, sell, or rent umbrellas for outdoor service area tables to on-premises licensees?

    Yes. Manufacturers and wholesalers may give, sell or rent table umbrellas to retailers as point-of-sale items. The umbrellas must bear substantial advertising matter about the product or the manufacturer or wholesaler. Anything offered to one retailer must be uniformly offered to all retailers. Iowa Code §§ 123.45, 123.123, 123.135, 123.172, 123.180 and 123.186; 27 C.F.R, § 6.84.

Return of Product

13. Can industry members allow the return of beer, wine, or liquor that annual (12 month) on- or off-premises licensees ordered too much of or is not selling?

    No. Manufacturers and wholesalers are prohibited by both federal and state law from accepting the return of overstocked and slow-moving beer, wine or liquor. Iowa Code § 123.186, 185 IAC 16.90, and 27 C.F.R. § 11.45.

14. Can industry members allow the return of beer, wine, or liquor that seasonal (6 and 8 month) on- or off-premises licensees ordered too much of or is not selling?

    Manufacturers and wholesalers may accept the return of product from a seasonal licensee, if the product is likely to spoil during the off season. Manufacturers and wholesalers are under no obligation to accept the return the product. Iowa Code § 123.186; 27 C.F.R. §§ 11.31 and 11.39.

15. Can industry members allow the return of beer, wine, or liquor that temporary (5-day and 14-day) on- or off-premises licensees ordered too much of?

    Yes. Manufacturers and wholesalers may accept the return of products that temporary licensees have on hand at the time the retailer terminates business. Manufacturers and wholesalers are under no obligation to accept the return the product. Iowa Code § 123.186, 185 IAC 16.90, and 27 C.F.R. § 11.35.

Ordering Product

Each licensee/permittee must order product under the unique license/permit granted to each premises.

16. Can industry members sell an on- or off-premises licensee a 100 case buy and deliver half to each of the licensee's locations?

    No. Transferring products between retail premises is prohibited. Each premises is separately licensed and required to operate as a separate business. Each licensee/permittee must order product under the unique license/permit granted to each premises. Iowa Code §§ 123.123, 123.130, 123.172, 123.173, and 123.177.

17. Can licensees/permittees that are owned by the same person/entity share their alcoholic beverages inventory between their annual licensed location and temporary licensed location?

    No. Transferring products between retail premises is prohibited. Each premises is separately licensed and required to operate as a separate business. Each licensee/permittee must order product under the unique license/permit granted to each premises. Iowa Code §§ 123.123, 123.130, 123.172, 123.173, and 123.177.

Pricing of Product

18. Can industry members donate beer, wine or liquor to on- or off-premises licensees?

    Yes, but since Iowa law prohibits manufacturers and wholesalers from discriminating between retailers, manufacturers or wholesalers must uniformly offer all rebates, free goods, or other discounts to all retailers. Iowa Code §§ 123.22, 123.123, 123.135, 123.172, and 123.180.

19. Can industry members give a quantity discount or rebate on beer, wine or liquor purchased by on- or off-premises licensees?

    Yes, but since Iowa law prohibits manufacturers and wholesalers from discriminating between retailers, manufacturers or wholesalers must uniformly offer all rebates, free goods, or other discounts to all retailers. Iowa Code §§ 123.22, 123.123, 123.135, 123.172, and 123.180.

DEPARTMENT OF THE TREASURY
Alcohol and Tobacco Tax and Trade Bureau

TTB Ruling
Number: 2012–4 November 19, 2012

Freshness Dating and Allowable Returns of Malt Beverage Products under the FAA Act

The Alcohol and Tobacco Tax and Trade Bureau (TTB) has been asked to clarify the circumstances under which retailers may return to wholesalers, and under which wholesalers may receive, malt beverage products that have been deemed unsuitable for sale because of freshness concerns without violating the consignment sales provision of the Federal Alcohol Administration Act (FAA Act) and TTB regulations.

TTB Rul. 2012-4

Background

Some brewers assign a coded "pull date" to their products to prevent stale or outdated products from remaining in the market. Brewers who assign pull date coding ask that distributors remove malt beverage products based on the pull date and replace them with fresh product. These brewers believe that relying on the wholesaler to monitor the pull date will ensure that only fresh products are in the retail market and that consumers do not purchase stale or spoiled malt beverages.

Brewers who include a "freshness date" on their products believe that such statements allow consumers to make purchasing decisions based on the freshness date. These brewers also assert that freshness dating is a quality control tool that offers some assurance that if the consumer purchases a malt beverage before that date, the product will not be deteriorated or spoiled.

Industry members who use freshness dating requested that TTB consider whether retailers may return to wholesalers malt beverage products past their freshness date as an allowable circumstance under the consignment sales provisions of the FAA Act.

Authority

The Secretary of the Treasury is authorized to prescribe regulations regarding unfair competition and unlawful trade practices involving the sale of wine, distilled spirits, and malt beverage products under 27 U.S.C. 205. In the case of malt beverages, trade practice provisions of the FAA Act apply only if the laws of the State into which the malt beverage products are sold or shipped impose similar requirements. TTB uses rulings and industry circulars to clarify the provisions of the FAA Act and implementing regulations, when appropriate.

Discussion

The consignment sales provision of the FAA Act, 27 U.S.C. § 205(d), makes it unlawful for an industry member (such as a producer, importer, or wholesaler of malt beverages, wines, or distilled spirits) to sell, offer for sale, or contract to sell to any trade buyer (a wholesaler or retailer), or for a trade buyer to purchase, offer to purchase, or contract to purchase any products (a) on consignment; or (b) under conditional sale; or (c) with privilege of return; or (d) on any basis other than a bona fide sale; or (e) if any part of the sale involves, directly or indirectly, the acquisition by such person of products from the trade buyer or the agreement to acquire other products from the trade buyer. However, section 205(d) does not prohibit transactions involving the bona fide return of products for "ordinary and usual commercial reasons arising after the merchandise has been sold".

TTB regulations promulgating allowable (that is, ordinary and usual) reasons for returns under § 205(d) are found in 27 CFR part 11, Subpart D – Rules for the Return of Distilled Spirits, Wine, and Malt Beverages. Sections 11.32 through 11.39 (27 CFR 11.32 - 11.39) of this subpart specify what are considered "ordinary and usual commercial reasons" for the return of products, and outline the conditions and limitations for such returns. The ordinary and usual commercial reasons listed under §§ 11.32-11.39 include:

- Defective product;
- Shipment error;
- A change in the law preventing sale of the product;
- Termination of the buyer's business or franchise;
- Change in product from that in inventory;
- Product in inventory is discontinued; or
- Possible spoilage of product during the off-season of a seasonal retail dealer.

While industry members have the option to accept exchanges and returns for the ordinary and usual commercial reasons listed in §§ 11.32 through 11.39, they are under no obligation to do so.

As found under TTB regulations (27 CFR 11.45 – 11.46), returns or exchanges of products that are merely overstocked, slow moving, or are seasonal in nature, such as holiday decanters, and certain distinctive bottles do not constitute returns for ordinary and usual commercial reasons.

TTB Determination

Under the following conditions, TTB will consider the return of malt beverages for cash or credit against outstanding indebtedness or exchange of such malt beverages for freshness reasons as a return by a retailer for ordinary or commercial reasons under 27 CFR 11.32:

- The brewer has policies and procedures in place that specify the date the retailer must pull the product;
- Such brewer's freshness return/exchange policies and procedures are readily verifiable and consistently followed by the brewer;
- The container has identifying markings that correspond with this date; and
- The malt beverage product pulled by the retailer may not re-enter the retail marketplace.

TTB believes this policy addresses the realities of modern marketing practices while minimizing the possibility that the industry will use freshness dating returns as a subterfuge for disposing of slow-moving products.

However, if TTB determines that a wholesaler is requiring or forcing a retailer to overstock its products under the pretext that the retailer may exchange the product based upon freshness, TTB may investigate the wholesaler for violating the consignment sales and/or tied house provisions. (*See* 27 U.S.C. 205(b)(7) and (d) as implemented under 27 CFR 6.71 and § 11.45.) Moreover, if industry members re-introduce into the marketplace malt beverages that were returned or exchanged for freshness purposes, TTB may investigate whether the purported freshness purpose was a mere subterfuge to violate these same consignment sales and/or tied house provisions.

Held, subject to the conditions described above, TTB considers the exchange of an identical quantity of the same brand or the return for cash or credit against outstanding indebtedness for freshness concerns as a return by a retailer for ordinary or commercial reason under 27 CFR 11.32.

Date Approved:

John J. Manfreda
Administrator
Alcohol and Tobacco Tax and Trade Bureau

OPR: TID

ALCOHOLIC
BEVERAGES
DIVISION
State of Iowa

Terry E. Branstad *Governor of Iowa*
Kim Reynolds *Lieutenant Governor*
Stephen Larson *Administrator*

RAGBRAI CONTACT INFORMATION

For questions regarding compliance, or to submit a complaint, please contact:

Heather Schaffer
Compliance Officer 2
(515) 281-7461
schaffer@iowaabd.com

For questions regarding licensing, please contact:

Jason Hohn
Lead Licensing Clerk Specialist
(515) 281-7429
hohn@iowaabd.com

To submit education and outreach ideas, please contact:

Erin Bothwell
Education and Outreach Program Planner
(515) 725-7927
bothwell@iowaabd.com

For all other questions, please contact:

Stephanie Strauss
Executive Officer 2
(515) 281-7432
strauss@iowaabd.com

ABD Regulatory Focus for 2016 & 2017

Site Inspections

Class "E" Liquor Control Licensees

- New licensees
  - One year follow up
- Adjacent licenses
- Multiple locations
- With Class "C" Beer Permit Sub-license
  - Growlers

Class "C" Liquor Licensees

- Brew Pub Sub-license

Class "B" Beer Permitees

- Brew Pub Sub-license

Class "C" Beer Permitees

- Growlers

Waivers

- Vending machine
- Bathroom

Smokefree Air Act

Regulatory Compliance Examinations

Breweries

Micro-distilleries

Wholesalers

Wineries

Complaint Investigations

IOWA ALCOHOLIC BEVERAGES DIVISION ORGANIZATIONAL CHART

Administrator
Stephen Larson

Regulatory Affairs & Administrative Appeals
Karen Freund (PSM1)
Heather Schaffer (Comp. Officer 2)
Jeffrey Cam (Comp. Officer 1)
Compliance Officer 1 (open)
Cassandra Saldana (Temp)

Governmental Relations & Public Policy
Stephanie Strauss (EO2)

COO/Deputy
Tim Iversen (PSE)

Communication, Education, Outreach
Bobby Bailey (Info Spec 3)
Erin Bothwell (PP3)
Program Planner 2 (open)

Executive Assistant
Tyler Ackerson (Sec 3)

Inspection Program
Matt Jones (Investigator 3)
Paul Swesey (Investigator 1)
Investigator 1 (open)

Safety/Security
Jodi Christensen (PA3)

Information Technology
Anita Volk (Contractor)

Administrative Assistant
Pam Koehn-Miller (Sec 2)

Financial Management
Todd Halbur (Acct 4)
Leisa Bertram (Acct 2)
Micky Truman (Storekeeper 3)
Dee Nelsen (Acct Tech 3)
Nathan Oakley (Acct Tech 2)
Jay Tostlebe (Acct Tech 2)

Licensing
Jason Hohn (Clerk Spec)
Clerk Specialist (open)
Clerk Specialist (open)
Kristina Senesaynho (Temp)
Kathleen Sandquist (Temp)
Christina Hatfield (Temp)

Tobacco Program
Jessica Ekman (PP3)
Corey Powell (Investigator 3)
Bill Missman (Investigator 1)
Investigator 1 (open)

Distribution
Herb Sutton (Public Service Supv)
Eric Ridenour (Public Service Supv)
Nicole Scebold (Mgt Analyst 3)
Monica Lundstrom (AA2)
Purchasing Assistant (open)
Jamie Richard (Secretary 1)
Storekeeper 2 (3)
Transport Drivers (22) (4 open)
Warehouse Workers (20) (3 open)

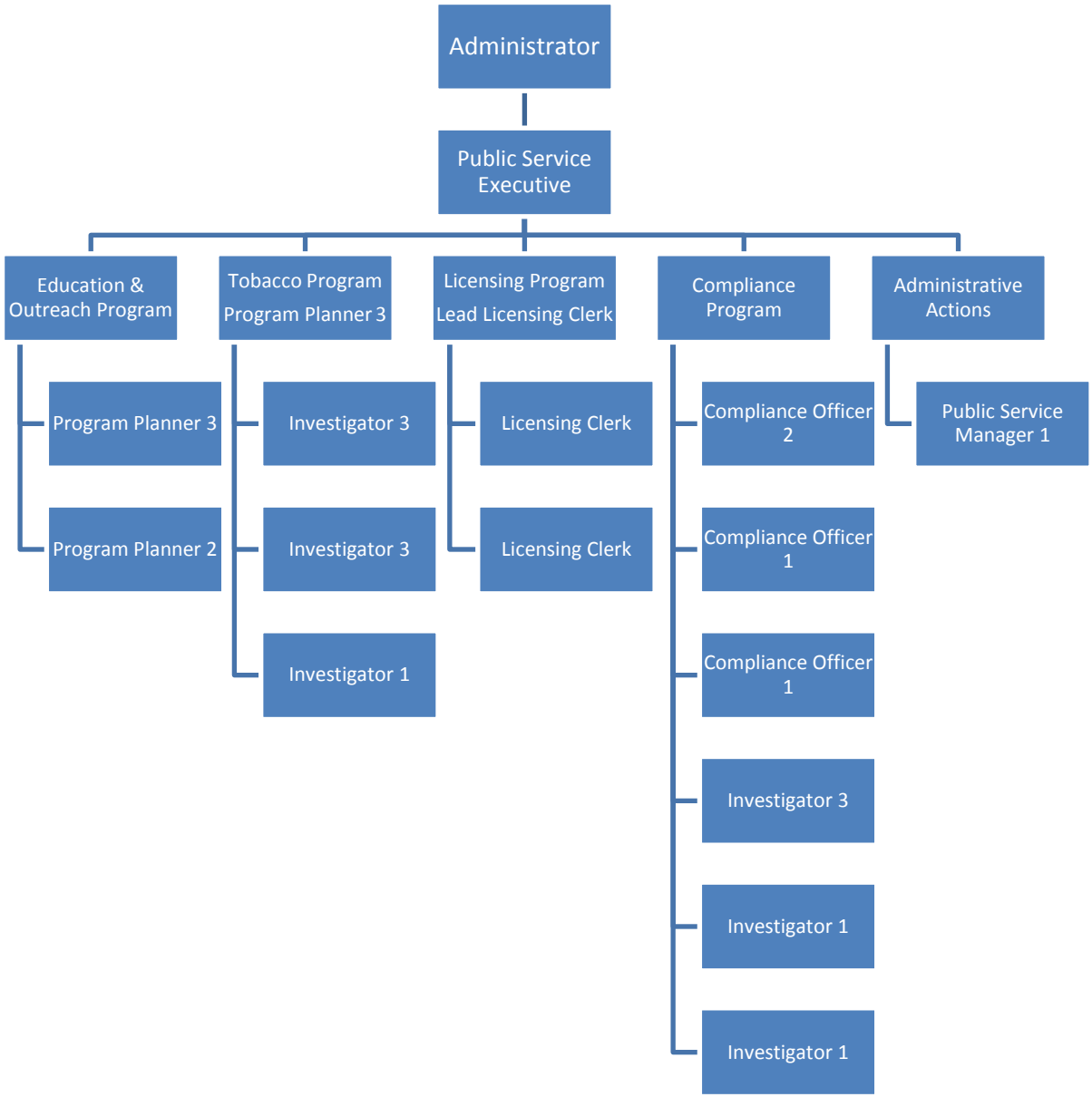
Buildings & Grounds
Bob Anderson (PA1)
Matt Wharff (Maint Repair)

Effective July 1, 2016

State of Iowa
ALCOHOLIC
BEVERAGES
DIVISION

Regulatory Compliance Program

Draft Organizational Chart



POSITION DESCRIPTION QUESTIONNAIRE (PDQ)

Please read the instructions before completing this form.

FOR AGENCY USE ONLY	FOR DAS-HRE USE ONLY
☐ New Position M-5 #: 27-9895	PDQ #:
☐ Update Only	Job Class Title:
☒ Review Requested by Appointing Authority	18-Digit Position #:
☐ Review Requested by Employee	Reviewed by:
☐ Response to DAS-HRE request	Effective Date:

1. Name of employee (if none, write VACANT)	2. Current 18-digit position #	3. Current job class title
Vacant	212-631-9201-00205-003	Purchasing Assistant

4. Department, division, bureau, section, and work address
Commerce, Alcoholic Beverages Division, 1918 SE Hulsizer Rd Ankeny 50021

5. Hours worked (shifts, rotations, travel)
Monday - Friday, 8:00 AM - 4:30 PM - Travel and extended hours are required to meet the needs of the Administrator, employees and licensees.

6. ☒ **Full-time (40 hours per week)**
☐ **Part-time (list number of hours per week):**

7. Have the assigned duties changed since this position was last reviewed for a classification decision? ☒ Yes ☐ No
If Yes, place an "X" beside each NEW task written below. Also, describe in detail how those tasks are different from those previously assigned.

8. Classification requested (optional)	9. Name and job class of the immediate supervisor
Public Service Executive	Stephen Larson, Administrator

10. Description of Work: Describe the work in detail. Make the description so clear that the reader can understand each task exactly. In the % column, enter the percent of time spent on each task during an average work week, not to exceed 100%. List tasks in descending order of time spent. If this is a reclassification request, the previous PDQ must be attached. This PDQ will be returned if any section is incomplete.

%	DESCRIPTION OF WORK PERFORMED
	Provides overall supervisory management of the Iowa Alcoholic Beverages Division's Licensing, Regulatory, Tobacco, and Education and Outreach programs; determines and develops agency-wide strategy and policy in close conjunction with the Administrator; performs related work as required.
	Responsible for the overall operations of the Division's Licensing, Regulatory, Tobacco, and Education and Outreach programs. Provides strategic leadership to ensure the successful planning and execution of critical programs under Iowa Code chapter 123.
X25%	Manages and directs work activities of employees within the Division's licensing and regulatory programs that affect over 13,000 licensees/permittees. Collaborates with the Administrator, Chief Operations Officer, and other members of the Division's senior leadership team, the Iowa Attorney General's Office, state, federal, and local agencies, and other internal and external stakeholders to ensure successful execution of the Division's Licensing, Regulatory, Tobacco, and Education and Outreach programs.
	Responsible for the successful planning and execution of programs within the Division's Licensing, Regulatory, Tobacco, and Education and Outreach programs. Provides visionary direction and managerial oversight that align with the Division's mission and vision statement, strategic plan, and budgetary requirements. Responsible for creating and implementing a plan for staff development and cross training, and for educating staff on program changes as necessary.
X20%	Represents the Administrator on matters regarding licensing and compliance. Attends local, regional, and national meetings on behalf of the Division. Represents the licensing and regulatory position of the Division to licensees, external stakeholders and the general public. Responsible for providing targeted educational programs for licensees and permittees, policymakers, local officials, law enforcement professionals, and industry representatives that are designed to increase compliance.

X20%	Responsible for implementing and executing a statewide inspection, financial-based examination, and compliance-based verification program with specific benchmarks, and for evaluating program content and personnel effectiveness and efficiency. Assigns work, establishes scope, time frames, due dates, and anticipated results of assigned work. Reports program and personnel effectiveness to the Administrator, Chief Operations Officer, and other members of the senior leadership team, and the Department of Personnel as deemed necessary.
X15%	Responsible for the fiscal affairs of the Licensing, Regulatory, Tobacco, and Education and Outreach programs, including, but not limited to, the preparation and execution of the annual budget and budgetary items within the respective programs. Prepares supporting data justification for major funding initiatives and presents proposals to the Comptroller, Chief Operations Officer, and Administrator for consideration. Serves as a key member of the senior leadership team to develop and execute the Division's strategic plan. Leads interdivisional teams to implement projects as assigned by the Administrator and the Chief Operations Officer.
X10%	Provides analysis of existing policy and analyzes proposed legislation. Determines the impact of proposed and enacted law changes on existing programs within the units. Identifies and presents legislative, administrative rules, and additional fiscal/policy proposals regarding programs under the incumbent's management to the Administrator for approval. Responsible for understanding and implementing changes related to new or modified laws, administrative rules, or regulations into those programs. Responsible for creating a plan to educate internal and external stakeholders on program changes, new or modified laws, rules, and regulations.
X5%	Performs research and provides advanced position papers on emerging issues regarding licensing and regulation.
5%	As assigned, the incumbent acts as Acting Chief Operations Officer in the absence of the Chief Operations Officer and provides back-up to any emergency staffing needs of the Division as necessary.

11. **Is this position considered to be supervisory? Yes ☒ No ☐ (If Yes, complete the Supervisory Analysis Questionnaire form [CFN 552-0193] and attach it to this PDQ.)**

12. **For what reasons are you requesting that this position be reviewed? Be specific. If applicable, include significant changes or additions to duties. Attach additional sheets, if necessary.**

The primary function of the Division is to license and regulate applicants and persons (defined under 123.3) who want to engage in the manufacturing, wholesaling or retailing of alcoholic beverages in the state of Iowa. To effectively administer these programs, the Division has been undergoing a restructure of the roles and responsibilities of the division and current staff over the last 18 months. This request will ensure that upon the filling of this position, the Division will be able to find the correct skill sets that match the roles and responsibilities of the classification requested (See Item 8). This position will provide comprehensive oversight and be responsible for all aspects of licensing, regulation, education and outreach for our 13,000-plus licensees.

Employee Signature

13. (For new or vacant positions, this section is not applicable.)

☐ **I certify that I have read the instructions for the completion of this questionnaire, that the answers are my own, and that they are accurate and complete.**

OR

☐ **The questionnaire was completed by agency management. I have read and been provided a copy of this questionnaire.**

Signed _____ _____

(Incumbent Employee) *(Date)*

For position review requests, if you have not been notified by your agency's management of this request being sent to DAS-HRE for review within 30 days, you may choose to send this request directly to DAS-HRE for review. Email it to pdq@iowa.gov or address it to: *Classification & Compensation, Iowa Department of Administrative Services – Human Resources Enterprise, Hoover Building, Level A, 1305 E. Walnut, Des Moines, Iowa 50319.*

Supervisor Review of PDQ

This section must be completed within 30 days after the PDQ is received from the employee. The employee must be notified of the decision to either support or not support the request. Regardless of this decision, the request must be forwarded to DAS-HRE. Email it to pdq@iowa.gov or address it to: *Classification & Compensation, Iowa Department of Administrative Services – Human Resources Enterprise, Hoover Building, Level A, 1305 E. Walnut, Des Moines, Iowa 50319.* This PDQ will be returned if any section is incomplete. Attach additional sheets, if necessary.

14. **Indicate to what extent, if any, the statements on this form are, in your opinion, not correct or need clarification.**

None

15. **Describe the origin of any new duties (i.e., those marked with an "X" in item 10). How long have the new duties been performed? Where were the new duties performed prior to being assigned to this position? Are these duties currently performed by anyone else? If so, identify the person(s) and the job classification(s) of their positions.**

The position that is currently vacant (Purchasing Assistant) was as a result of a former employee retiring from the Division. The current job duties associated with this position (Item 3) are no longer relevant. The duties identified in Item 10 are being performed by: Stephen Larson, Administrator; Stephanie Strauss, Executive Officer 2; Heather Schaffer, Compliance Officer 2; Jessica Ekman, Program Planner 3; Todd Halbur, Comptroller; Tim Iversen, Chief Operations Officer; and Jason Hohn, Licensing Clerk Specialist. I seek an incumbent who will plan, organize and direct staff to license, execute inspections, compliance examinations and investigate complaints of alleged non-compliance of state and federal alcohol laws. Will review reports alleging non-compliance to determine what corrective action is required. Will identify financial and human resource requirements to adequately support the functions and programs related to licensing, regulation, tobacco, and education.

16. What is the basic purpose of this position?

Is responsible for implementing the Division's licensing, regulatory, tobacco, and educational programs. Oversees licensing, investigations, compliance checks, and education and outreach initiatives. Modifies, develops, and maintains uniform standards for statewide consistency regarding licensing, investigations, compliance checks, financial based examinations and evaluates work performance in these areas. Monitors staff in the performance of their duties and takes appropriate action as necessary. Supervises and oversees the work performance of lead workers, division staff, and senior staff. Works with the Administrator, Chief Operations Officer, and Comptroller to determine staffing and budgetary needs, and that financial resources are applied that will achieve the efficient delivery of results with a return on investment. See Item 10 as well.

17. Identify the essential functions that must be performed by the incumbent, with or without reasonable accommodations for disabilities. Refer to the Drafting Essential Functions tool to develop the essential functions. Example essential function: *Prepares daily statistical reports for agency director.*

Brings forth recommendations with an action plan on operational issues that influence performance, fiscal management, safety and security, and risk management. Provides input to the Administrator on regulatory and licensing matters, public relations, education and outreach. Researches and provides daily, monthly, and quarterly submitted reports on how to best carry out core functions. Prepares a system of tracking the progress of implementation of the Division's strategic plan on licensing, regulation and compliance. Communicates to, and coordinates with staff, management, and Administrator on issues related to operations and policy. Organizes, supervises, and proofreads instructions, forms and reports.

18. If applicable, identify any special requirements (e.g., a specific registration, certification, or professional licensure) or position-specific competency requirements which are necessary to perform the job duties of this position as described in Item 10.

None

19. If applicable, identify any selective certifications (by both three-digit code and title) which are required for this position. For selective definitions and more information, refer to the Selective List.

058 - Budgeting, 208 - Financial, ability to work overtime, nights, weekends, and Holidays.

20. If this position is non-supervisory, are you requesting that it be reviewed to determine coverage or exclusion from the collective bargaining provisions of Iowa Code Chapter 20? Yes ☐ No ☐ (If Yes, complete the Bargaining Exemption Questionnaire form [CFN 552-0631] and attach it to this PDQ.)

21. Are you requesting that this position be reviewed to determine coverage or exclusion from the merit-system provisions of Iowa Code Chapter 8A? Yes ☒ No ☐ (If Yes, complete the Merit Exemption Questionnaire form [CFN 552-0733] and attach it to this PDQ.)

Supervisor Comments and Signature

22. ☐ **Support Request** ☐ **Do Not Support Request**

Comments (if applicable):

Signed _____ *(Supervisor)* _____ *(Date)*

Appointing Authority Comments and Signature

23. ☐ **Support Request** ☐ **Do Not Support Request**

Comments (if applicable):

_____

Signed _____ _____

(Appointing Authority) *(Date)*

ALCOHOLIC BEVERAGES DIVISION

State of Iowa

ABD Technology Update

Anita Volk, Program Manager

June 23, 2016

Technical Overview-Agenda

1. *Electronic Ordering*
2. *Single Platform-MS Dynamics AX*
3. *Elicensing*

Electronic Ordering

- *Customer Portal & EDI: Currently 99% of all orders are electronic, only 5 remaining licensees are ordering manually.*

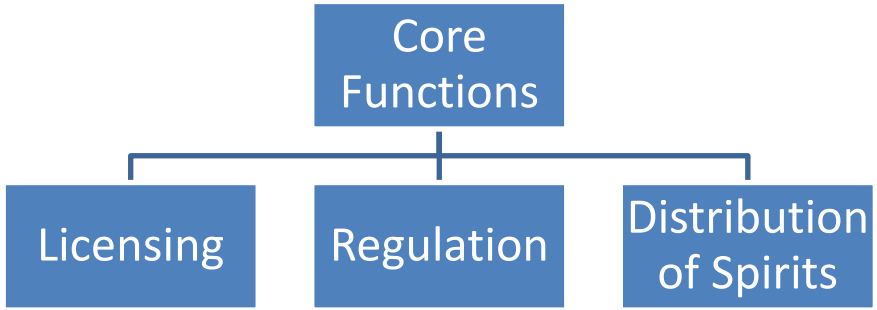
Single Platform-MS Dynamics AX

- *Project is in execution stage.*
- *Testing begins today and will move through June and July.*

eLicensing System

- *BasicGov has been selected for the new eLicensing system that will encompass Compliance, Regulation and Licensing*
  - *Requirements have been collected by vendor*
  - *Timeline of the project is around 18 months*

5 Year Strategic Plan FY17-FY21



Mission Statement

To serve Iowans through responsible and efficient licensing, regulation, and distribution of alcohol.

Vision Statement

The Iowa Alcoholic Beverages Division provides clarity, consistency, and equity to all stakeholders within the beverage alcohol industry.

Platform 1

Modernize rules and regulations that affect the alcoholic beverages industry.

Platform 2

Refresh the regulatory program that ensures licensee compliance.

Platform 3

Demonstrate ongoing improvement in the distribution of spirits to Iowa licensees.

Platform 4

Integrate technology into all Division processes to optimize the delivery of goods and services.

Financial Overview YTD through May FY16

2016 Legislative Session - Final Update

June 23, 2016

The Legislative Session Final Update is a recap of legislative action taken by the 86th General Assembly in 2016 relating to the Alcoholic Beverages Division and Iowa Code Chapter 123. The Division introduced three bills in 2016. Senate File 2151, making technical changes, was passed and signed by Governor Branstad. Division bills relating to wine vending machines and personal importation of wine failed to advance. Ultimately, four bills related to alcohol regulation were passed and signed into law during the 2016 Legislative Session.

2016 Legislation – Passed

House File 2359 – Code Editor Bill
Makes non-substantive changes to Iowa Code Chapter 123. Division 1, Sections 31-40 of the bill changes "nonoperator" to "nonoperator's" where it appears and adds "beer" before "permit" in the beer subchapter. *Signed by the Governor on April 6, 2015. Effective July 1, 2016.*

Senate File 2151 – DIVISION BILL - Technical Changes
Makes non-substantive changes to Iowa Code Chapter 123 to assist the reader by establishing wording that is consistent with the Division's administrative rules and with federal regulations, is more accurately reflective of the Division's practices, or by adding language that was omitted in error by earlier legislation. *Signed by the Governor on March 23, 2016. Effective July 1, 2016.*

Senate File 2151 makes the following amendments to Iowa Code Chapter 123:

- Iowa Code § 123.9 is amended to add "wine" permits to the list of licenses and permits that are issued by the Administrator when executing Divisional functions because it was omitted in error by earlier legislation.
- Iowa Code § 123.10(4) is amended to allow the Division to distribute monthly pricing to licensees electronically.
- Iowa Code § 123.30(4) is amended to allow special class "C" liquor control license holders to reseal bottles of wine that have been purchased and partially consumed on the premises by their patrons. Iowa law allows all liquor control license holders who are authorized to sell *liquor* for consumption on the premises to reseal a bottle of wine that has been purchased and partially consumed by a patron. The special class "C" liquor control license is excluded from resealing wine in this manner because the license authorizes the sale of wine and beer, but not liquor. This amendment strikes *liquor* and replaces it with the broader term *alcoholic beverages*, making it possible for special class "C" liquor control license holders to reseal wine for their patrons.
- Iowa Code § 123.32(3) is amended to list by name the types of liquor control licenses and wine or beer permits that may be issued on a temporary basis. This change adds language that was omitted in error by previous legislation and is reflective of the current practices of the Division.
- Iowa Code § 123.34, which pertains to seasonal, five-day, or fourteen-day licenses and permits is amended to reflect the current practices of the Division.
- Iowa Code § 123.38(1) and § 123.38(2) are amended to change "special liquor permit" to "special permit" to be consistent with wording used in an earlier section of the Chapter.

- Iowa Code § 123.43A (3) is amended to clarify that micro-distilled spirits may be tasted pursuant to the rules of the Division. This change removes a restriction from micro-distilleries that offer tastes of their products as part of a tour of the manufacturing facility.

- Iowa Code § 123.56(2) is amended to clarify that tastes of native wine shall be given pursuant to the Division's rules. A second amendment to this section strikes language that pertains to wine that is made for personal use when it is made on the premises of a manufacturer. The stricken language will be incorporated into Iowa Code § 123.171.

- Iowa Code § 123.56(6) is amended to create consistent wording and to make corrections to the names of permits that are held by Iowa wine and beer manufacturers.

- Iowa Code § 123.92(2)"a" is amended to require class "C" native wine permit holders to furnish proof of financial responsibility by obtaining dram shop insurance as a condition of obtaining a new or renewal permit, which reflects the current practices of the Division.

- Iowa Code § 123.171 is amended by adding a new subsection and incorporating the language pertaining to homemade wine that was stricken from § 123.56(2). The amended language also allows homemade wine to be removed from the premises where it was made, as long as the wine is for personal use and is not sold, exchanged, bartered or given in consideration of purchase for goods or services. A similar change was made in 2013 for homemade beer.

- Iowa Code § 123.173(2) is amended to authorize class "E" liquor control license holders to sell limited quantities of wine at wholesale to special class "C" liquor control license holders because it was omitted in error by previous legislation.

Senate File 2164 – Expungement

Makes substantive changes to Iowa Code Chapter 123 to conform to an amendment to Iowa Code § 907.9, as it relates to the expungement of the court's record of a dismissed count or related charge and a finding of contempt. *Signed by the Governor on April 6, 2016. Effective July 1, 2016.*

Senate File 2188 – Prescription Authority for Certain Psychologists

Make a substantive change by adding "prescribing psychologists" to the current definition of "pharmacy" in Iowa Code §123.3(35). The new wording conforms to amendments made in Iowa Code Chapters 124, 147, 148, and 154B that authorize psychologists to prescribe medication to their patients. *Signed by the Governor on May 27, 2016. Effective July 1, 2016.*

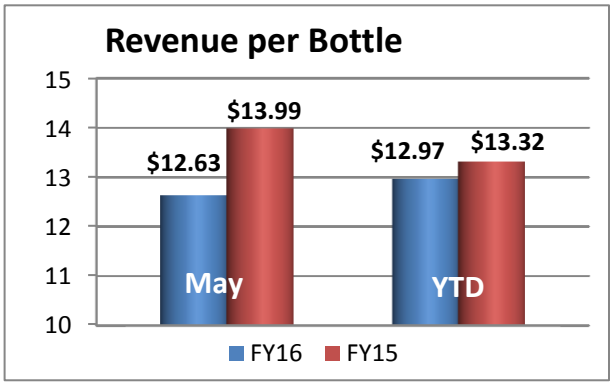
Senate File 2314 – Administration & Regulation Appropriations Bill

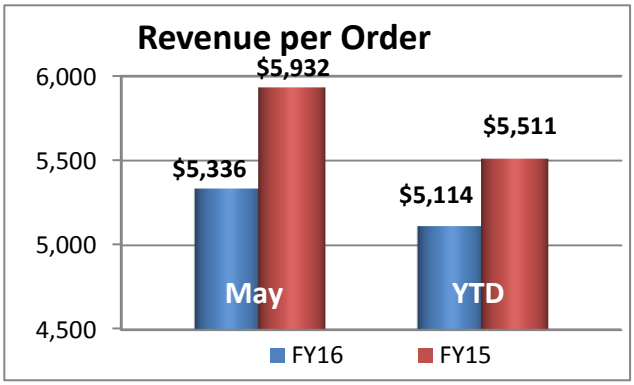
Appropriates $1,214,106 from the State General Fund to the Division for Fiscal Year 2017 budget; authorizes 15.56 FTE positions. Partially funds the Division's Fiscal Year 2017 budget. *Signed by the Governor on April 24, 2016. Effective July 1, 2016.*

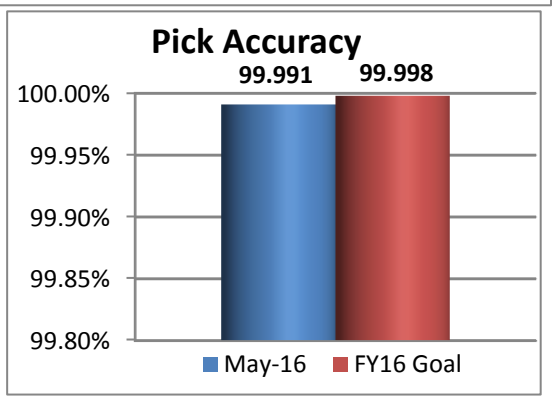
Iowa ABD
Monthly Financial Meeting

FY 2016 MAY SALES COMPARISON - YEAR OVER YEAR- CASH BASIS

Category	FY 2016	FY 2015	% Change
Liquor Sales	24,735,346	23,254,741	6.37%
Split Case Fee	124,648	113,259	10.06%
Bottle Dep and Sur	224,990	197,914	13.68%
Total Revenue	25,084,984	23,565,914	6.45%
Orders	4,701	3,973	18.32%
Bottles	1,986,019	1,684,550	17.90%



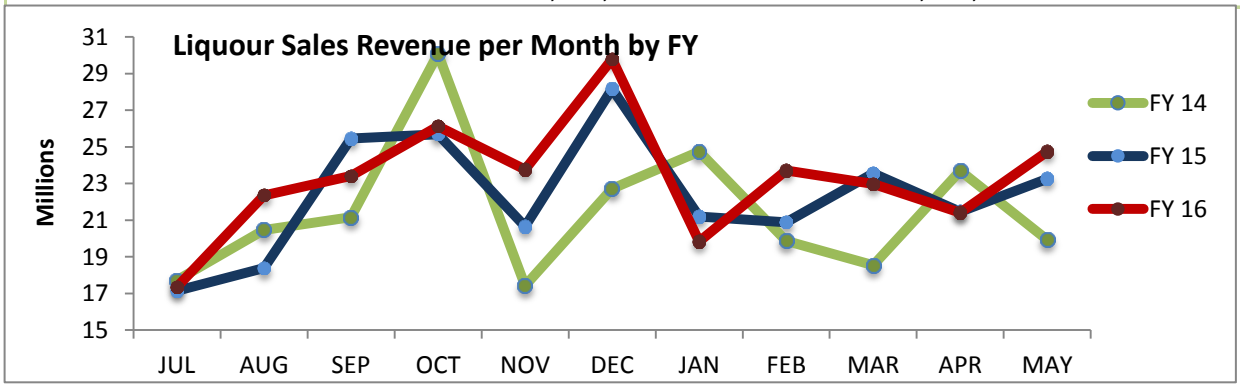




July-April Average Sale Days Comparison	
Jul - Sep	0
Oct - Dec	0
Jan	-1
Feb	1
Mar	1
Apr	-2
May	2
Total For FY	1

JULY - MAY SALES COMPARISON - YEAR TO DATE

Category	FY 2016	FY 2015	% Change
Liquor Sales	255,467,327	245,848,063	3.91%
Split Case Fee	1,317,357	1,265,668	4.08%
Bottle Dep and Sur	2,287,882	2,106,748	8.60%
Total Revenue	259,072,566	249,220,479	3.95%
Orders	50,660	45,225	12.02%
Bottles	19,970,202	18,708,865	6.74%



ALCOHOLIC
BEVERAGES
DIVISION
State of Iowa

Terry E. Branstad *Governor of Iowa*
Kim Reynolds *Lieutenant Governor*

Stephen Larson *Administrator*

June 23, 2016

TO: Alcoholic Beverages Commission

FR: Stephen Larson, Administrator

RE: Proposed rulemaking - 185 IAC 16 Trade Practices

This memo provides an update on the rulemaking activities of the Alcoholic Beverage Division related to trade practices issues.

In a memo dated April 19, 2016, the Commission was informed that the Division was preparing to initiate the rulemaking process to update 185 IAC 16.15(123) Sponsorships and special events. In conjunction with the proposed rulemaking, certain clarifications may be suggested by the Division regarding the use of advertising and retailer advertising utensils, consumer souvenirs, and wearing apparel. This broadened scope is response to stakeholder comments received in an earlier rulemaking.

Before the formal rulemaking process is initiated, the Division will carefully review all applicable Federal regulations and letters or guidance issued by the Tobacco, Tax, and Trade Bureau of the Federal Department of Commerce. Doing so will help the Division identify and incorporate the substance of the Federal regulations in 27 C.F.R. parts 6 (Tied-House), 8 (Exclusive Outlet), 10 (Commercial Bribery), and 11 (Consignment Sales) that it feels will provide further clarification. The current agency rule on sponsorships and special events and the applicable parts of the Federal regulations are attached to this memo.

As of this writing, there is no progress to report.

185—16.15(123) Sponsorships and special events. An industry member is prohibited from giving or furnishing a retailer with money, services, or other things of value (including equipment, fixtures and furnishings) in conjunction with a community, civic, charitable or retailer-sponsored special event. An industry member may contribute to charitable, civic, religious, fraternal, educational and community activities; however, such contributions may not be given to influence a retailer in the selection of the alcoholic beverages products which may be sold at such activities and events. If the industry member's contribution influences, directly or indirectly, the retailer in selection of alcoholic beverages products, and a competitor's alcoholic beverages products are excluded in whole or in part from sale at the activity or event, the industry member and the retailer violate the provisions of this chapter.

This rule is intended to implement Iowa Code sections 123.45 and 123.186.

[**ARC 1992C**, IAB 5/13/15, effective 6/17/15]

wines, or malt beverages (except as provided in §6.93);

(3) The industry member's acquisition or production costs of the merchandise appears on the industry member's purchase invoices or other records; and

(4) The individual selling prices of merchandise and distilled spirits, wines, or malt beverages sold in a single transaction can be determined from commercial documents covering the sales transaction.

(b) *Things of value covered in other sections of this part.* The act by an industry member of providing equipment, fixtures, signs, glassware, supplies, services, and advertising specialties to retailers does not constitute a means to induce within the meaning of section 105(b)(3) of the Act only as provided in other sections within this part.

[T.D. ATF-364, 60 FR 20424, Apr. 26, 1995]

§6.102 Outside signs.

The act by an industry member of giving or selling outside signs to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act provided that:

(a) The sign must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed;

(b) The retailer is not compensated, directly or indirectly such as through a sign company, for displaying the signs; and

(c) The cost of the signs may not exceed $400.

[T.D. ATF-364, 60 FR 20424, Apr. 26, 1995]

Subpart E—Exclusion

SOURCE: T.D. ATF-364, 60 FR 20424, Apr. 26, 1995, unless otherwise noted.

§6.151 Exclusion, in general.

(a) Exclusion, in whole or in part occurs:

(1) When a practice by an industry member, whether direct, indirect, or through an affiliate, places (or has the potential to place) retailer independence at risk by means of a tie or link between the industry member and retailer or by any other means of industry member control over the retailer; and

(2) Such practice results in the retailer purchasing less than it would have of a competitor's product.

(b) Section 6.152 lists practices that create a tie or link that places retailer independence at risk. Section 6.153 lists the criteria used for determining whether other practices can put retailer independence at risk.

§6.152 Practices which put retailer independence at risk.

The practices specified in this section put retailer independence at risk. The practices specified here are examples and do not constitute a complete list of those practices that put retailer independence at risk.

(a) The act by an industry member of resetting stock on a retailer's premises (other than stock offered for sale by the industry member).

(b) The act by an industry member of purchasing or renting display, shelf, storage or warehouse space (*i.e.* slotting allowance).

(c) Ownership by an industry member of less than a 100 percent interest in a retailer, where such ownership is used to influence the purchases of the retailer.

(d) The act by an industry member of requiring a retailer to purchase one alcoholic beverage product in order to be allowed to purchase another alcoholic beverage product at the same time.

§6.153 Criteria for determining retailer independence.

The criteria specified in this section are indications that a particular practice, other than those in §6.152, places retailer independence at risk. A practice need not meet all of the criteria specified in this section in order to place retailer independence at risk.

(a) The practice restricts or hampers the free economic choice of a retailer to decide which products to purchase or the quantity in which to purchase them for sale to consumers.

(b) The industry member obligates the retailer to participate in the promotion to obtain the industry member's product.

§§ 6.86–6.87 [Reserved]

§ 6.88 Equipment and supplies.

(a) *General.* The act by an industry member of selling equipment or supplies to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act if the equipment or supplies are sold at a price not less than the cost to the industry member who initially purchased them, and if the price is collected within 30 days of the date of the sale. The act by an industry member of installing dispensing accessories at the retailer's establishment does not constitute a means to induce within the meaning of the Act as long as the retailer bears the cost of initial installation. The act by an industry member of furnishing, giving, or selling coil cleaning service to a retailer of distilled spirits, wine, or malt beverages does not constitute a means to induce within the meaning of section 105(b)(3) of the Act.

(b) *Definition.* "Equipment and supplies" means glassware (or similar containers made of other material), dispensing accessories, carbon dioxide (and other gasses used in dispensing equipment) or ice. "Dispensing accessories" include items such as standards, faucets, cold plates, rods, vents, taps, tap standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, and check valves.

[T.D. ATF-364, 60 FR 20423, Apr. 26, 1995]

§§ 6.89–6.90 [Reserved]

§ 6.91 Samples.

The act by an industry member of furnishing or giving a sample of distilled spirits, wine, or malt beverages to a retailer who has not purchased the brand from that industry member within the last 12 months does not constitute a means to induce within the meaning of section 105(b)(3) of the Act. For each retail establishment the industry member may give not more than 3 gallons of any brand of malt beverage, not more than 3 liters of any brand of wine, and not more than 3 liters of distilled spirits. If a particular product is not available in a size within the quantity limitations of this section, an industry member may furnish to a retailer the next larger size.

[T.D. ATF-364, 60 FR 20423, Apr. 26, 1995]

§ 6.92 Newspaper cuts.

Newspaper cuts, mats, or engraved blocks for use in retailers' advertisements may be given or sold by an industry member to a retailer selling the industry member's products.

[T.D. ATF-364, 60 FR 20423, Apr. 26, 1995]

§ 6.93 Combination packaging.

The act by an industry member of packaging and distributing distilled spirits, wine, or malt beverages in combination with other (non-alcoholic) items for sale to consumers does not constitute a means to induce within the meaning of section 105(b)(3) of the Act.

[T.D. ATF-364, 60 FR 20423, Apr. 26, 1995]

§ 6.94 Educational seminars.

An industry member may give or sponsor educational seminars for employees of retailers either at the industry member's premises or at the retail establishment. Examples would be seminars dealing with use of a retailer's equipment, training seminars for employees of retailers, or tours of industry member's plant premises. This section does not authorize an industry member to pay a retailer's expense in conjunction with an educational seminar (such as travel and lodging). This does not preclude providing nominal hospitality during the event.

[T.D. ATF-74, 45 FR 63251, Sept. 23, 1980, as amended by T.D. ATF-364, 60 FR 20423, Apr. 26, 1995]

§ 6.95 Consumer tasting or sampling at retail establishments.

An industry member may conduct tasting or sampling activities at a retail establishment. The industry member may purchase the products to be used from the retailer, but may not purchase them from the retailer for more than the ordinary retail price.

§ 6.96 Consumer promotions.

(a) *Coupons.* The act by an industry member of furnishing to consumers

§6.66 Calculation of period.

For the purpose of this part, the period of credit is calculated as the time elapsing between the date of delivery of the product and the date of full legal discharge of the retailer, through the payment of cash or its equivalent, from all indebtedness arising from the transaction.

§6.67 Sales to retailer whose account is in arrears.

An extension of credit (for product purchases) by an industry member to a retailer whose account is in arrears does not constitute a means to induce within the meaning of the Act so long as such retailer pays in advance or on delivery an amount equal to or greater than the value of each order, regardless of the manner in which the industry member applies the payment in its records.

[T.D. ATF-364, 60 FR 20422, Apr. 26, 1995]

QUOTA SALES

§6.71 Quota sales.

The act by an industry member of requiring a retailer to take and dispose of any quota of distilled spirits, wine, or malt beverages constitutes a means to induce within the meaning of the Act.

[T.D. ATF-364, 60 FR 20422, Apr. 26, 1995]

§6.72 "Tie-in" sales.

The act by an industry member of requiring that a retailer purchase one product (as defined in §6.11) in order to obtain another constitutes a means to induce within the meaning of the Act. This includes the requirement to take a minimum quantity of a product in standard packaging in order to obtain the same product in some type of premium package, i.e., a distinctive decanter, or wooden or tin box. This also includes combination sales if one or more products may be purchased only in combination with other products and not individually. However, an industry member is not precluded from selling two or more kinds or brands of products to a retailer at a special combination price, provided the retailer has the option of purchasing either product at the usual price, and the retailer is not required to purchase any product it does not want. See §6.93 for combination packaging of products plus non-alcoholic items.

[T.D. ATF-364, 60 FR 20422, Apr. 26, 1995]

Subpart D—Exceptions

§6.81 General.

(a) *Application.* Section 105(b)(3) of the Act enumerates means to induce that may be unlawful under the subsection, subject to such exceptions as are prescribed in regulations, having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest, and the purposes of that section. This subpart implements section 105(b)(3) of the Act and identifies the practices that are exceptions to section 105(b)(3) of the Act. An industry member may furnish a retailer equipment, inside signs, supplies, services, or other things of value, under the conditions and within the limitations prescribed in this subpart.

(b) *Recordkeeping Requirements.* (1) Industry members shall keep and maintain records on the permit or brewery premises, for a three year period, of all items furnished to retailers under §§6.83, 6.88, 6.91, 6.96(a), and 6.100 and the commercial records required under §6.101. Commercial records or invoices may be used to satisfy this recordkeeping requirement if all required information is shown. These records shall show:

(i) The name and address of the retailer receiving the item;

(ii) The date furnished;

(iii) The item furnished;

(iv) The industry member's cost of the item furnished (determined by the manufacturer's invoice price); and

(v) Charges to the retailer for any item.

(2) Although no separate recordkeeping violation results, an industry member who fails to keep such records is not eligible for the exception claimed.

(Approved by the Office of Management and Budget under control number 1512-0392)

[T.D. ATF-364, 60 FR 20422, Apr. 26, 1995]

may result in a violation of section 105(b)(1) of the Act.

(b) *Partial ownership.* Less than complete ownership of a retail business by an industry member constitutes an interest in a retail license within the meaning of the Act.

[T.D. ATF-74, 45 FR 63251, Sept. 23, 1980, as amended by T.D. ATF-364, 60 FR 20421, Apr. 26, 1995]

INTEREST IN RETAIL PROPERTY

§ 6.31 General.

The act by an industry member of acquiring an interest in real or personal property owned, occupied, or used by the retailer in the conduct of business constitutes a means to induce within the meaning of the Act.

[T.D. ATF-364, 60 FR 20421, Apr. 26, 1995]

§ 6.32 Indirect interest.

Industry member interest in retail property includes any interest acquired by corporate officials, partners, employees or other representatives of the industry member. Any interest in retail property acquired by a separate corporation in which the industry member or its officials, hold ownership or are otherwise affiliated, is an interest in retail property.

§ 6.33 Proprietary interest.

(a) *Complete ownership.* Outright ownership of a retail business by an industry member is not an interest that may result in a violation of section 105(b)(2) of the Act.

(b) *Partial ownership.* Less than complete ownership of a retail business by an industry member constitutes an interest in retail property within the meaning of the Act.

[T.D. ATF-74, 45 FR 63251, Sept. 23, 1980, as amended by T.D. ATF-364, 60 FR 20421, Apr. 26, 1995]

§ 6.34 Mortgages.

The acquisition of a mortgage on a retailer's real or personal property by an industry member constitutes an interest in the retailer's property within the meaning of the Act.

§ 6.35 Renting display space.

The renting of display space by an industry member at a retail establishment constitutes an interest in the retailer's property within the meaning of the Act.

FURNISHING THINGS OF VALUE

§ 6.41 General.

Subject to the exceptions listed in subpart D, the act by an industry member of furnishing, giving, renting, lending, or selling any equipment, fixtures, signs, supplies, money, services, or other things of value to a retailer constitutes a means to induce within the meaning of the Act.

[T.D. ATF-364, 60 FR 20421, Apr. 26, 1995]

§ 6.42 Indirect inducement through third party arrangements.

(a) *General.* The furnishing, giving, renting, lending, or selling of equipment, fixtures, signs, supplies, money, services, or other thing of value by an industry member to a third party, where the benefits resulting from such things of value flow to individual retailers, is the indirect furnishing of a thing of value within the meaning of the Act. Indirect furnishing of a thing of value includes, but is not limited to, making payments for advertising to a retailer association or a display company where the resulting benefits flow to individual retailers.

(b) *Exceptions.* An indirect inducement will not arise where the thing of value was furnished to a retailer by the third party without the knowledge or intent of the industry member, or the industry member did not reasonably foresee that the thing of value would have been furnished to a retailer. Things which may lawfully be furnished, given, rented, lent, or sold by industry members to retailers under subpart D may also be furnished directly by a third party to a retailer.

[T.D. ATF-364, 60 FR 20421, Apr. 26, 1995]

§ 6.43 Sale of equipment.

A transaction in which equipment is sold to a retailer by an industry member, except as provided in § 6.88, is the selling of equipment in within the meaning of the Act regardless of how

beverage in such State, as the case may be.

[T.D. ATF-74, 45 FR 63251, Sept. 23, 1980, as amended by T.D. ATF-364, 60 FR 20421, Apr. 26, 1995]

§6.5 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.6, Delegation of the Administrator's Authorities in 27 CFR Part 6, *Tied-House*. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

[T.D. TTB-44, 71 FR 16922, Apr. 4, 2006]

§6.6 Administrative provisions.

(a) *General.* The Act makes applicable the provisions including penalties of sections 49 and 50 of Title 15, United States Code, to the jurisdiction, powers and duties of the Administrator under this Act, and to any person (whether or not a corporation) subject to the provisions of law administered by the Administrator under this Act. The Act also provides that the Administrator is authorized to require, in such manner and such form as he or she shall prescribe, such reports as are necessary to carry out the powers and duties under this chapter.

(b) *Examination and subpoena.* Any appropriate TTB officer shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against. An appropriate TTB officer shall also have the power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation, upon a satisfactory showing the requested evidence may reasonably be expected to yield information relevant to any matter being investigated under the Act.

(c) *Reports required by the appropriate TTB officer*—(1) *General.* The appropriate TTB officer may, as part of a trade practice investigation of an industry member, require such industry member to submit a written report containing information on sponsorships, advertisements, promotions, and other activities pertaining to its business subject to the Act conducted by, or on behalf of, or benefiting the industry member.

(2) *Preparation.* The report will be prepared by the industry member in letter form, executed under the penalties of perjury, and will contain the information specified by the appropriate TTB officer. The period covered by the report will not exceed three years.

(3) *Filing.* The report will be filed in accordance with the instructions of the appropriate TTB officer.

(Approved by the Office of Management and Budget under control number 1512-0392)

[T.D. ATF-364, 60 FR 20421, Apr. 26, 1995. Redesignated and amended by T.D. ATF-428, 65 FR 52019, Aug. 28, 2000]

Subpart B—Definitions

§6.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the meaning assigned to it by that Act.

Act. The Federal Alcohol Administration Act.

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.6, Delegation of the Administrator's Authorities in 27 CFR Part 6, *Tied-House*.

Brand. For purposes of administering this part, the term "brand" refers to differences in the brand name of a product or in the nature of a product.

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to convey, or attempts to convey, a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF-180, 49 FR 31674, Aug. 8, 1984; TTB T.D.-1, 68 FR 10105, Mar. 3, 2003]

§ 5.66 Comparative advertising.

(a) *General.* Comparative advertising shall not be disparaging of a competitor's product.

(b) *Taste tests.* (1) Taste test results may be used in advertisements comparing competitors' products unless they are disparaging, deceptive, or likely to mislead the consumer.

(2) The taste test procedure used shall meet scientifically accepted procedures. An example of a scientifically accepted procedure is outlined in the *Manual on Sensory Testing Methods*, ASTM Special Technical Publication 434, published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103, ASTM, 1968, Library of Congress Catalog Card Number 68–15545.

(3) A statement shall appear in the advertisement providing the name and address of the testing administrator.

[T.D. ATF-180, 49 FR 31674, Aug. 8, 1984]

Subpart I—Use of the Term "Organic."

§ 5.71 Use of the term "organic."

(a) Use of the term "organic" is optional and is treated as "additional information on labels" under § 5.33(f).

(b) Any use of the term "organic" on a distilled spirits label or in advertising of distilled spirits must comply with the United States Department of Agriculture's (USDA) National Organic Program rules, 7 CFR part 205, as interpreted by the USDA.

(c) This section applies to labels and advertising that use the term "organic" on and after October 21, 2002.

[T.D. ATF-483, 67 FR 62858, Oct. 8, 2002]

PART 6—"TIED-HOUSE"

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will be permitted, either above or below the stated percentage of alcohol. Any malt beverage which is labeled as containing 0.5 percent or more alcohol by volume may not contain less than 0.5 percent alcohol by volume, regardless of any tolerance.

(2) For malt beverages which are labeled as "low alcohol" or "reduced alcohol" under paragraph (d) of this section, the actual alcoholic content may not equal or exceed 2.5 percent alcohol by volume, regardless of any tolerance permitted by paragraph (c)(1) of this section.

(3) For malt beverages containing less than 0.5 percent alcohol by volume, the actual alcoholic content may not exceed the labeled alcoholic content. A malt beverage may not be labeled with an alcoholic content of 0.0 percent alcohol by volume unless it is also labeled as "alcohol free" and contains no alcohol.

(d) *Low alcohol and reduced alcohol.* The terms "low alcohol" or "reduced alcohol" may be used only on malt beverages containing less than 2.5 percent alcohol by volume.

(e) *Non-alcoholic.* The term "non-alcoholic" may be used on malt beverages, provided the statement "contains less than 0.5 percent (or .5%) alcohol by volume" appears in direct conjunction with it, in readily legible printing and on a completely contrasting background.

(f) *Alcohol free.* The term "alcohol free" may be used only on malt beverages containing no alcohol.

[T.D. ATF-339, 58 FR 21232, Apr. 19, 1993]

Subpart I—Use of the Term "Organic"

§ 7.81 Use of the term "organic."

(a) Use of the term "organic" is optional and is treated as "additional information on labels" under § 7.28(e).

(b) Any use of the term "organic" on a malt beverage label or in advertising of malt beverages must comply with the United States Department of Agriculture's (USDA) National Organic Program rules (7 CFR part 205) as interpreted by the USDA.

(c) This section applies to labels and advertising that use the term "organic" on and after October 21, 2002.

[T.D. ATF-483, 67 FR 62858, Oct. 8, 2002]

PART 8—EXCLUSIVE OUTLETS

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8.51 Exclusion, in general.
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AUTHORITY: 15 U.S.C. 49–50; 27 U.S.C. 202 and 205; 44 U.S.C. 3504(h).

SOURCE: T.D. ATF-74, 45 FR 63256, Sept. 23, 1980, unless otherwise noted.

Subpart A—Scope of Regulations

§ 8.1 General.

The regulations in this part, issued pursuant to section 105 of the Federal Alcohol Administration Act (27 U.S.C. 205), specify arrangements which are exclusive outlets under section 105(a) of the Act and criteria for determining whether a practice is a violation of section 105(a) of the Act. This part does not attempt to enumerate all of the practices prohibited by section 105(a) of the Act. Nothing in this part shall operate to exempt any person from the requirements of any State law or regulation.

[T.D. ATF-364, 60 FR 20425, Apr. 26, 1995]

member to submit a written report containing information on sponsorships, advertisements, promotions, and other activities pertaining to its business subject to the Act conducted by, or on behalf of, or benefiting the industry member.

(2) *Preparation.* The report will be prepared by the industry member in letter form, executed under the penalties of perjury, and will contain the information specified by the appropriate TTB officer. The period covered by the report will not exceed three years.

(3) *Filing.* The report will be filed in accordance with the instructions of the appropriate TTB officer.

(Approved by the Office of Management and Budget under control number 1512–0392)

[T.D. ATF–364, 60 FR 20425, Apr. 26, 1995. Redesignated and amended by T.D. ATF–428, 65 FR 52020, Aug. 28, 2000]

Subpart B—Definitions

§ 8.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the meaning assigned to it by that Act.

Act. The Federal Alcohol Administration Act.

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.8, Delegation of the Administrator's Authorities in 27 CFR Part 8, Exclusive Outlets.

Industry member. Any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits; industry member does not include an agency of a State or political subdivision thereof, or an officer or employee of such agency.

Product. Distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

Retailer. Any person engaged in the sale of distilled spirits, wine or malt beverages to consumers. A wholesaler who makes incidental retail sales representing less than five percent of the wholesaler's total sales volume for the preceding two-month period shall not be considered a retailer with respect to such incidental sales.

[T.D. ATF–74, 45 FR 63256, Sept. 23, 1980, as amended by T.D. ATF–364, 60 FR 20425, Apr. 26, 1995; T.D. ATF–428, 65 FR 52020, Aug. 28, 2000; T.D. TTB–44, 71 FR 16923, Apr. 4, 2006]

Subpart C—Prohibited Practices

§ 8.21 General.

It is unlawful for an industry member to require, by agreement or otherwise, that any retailer purchase distilled spirits, wine, or malt beverages from the industry member to the exclusion, in whole or in part, of products sold or offered for sale by other persons in interstate or foreign commerce. This prohibition includes purchases coerced by industry members, through acts or threats of physical or economic harm, as well as voluntary industry member-retailer purchase agreements.

§ 8.22 Contracts to purchase distilled spirits, wine, or malt beverages.

Any contract or agreement, written or unwritten, which has the effect of requiring the retailer to purchase distilled spirits, wine, or malt beverages from the industry member beyond a single sales transaction is prohibited. Examples of such contracts are:

(a) An advertising contract between an industry member and a retailer with the express or implied requirement of the purchase of the advertiser's products; or

(b) A sales contract awarded on a competitive bid basis which has the effect of prohibiting the retailer from purchasing from other industry members by:

(1) Requiring that for the period of the agreement, the retailer purchase a product or line of products exclusively from the industry member; or

or the quantity in which to purchase them for sale to consumers.

(b) The industry member obligates the retailer to participate in the promotion to obtain the industry member's product.

(c) The retailer has a continuing obligation to purchase or otherwise promote the industry member's product.

(d) The retailer has a commitment not to terminate its relationship with the industry member with respect to purchase of the industry member's products.

(e) The practice involves the industry member in the day-to-day operations of the retailer. For example, the industry member controls the retailer's decisions on which brand of products to purchase, the pricing of products, or the manner in which the products will be displayed on the retailer's premises.

(f) The practice is discriminatory in that it is not offered to all retailers in the local market on the same terms without business reasons present to justify the difference in treatment.

PART 9—AMERICAN VITICULTURAL AREAS

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9.34 Finger Lakes.
9.35 Edna Valley.
9.36 McDowell Valley.
9.37 California Shenandoah Valley.
9.38 Cienega Valley.
9.39 Paicines.
9.40 Leelanau Peninsula.
9.41 Lancaster Valley.
9.42 Cole Ranch.
9.43 Rocky Knob.
9.44 Solano County Green Valley.
9.45 Suisun Valley.
9.46 Livermore Valley.
9.47 Hudson River Region.
9.48 Monticello.
9.49 Central Delaware Valley.
9.50 Temecula Valley.
9.51 Isle St. George.
9.52 Chalk Hill.
9.53 Alexander Valley.
9.54 Santa Ynez Valley.
9.55 Bell Mountain.
9.56 San Lucas.
9.57 Green Valley of Russian River Valley.
9.58 Carmel Valley.
9.59 Arroyo Seco.
9.60 Shenandoah Valley.
9.61 El Dorado.
9.62 Loramie Creek.
9.63 Linganore.
9.64 Dry Creek Valley.
9.65 North Fork of Roanoke.
9.66 Russian River Valley.
9.67 Catoctin.
9.68 Merritt Island.
9.69 Yakima Valley.
9.70 Northern Sonoma.
9.71 Hermann.
9.72 Southeastern New England.
9.73 Martha's Vineyard.
9.74 Columbia Valley.
9.75 Central Coast.
9.76 Knights Valley.
9.77 Altus.
9.78 Ohio River Valley.
9.79 Lake Michigan Shore.
9.80 York Mountain.
9.81 Fiddletown.
9.82 Potter Valley.
9.83 Lake Erie.
9.84 Paso Robles.
9.85 Willow Creek.
9.86 Anderson Valley.
9.87 Grand River Valley.
9.88 Pacheco Pass.
9.89 Umpqua Valley.
9.90 Willamette Valley.
9.91 Walla Walla Valley.
9.92 Madera.
9.93 Mendocino.
9.94 Howell Mountain.
9.95 Clarksburg.
9.96 Mississippi Delta.
9.97 Sonoita.
9.98 Monterey.
9.99 Clear Lake.
9.100 Mesilla Valley.

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Hodgen Road, and Appleton Road, section 27, T6N/R35E; then

(11) Proceed east-northeasterly in a straight line for 1.25 miles, returning to the beginning point.

[T.D. TTB–127, 80 FR 6906, Feb. 9, 2015]

§ 9.250 Fountaingrove District.

(a) *Name.* The name of the viticultural area described in this section is "Fountaingrove District." For purposes of part 4 of this chapter, "Fountaingrove District" is a term of viticultural significance.

(b) *Approved maps.* The four United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Fountaingrove District viticultural area are titled:

(1) Mark West Springs, CA; 1993;

(2) Calistoga, CA; 1997;

(3) Kenwood, CA; 1954; photorevised 1980; and

(4) Santa Rosa, CA; 1994.

(c) *Boundary.* The Fountaingrove District viticultural area is located in Sonoma County, California. The boundary of the Fountaingrove District viticultural area is as described below:

(1) The beginning point is on the Mark West Springs map at the intersection of the shared Sonoma-Napa County line with Petrified Forest Road, section 3, T8N/R7W.

(2) From the beginning point, proceed southeasterly along the Sonoma-Napa County line, crossing onto the Calistoga map and then the Kenwood map, to the marked 2,530-peak of an unnamed mountain, section 9, T7N/R6W; then

(3) Proceed west-southwest in a straight line to the marked 2,730-foot summit of Mt. Hood, section 8, T7N/R6W; then

(4) Proceed west-northwest in a straight line to the marked 1,542-foot summit of Buzzard Peak, section 11, T7N/R7W; then

(5) Proceed west-southwest in a straight line, crossing onto the Santa Rosa map, to the intersection of State Highway 12 and Los Alamos Road; then

(6) Proceed due north in a straight line to the southern boundary of section 9, T7N/R7W; then

(7) Proceed west-northwest along the southern boundaries of sections 9, 4, and 5, T7N/R7W, to the western boundary of the Los Guilicos Land Grant; then

(8) Proceed west-southwest along the southern boundaries of sections 5, 6, and 7, T7N/R7W; then continue west-southwest along the southern boundaries of sections 12 and 11, T7N/R8W, to the point where the section 11 boundary becomes concurrent with an unnamed light-duty road known locally as Lewis Road; and then continue west-southwest along Lewis Road to the road's intersection with Mendocino Avenue in Santa Rosa; then

(9) Proceed north-northwesterly along Mendocino Avenue to the road's intersection with an unnamed road known locally as Bicentennial Way; then

(10) Proceed north in a straight line, crossing through the marked 906-foot elevation peak in section 35, T8N/R8W, and, crossing on to the Mark West Springs map, continue to the line's intersection with Mark West Springs Road, section 26, T8N/R8W; then

(11) Proceed northerly along Mark West Springs Road, which turns easterly and becomes Porter Creek Road, to the road's intersection with Franz Valley Road, section 12, T8N/R8W; then

(12) Proceed northeasterly along Franz Valley Road to the western boundary of section 6, T8N/R7W; then

(13) Proceed south along the western boundary of section 6, T8N/R7W, to the southwest corner of section 6; then

(14) Proceed east, then east-northeast along the southern boundaries of sections 6, 5, and 4, T8N/R7W, to the southeast corner of section 4; then

(15) Proceed north along the eastern boundary of section 4, T8N/R7W, to the Sonoma-Napa County line; then

(16) Proceed easterly along the Sonoma-Napa County line to the beginning point.

[T.D. TTB–128, 80 FR 8531, Feb. 18, 2015]

PART 10—COMMERCIAL BRIBERY

Subpart A—Scope of Regulations

Sec.
10.1 General.
10.2 Territorial extent.
10.3 Application.
10.4 Jurisdictional limits.
10.5 Delegations of the Administrator.

may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

[T.D. TTB–44, 71 FR 16923, Apr. 4, 2006]

§ 10.6 Administrative provisions.

(a) *General.* The Act makes applicable the provisions including penalties of sections 49 and 50 of Title 15, United States Code, to the jurisdiction, powers and duties of the Administrator under this Act, and to any person (whether or not a corporation) subject to the provisions of law administered by the Administrator under this Act. The Act also provides that the Administrator is authorized to require, in such manner and such form as he or she shall prescribe, such reports as are necessary to carry out the powers and duties under this chapter.

(b) *Examination and subpoena.* Any appropriate TTB officer shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against. An appropriate TTB officer shall also have the power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation, upon a satisfactory showing the requested evidence may reasonably be expected to yield information relevant to any matter being investigated under the Act.

(c) *Reports required by the appropriate TTB officer*—(1) *General.* The appropriate TTB officer may, as part of a trade practice investigation of an industry member, require such industry member to submit a written report containing information on sponsorships, advertisements, promotions, and other activities pertaining to its business subject to the Act conducted by, or on behalf of, or benefiting the industry member.

(2) *Preparation.* The report will be prepared by the industry member in letter form, executed under the penalties of perjury, and will contain the information specified by the appropriate TTB officer. The period covered by the report will not exceed three years.

(3) *Filing.* The report will be filed in accordance with the instructions of the appropriate TTB officer.

(Approved by the Office of Management and Budget under control number 1512–0392)

[T.D. ATF–364, 60 FR 20426, Apr. 26, 1995. Redesignated and amended by T.D. ATF–428, 65 FR 52020, Aug. 28, 2000]

Subpart B—Definitions

§ 10.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the meaning assigned to it by that Act.

Act. The Federal Alcohol Administration Act.

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.10, Delegation of the Administrator's Authorities in 27 CFR Part 10, Commercial Bribery.

Industry member. Any person engaged in business as a distiller, brewer, recitifier, blender, or other producer, or as an importer or wholesaler of distilled spirits, wine or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits; industry member does not include an agency of a State or political subdivision thereof, or an officer or employee of such agency.

Officer. All corporate executives, including presidents, vice presidents, treasurers, and chief executive officers.

Product. Distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

§ 10.52 Practice which puts trade buyer independence at risk.

The practice specified in this section is deemed to place trade buyer independence at risk within the description of exclusion in § 10.51: Industry member payments of money to the employee(s) of a trade buyer without the knowledge or consent of the trade buyer-employer in return for the employee agreeing to order distilled spirits, wine, or malt beverages from the industry member. The practice enumerated here is an example and does not constitute a complete list of those situations which result in such control.

§ 10.53 Practices not resulting in exclusion. [Reserved]

§ 10.54 Criteria for determining trade buyer independence.

The criteria specified in this section are indications that a particular practice between an industry member and an officer, employee, or representative of a trade buyer, other than those in § 10.52, places trade buyer independence at risk. A practice need not meet all of the criteria specified in this section in order to place trade buyer independence at risk.

(a) The practice restricts or hampers the free economic choice of a trade buyer to decide which products to purchase or the quantity in which to purchase them for sale to retailers and consumers.

(b) The industry member obligates the trade buyer to participate in the promotion to obtain the industry member's product.

(c) The trade buyer has a continuing obligation to purchase or otherwise promote the industry member's product.

(d) The trade buyer has a commitment not to terminate its relationship with the industry member with respect to purchase of the industry member's products.

(e) The practice involves the industry member in the day-to-day operations of the trade buyer. For example, the industry member controls the trade buyer's decisions on which brand of products to purchase, the pricing of products, or the manner in which the products will be displayed on the trade buyer's premises.

(f) The practice is discriminatory in that it is not offered to all trade buyers in the local market on the same terms without business reasons present to justify the difference in treatment.

PART 11—CONSIGNMENT SALES

Subpart A—Scope of Regulations

Sec.
11.1 General.
11.2 Territorial extent.
11.3 Application.
11.4 Jurisdictional limits.
11.5 Delegations of the Administrator.
11.6 Administrative provisions.

Subpart B—Definitions

11.11 Meaning of terms.

Subpart C—Unlawful Sales Arrangements

11.21 General.
11.22 Consignment sales.
11.23 Sales conditioned on the acquisition of other products.
11.24 Other than a bona fide sale.

Subpart D—Rules for the Return of Distilled Spirits, Wine, and Malt Beverages

11.31 General.

EXCHANGES AND RETURNS FOR ORDINARY AND USUAL COMMERCIAL REASONS

11.32 Defective products.
11.33 Error in products delivered.
11.34 Products which may no longer be lawfully sold.
11.35 Termination of business.
11.36 Termination of franchise.
11.37 Change in product.
11.38 Discontinued products.
11.39 Seasonal dealers.

EXCHANGES AND RETURNS FOR REASONS NOT CONSIDERED ORDINARY AND USUAL

11.45 Overstocked and slow-moving products.
11.46 Seasonal products.

AUTHORITY: 15 U.S.C. 49–50; 27 U.S.C. 202 and 205.

SOURCE: T.D. ATF–74, 45 FR 63258, Sept. 23, 1980, unless otherwise noted.

Subpart A—Scope of Regulations

§ 11.1 General.

The regulations in this part, issued pursuant to section 105 of the Federal

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§ 10.52 Practice which puts trade buyer independence at risk.

The practice specified in this section is deemed to place trade buyer independence at risk within the description of exclusion in § 10.51: Industry member payments of money to the employee(s) of a trade buyer without the knowledge or consent of the trade buyer-employer in return for the employee agreeing to order distilled spirits, wine, or malt beverages from the industry member. The practice enumerated here is an example and does not constitute a complete list of those situations which result in such control.

§ 10.53 Practices not resulting in exclusion. [Reserved]

§ 10.54 Criteria for determining trade buyer independence.

The criteria specified in this section are indications that a particular practice between an industry member and an officer, employee, or representative of a trade buyer, other than those in § 10.52, places trade buyer independence at risk. A practice need not meet all of the criteria specified in this section in order to place trade buyer independence at risk.

(a) The practice restricts or hampers the free economic choice of a trade buyer to decide which products to purchase or the quantity in which to purchase them for sale to retailers and consumers.

(b) The industry member obligates the trade buyer to participate in the promotion to obtain the industry member's product.

(c) The trade buyer has a continuing obligation to purchase or otherwise promote the industry member's product.

(d) The trade buyer has a commitment not to terminate its relationship with the industry member with respect to purchase of the industry member's products.

(e) The practice involves the industry member in the day-to-day operations of the trade buyer. For example, the industry member controls the trade buyer's decisions on which brand of products to purchase, the pricing of products, or the manner in which the products will be displayed on the trade buyer's premises.

(f) The practice is discriminatory in that it is not offered to all trade buyers in the local market on the same terms without business reasons present to justify the difference in treatment.

PART 11—CONSIGNMENT SALES

Subpart A—Scope of Regulations

Sec.
11.1 General.
11.2 Territorial extent.
11.3 Application.
11.4 Jurisdictional limits.
11.5 Delegations of the Administrator.
11.6 Administrative provisions.

Subpart B—Definitions

11.11 Meaning of terms.

Subpart C—Unlawful Sales Arrangements

11.21 General.
11.22 Consignment sales.
11.23 Sales conditioned on the acquisition of other products.
11.24 Other than a bona fide sale.

Subpart D—Rules for the Return of Distilled Spirits, Wine, and Malt Beverages

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EXCHANGES AND RETURNS FOR ORDINARY AND USUAL COMMERCIAL REASONS

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11.39 Seasonal dealers.

EXCHANGES AND RETURNS FOR REASONS NOT CONSIDERED ORDINARY AND USUAL

11.45 Overstocked and slow-moving products.
11.46 Seasonal products.

AUTHORITY: 15 U.S.C. 49–50; 27 U.S.C. 202 and 205.

SOURCE: T.D. ATF–74, 45 FR 63258, Sept. 23, 1980, unless otherwise noted.

Subpart A—Scope of Regulations

§ 11.1 General.

The regulations in this part, issued pursuant to section 105 of the Federal

relating to any matter under investigation, upon a satisfactory showing the requested evidence may reasonably be expected to yield information relevant to any matter being investigated under the Act.

[T.D. ATF–364, 60 FR 20427, Apr. 26, 1995. Redesignated and amended by T.D. ATF–428, 65 FR 52021, Aug. 28, 2000]

Subpart B—Definitions

§ 11.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the meaning assigned to it by that Act.

Act. The Federal Alcohol Administration Act.

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.11, Delegation of the Administrator's Authorities in 27 CFR Part 11, Consignment Sales.

Exchange. The transfer of distilled spirits, wine, or malt beverages from a trade buyer to an industry member with other products taken as a replacement.

Industry member. Any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler of distilled spirits, wine or malt beverages, or as a bottler or warehouseman and bottler, of distilled spirits.

Product. Distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

Retailer. Any person engaged in the sale of distilled spirits, wine or malt beverages to consumers. A wholesaler who makes incidental retail sales representing less than five percent of the wholesaler's total sales volume for the preceding two-month period shall not be considered a retailer with respect to such incidental sales.

Return. The transfer of distilled spirits, wine, or malt beverages from a trade buyer to the industry member from whom purchased, for cash or credit.

Trade buyer. Any person who is a wholesaler or retailer of distilled spirits, wine or malt beverages.

[T.D. ATF–74, 45 FR 63258, Sept. 23, 1980, as amended by T.D. ATF–364, 60 FR 20427, Apr. 26, 1995; T.D. ATF–428, 65 FR 52021, Aug. 28, 2000; T.D. TTB–44, 71 FR 16924, Apr. 4, 2006]

Subpart C—Unlawful Sales Arrangements

§ 11.21 General.

It is unlawful for an industry member to sell, offer for sale, or contract to sell to any trade buyer, or for any such trade buyer to purchase, offer to purchase, or contract to purchase any products (a) on consignment; or (b) under conditional sale; or (c) with the privilege of return; or (d) on any basis other than a bona fide sale; or (e) if any part of the sale involves, directly or indirectly, the acquisition by such person of other products from the trade buyer or the agreement to acquire other products from the trade buyer. Transactions involving the bona fide return of products for ordinary and usual commercial reasons arising after the product has been sold are not prohibited.

§ 11.22 Consignment sales.

Consignment sales are arrangements wherein the trade buyer is under no obligation to pay for distilled spirits, wine, or malt beverages until they are sold by the trade buyer.

§ 11.23 Sales conditioned on the acquisition of other products.

(a) *General.* A sale in which any part of the sale involves, directly or indirectly, the acquisition by the industry member from the trade buyer, or the agreement, as a condition to present or future sales, to accept other products from the trade buyer is prohibited.

(b) *Exchange.* The exchange of one product for another is prohibited as a sales transaction conditioned on the acquisition of other products. However, the exchange of a product for equal quantities (case for case) of the same

§ 11.39 Seasonal dealers.

Industry members may accept the return of products from retail dealers who are only open a portion of the year, if the products are likely to spoil during the off season. These returns will be for cash or for credit against outstanding indebtedness.

EXCHANGES AND RETURNS FOR REASONS NOT CONSIDERED ORDINARY AND USUAL

§ 11.45 Overstocked and slow-moving products.

The return or exchange of a product because it is overstocked or slow-moving does not constitute a return for "ordinary and usual commercial reasons."

§ 11.46 Seasonal products.

The return or exchange of products for which there is only a limited or seasonal demand, such as holiday decanters and certain distinctive bottles, does not constitute a return for "ordinary and usual commercial reasons."

PART 12—FOREIGN NONGENERIC NAMES OF GEOGRAPHIC SIGNIFICANCE USED IN THE DESIGNATION OF WINES

Subpart A—General Provisions

Sec.
12.1 Scope.
12.2 Territorial extent.
12.3 Procedure for recognition of foreign distinctive designations.

Subpart B [Reserved]

Subpart C—Foreign Nongeneric Names of Geographic Significance

12.21 List of examples of names by country.

Subpart D—Foreign Nongeneric Names Which Are Distinctive Designations of Specific Grape Wines

12.31 List of approved names by country.

AUTHORITY: 27 U.S.C. 205.

SOURCE: T.D. ATF-296, 55 FR 17967, Apr. 30, 1990, unless otherwise noted.

Subpart A—General Provisions

§ 12.1 Scope.

The regulations in this part relate to foreign names of geographic significance used in the designation of wines which are recognized as nongeneric under 27 CFR 4.24, and include those nongeneric names which the Administrator has found to be distinctive designations of wine, as defined in § 4.24(c)(1) of this chapter.

§ 12.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

§ 12.3 Procedure for recognition of foreign distinctive designations.

(a) *Procedure.* Under the provisions of 27 CFR 70.701(c), the Administrator may approve petitions requesting TTB recognition of names of geographic significance which are the distinctive designations of specific wines under § 4.24(c) of this chapter.

(b) *Format.* A petition shall be in the form of a letterhead application requesting that TTB recognize the distinctive wine designation listed in their petition. The petition should present evidence to support a finding that the geographic designation is known to the U.S. consumer and trade as the designation of a specific wine of a particular place or region, distinguishable from all other wines. All background material and supporting data submitted will be made part of the application and will be considered in the review process.

[T.D. ATF-296, 55 FR 17967, Apr. 30, 1990, as amended by T.D. ATF-463, 66 FR 42733, Aug. 15, 2001]

Subpart B [Reserved]

Subpart C—Foreign Nongeneric Names of Geographic Significance

§ 12.21 List of examples of names by country.

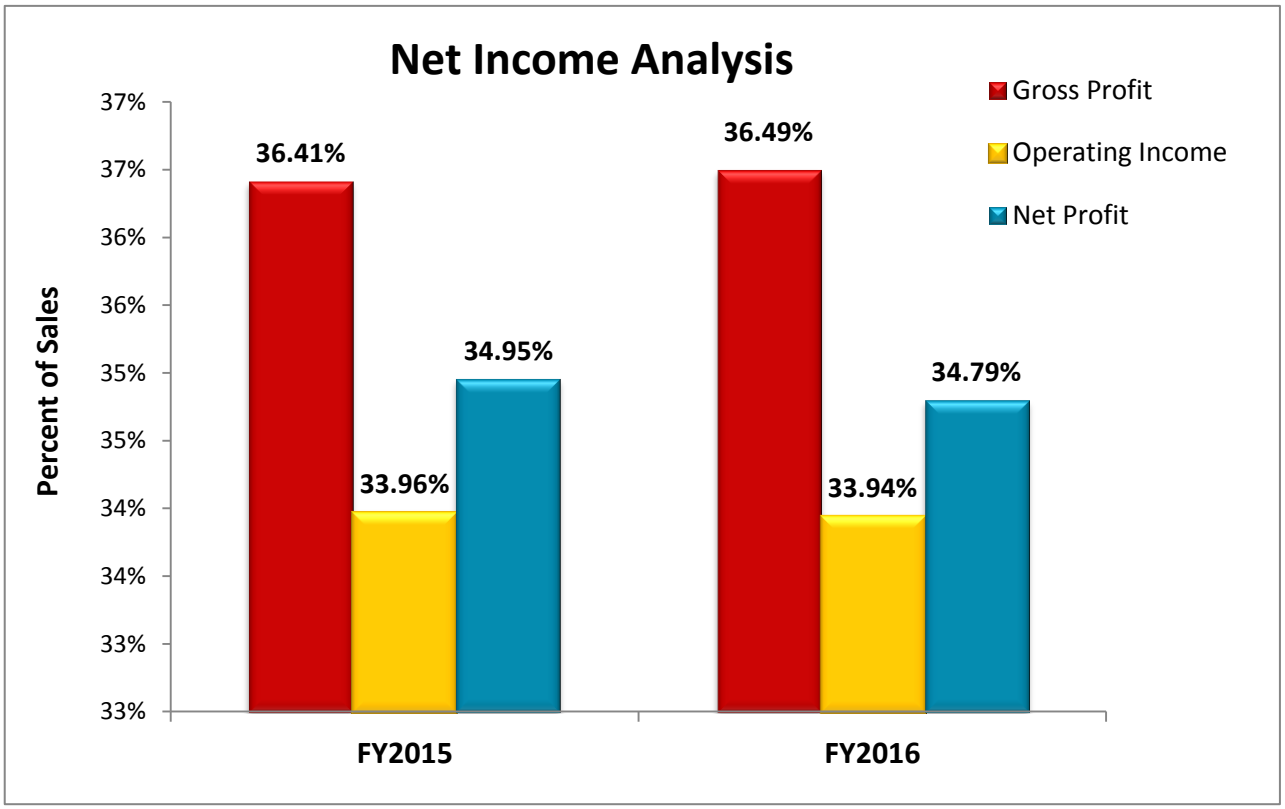
The names listed in this section are examples of foreign nongeneric names of geographic significance under § 4.24(c) (1) and (2) of this chapter.

Net Income Analysis YTD July - May FY2016*

* Total amounts have been adjusted to exclude one time expenses

Category	FY2015	FY2016	% Change	Amount Change
Gross Profit	89,518,029	93,231,231	4.15%	$ 3,713,202.00
Operating Income	83,501,144	86,701,718	3.83%	$ 3,200,574.00
Net Profit	85,927,064	88,887,506	3.45%	$ 2,960,442.00
Net Sales	245,848,063	255,467,327	3.91%	$ 9,619,264.00

Percent Of Sales	FY2015	FY2016	% Change	Amount Change
Gross Profit	36.41%	36.49%	0.23%	-0.33
Operating Income	33.96%	33.94%	-0.08%	-0.38
Net Profit	34.95%	34.79%	-0.45%	-0.33



Iowa ABD
Profit and Loss Statement-Accrual Basis
FY 2016

	May FY 2015	May FY 2016	May FY16 vs. FY15 % Chg.	May FY16 vs. FY15 Amount Chg.	YTD FY 2015	YTD FY 2016	FY16 vs. FY15 % Chg.	FY16 vs. FY15 Amount Chg.
Liquor Sales Revenue	**23,254,741**	**24,735,346**	**6.37%**	**1,480,605**	**245,848,063**	**255,467,327**	**3.91%**	**9,619,264**
Cost of Sales								
Bailment	15,385,822	15,509,150	0.80%	123,328	158,509,104	164,381,861	3.70%	5,872,757
Less: Bailment Fees	(169,348)	(169,567)	0.13%	(219)	(1,743,877)	(1,787,589)	2.51%	(43,712)
Less: Special Handling Fees	107,851	(18,284)	-116.95%	(126,135)	(367,083)	(292,916)	-20.20%	74,167
Less: Defective Products	(11,679)	(5,991)	-48.70%	5,688	(68,110)	(65,260)	-4.18%	2,850
Total Cost of Sales	**15,312,646**	**15,315,308**	**0.02%**	**2,662**	**156,330,034**	**162,236,096**	**3.78%**	**5,906,062**
Gross Profit	**7,942,095**	**9,420,038**	**18.61%**	**1,477,943**	**89,518,029**	**93,231,231**	**4.15%**	**3,713,202**
Gross Profit %	**34.2%**	**38.1%**	**11.40%**	**3.90%**	**36.4%**	**36.5%**	**0.27%**	**0.10%**
Operating Expenses								
Freight Expenses	176,228	180,860	2.63%	4,632	2,424,004	2,313,581	-4.56%	(110,423)
Warehouse Expenses	115,510	158,987	37.64%	43,477	1,472,917	1,588,974	7.88%	116,057
Other Expenses Related To Distribution	-	468,688		468,688	2,010,918	468,688	-76.69%	(1,542,230)
Total Operating Expenses	**291,738**	**808,535**	**177.14%**	**516,797**	**5,907,839**	**4,371,243**	**-26.01%**	**(1,536,596)**
General and Administrative Expenses								
Warehouse Administration	24,057	37,186	54.57%	13,129	500,987	566,354	13.05%	65,367
Product Administration	24,202	35,270	45.73%	11,068	335,308	419,405	25.08%	84,097
Accounting	27,884	35,515	27.37%	7,631	374,430	388,975	3.88%	14,545
Information Technology	50,153	292,037	482.29%	241,884	641,266	1,891,718	195.00%	1,250,452
Buildings and Grounds	19,680	25,827	31.23%	6,147	303,049	391,914	29.32%	88,865
General and Administrative Expense Total	**145,976**	**425,835**	**191.72%**	**279,859**	**2,155,040**	**3,658,366**	**69.76%**	**1,503,326**
Income from Operations	**7,504,381**	**8,185,668**	**9.08%**	**681,287**	**81,455,150**	**85,201,622**	**4.60%**	**3,746,472**
Other Revenues								
Split Case Fee	113,259	124,648	10.06%	11,389	1,265,668	1,317,357	4.08%	51,689
Bottle Deposit/Surcharge	197,914	224,990	13.68%	27,076	2,106,748	2,287,882	8.60%	181,134
Recycling	586	1,531	161.26%	945	13,651	18,570	36.03%	4,919
Fuel and Lease Reimbursement	-	5,550		5,550	8,196	30,883	276.81%	22,687
Lease Revenue	79,950	-	100.00%	(79,950)	79,950	59,963	100.00%	(19,987)
Total Other Revenues	**391,709**	**356,719**	**-8.93%**	**(34,990)**	**3,474,213**	**3,714,655**	**6.92%**	**240,442**
Other Expenses								
Bottle Deposit Fee	56,992	57,623	1.11%	631	447,153	470,321	5.18%	23,168
Recycle Surcharge Fee	128,574	127,571	-0.78%	(1,003)	1,005,401	1,057,484	5.18%	52,083
Liquor Refunds	-	-		-	(4,261)	1,062	-124.92%	5,323
Substance Abuse Transfer	1,598,409	1,506,435	-5.75%	(91,974)	16,066,897	16,234,727	1.04%	167,830
Total Other Expense	**1,783,975**	**1,691,629**	**-5.18%**	**(92,346)**	**17,515,190**	**17,763,594**	**1.42%**	**248,404**
Net Profit	**6,112,115**	**6,850,758**	**12.08%**	**738,643**	**67,414,173**	**71,152,683**	**5.55%**	**3,738,510**
Return on Sales	**26.3%**	**27.7%**	**5.32%**	**1.40%**	**27.4%**	**27.9%**	**1.82%**	**0.50%**

Profit & Loss Review
July 1- May 31

	YTD FY 2015	YTD FY 2016	FY16 vs. FY15 % Chg.	FY16 vs. FY15 Amount Chg.
Liquor Sales Revenue	245,848,063	255,467,327	3.91%	9,619,264
Total Cost of Sales	156,330,034	162,236,096	3.78%	5,906,062
Gross Profit	89,518,029	93,231,231	4.15%	3,713,202
Gross Profit %	36.4%	36.5%	0.27%	0.10%
Total Operating Expenses	5,907,839	4,371,243	-26.01%	(1,536,596)
*Adjusted Operating Expenses	3,896,921	3,902,555	0.14%	5,634
General and Admin Expense Total	2,155,040	3,658,366	69.76%	1,503,326
Income from Operations	81,455,150	85,201,622	4.60%	3,746,472
Total Other Revenues	3,474,213	3,714,655	6.92%	240,442
Total Other Expense	17,515,190	17,763,594	1.42%	248,404
Net Profit	67,414,173	71,152,683	5.55%	3,738,510
Return on Sales	27.4%	27.9%	1.82%	0.50%

*Adjusted for one time expenses for Phase IV in 2015 and Phase V in 2016

123.132 Authority under class "C" permit.

1. The holder of a class "C" permit shall be allowed to sell beer to consumers at retail for consumption off the premises. The sales made pursuant to this section shall be made in original containers except as provided in subsection 2.

2. Subject to the rules of the division, sales made pursuant to this section may be made in a container other than the original container only if all of the following requirements are met:

a. The beer is transferred from the original container to the container to be sold on the licensed premises at the time of sale.

b. The person transferring the beer from the original container to the container to be sold shall be eighteen years of age or more.

c. The container to be sold shall be no larger than seventy-two ounces.

d. The container to be sold shall be securely sealed by a method authorized by the division that is designed so that if the sealed container is reopened or the seal tampered with, it is visibly apparent that the seal on the container of beer has been tampered with or the sealed container has otherwise been reopened.

3. A container of beer other than the original container that is sold and sealed in compliance with the requirements of subsection 2 and the division's rules shall not be deemed an open container subject to the requirements of sections 321.284 and 321.284A if the sealed container is unopened and the seal has not been tampered with, and the contents of the container have not been partially removed.

4. The holder of a class "C" permit or the permittee's agents or employees shall not sell beer to other retail license or permit holders knowing or having reasonable cause to believe that the beer will be resold in another licensed establishment.

[C35, §1921-f107; C39, §**1921.108;** C46, 50, 54, 58, 62, 66, 71, §124.13; C73, 75, 77, 79, 81, §123.132]

94 Acts, ch 1017, §7; 2015 Acts, ch 66, §1; 2015 Acts, ch 138, §14, 161, 162
Section amended

185—4.1 (123) Definitions.

4.1(1) *"Act"* means the alcoholic beverage control Act.

4.1(2) *"Division"* means the alcoholic beverages division of the department of commerce.

4.1(3) *"Growler"* means any fillable and sealable glass, ceramic, plastic, aluminum or stainless steel container designed to hold only beer or high alcoholic content beer.

4.1(4) *"Original container"* means a vessel containing an alcoholic beverage that has been lawfully obtained, bears a label approved by the Alcohol and Tobacco Tax and Trade Bureau, and has been securely capped, sealed or corked at the location of manufacture.

4.1(5) Reserved.

4.1(6) *"Administrator"* means the chief administrative officer of the alcoholic beverages division or a designee.

4.1(7) *"Beverages"* as used in Iowa Code section 123.129 does not include alcoholic liquor, wine, or beer as defined in Iowa Code sections 123.3(5), 123.3(7), and 123.3(37).

This rule is intended to implement Iowa Code sections 123.3 and 123.4.

[**ARC 2382C**, IAB 2/3/16, effective 3/9/16]

185—4.6 (123) Filling and selling of beer in a container other than the original container by class "C" beer permit holders. Class "C" beer permit holders and their employees may fill, refill and sell beer in a container other than the original container, otherwise known as a growler as defined in subrule 4.1(3), subject to the requirements and restrictions provided in Iowa Code section 123.132 and in this rule.

4.6(1) *Definition.*

"Beer," for the purpose of this rule, means "beer" as defined in Iowa Code section 123.3(7) and "high alcoholic content beer" as defined in Iowa Code section 123.3(19).

4.6(2) *Sales criteria and restrictions.* All sales made pursuant to this rule shall be made in person. Beer packaged and sold pursuant to this rule shall not be delivered or direct-shipped to consumers.

4.6(3) *Filling and refilling requirements.*

a. A growler shall have the capacity to hold no more than 72 ounces.

b. A growler shall be filled or refilled only by the permittee or the permittee's employees who are 18 years of age or older.

c. A growler shall be filled or refilled only on demand by a consumer at the time of the in-person sale.

d. A growler shall be filled or refilled only with beer from the original container procured from a duly licensed wholesaler.

e. A retailer may exchange a growler to be filled or refilled, provided the exchange occurs at the time of the in-person sale.

f. The filling or refilling of a growler shall at all times be conducted in compliance with applicable state and federal food safety statutes and regulations.

4.6(4) *Sealing requirements.* A filled or refilled growler shall be securely sealed at the time of the sale by the permittee or the permittee's employees in the following manner:

a. A growler shall bear a twist-type cap, screw-on cap, flip-top lid, swing-top lid, stopper, or plug.

b. A plastic heat shrink wrap band, strip, or sleeve shall extend around the twist-type cap, screw-on cap, flip-top lid, or swing-top lid or over the stopper or plug to form a seal that must be broken upon the opening of the growler.

c. The heat shrink wrap seal shall be so secure that it is visibly apparent when the seal on a growler has been tampered with or a sealed growler has otherwise been reopened.

d. A growler shall not be deemed an open container, subject to the requirements of Iowa Code sections 321.284 and 321.284A, provided the sealed growler is unopened and the seal has not been tampered with and the contents of the growler have not been partially removed.

4.6(5) *Restrictions.*

a. Beer shall not be consumed on the premises of a class "C" beer permit holder.

b. A growler shall not be filled in advance of a sale.

c. A growler filled pursuant to this rule shall not be delivered or direct-shipped to a consumer.

d. A growler filled pursuant to this rule shall not be sold or otherwise distributed to a retailer.

e. A permittee or a permittee's employees shall not allow a consumer to fill or refill a growler.

f. The filling, refilling and selling of a growler shall be limited to the hours in which beer may be legally sold.

g. A filled or refilled growler shall not be sold to any consumer who is under legal age, intoxicated, or simulating intoxication.

h. An original container shall only be opened by the permittee or the permittee's employees for the limited purpose of filling or refilling a growler as provided in this rule.

4.6(6) *Violations.* Failure to comply with the requirements and restrictions of this rule shall subject the permittee to the penalty provisions provided in Iowa Code chapter 123.

This rule is intended to implement Iowa Code section 123.132.

[**ARC 2382C**, IAB 2/3/16, effective 3/9/16]

185—16.7 (123) Tasting.

16.7(1) *Restrictions.*

a. The amount of product served per person during a tasting shall be limited to the following.

(1) No more than two one half of one-fluid-ounce tastes of any brand of alcoholic liquor.

(2) No more than two one-fluid-ounce tastes of any brand of wine.

(3) No more than two two-fluid-ounce tastes of any brand of beer or high alcoholic content beer.

(4) No more than two two-fluid-ounce tastes of a mixed drink or cocktail as defined in 185—paragraph 4.5(1)*"b."*

b. Product shall not be served to, or allowed to be consumed by, any consumer who is under legal age, intoxicated, or simulating intoxication.

c. Product served during a tasting shall not be served by persons under 18 years of age.

d. Product served by an industry member shall be limited to the brands the industry member represents.

16.7(2) *Tastings conducted by an industry member.* An industry member may conduct a tasting on licensed and unlicensed premises, subject to the requirements and restrictions provided in this rule.

a. *Licensed premises.*

(1) A tasting may be conducted on licensed premises where alcoholic beverages are sold or served.

(2) A tasting shall be limited to the types of alcoholic beverages available for purchase as authorized by the license or permit.

(3) A tasting shall be held during the hours in which alcoholic beverages may be legally sold or served.

(4) An industry member may provide snack foods or hors d'oeuvres for the participants at the tasting.

(5) Product or food served during a tasting shall either be provided by the industry member or purchased at no more than the ordinary retail price from the license or permit holder on whose premises the tasting is being held.

(6) Any product or food remaining at the end of a tasting shall be removed from the licensed premises by the industry member.

b. *Unlicensed premises.*

(1) A tasting of wine, beer, or high alcoholic content beer may be conducted in an unlicensed public place unless prohibited by Iowa Code section 123.46(2) or an applicable ordinance or regulation of the local authority.

(2) A tasting of alcoholic liquor, wine, beer, or high alcoholic content beer may be conducted in an unlicensed private place as defined in 185—subrule 4.23(4).

(3) A tasting of alcoholic liquor is prohibited in an unlicensed public place.

(4) Wine, beer, and high alcoholic content beer served during a tasting shall be obtained from the respective wholesaler.

(5) An industry member may provide snack foods or hors d'oeuvres for the participants at the tasting.

(6) Any product or food remaining at the end of a tasting shall be removed from the premises by the industry member.

16.7(3) *Tastings conducted by a retailer.* A retailer licensed or permitted for on- or off-premises consumption may conduct a tasting, subject to the requirements and restrictions provided in this rule.

a. Product served during a tasting shall be served by a retailer, the retailer's employees or agents, or an industry member who has the explicit consent of the retailer.

b. A tasting shall be limited to the types of alcoholic beverages available for purchase as authorized by the license or permit.

c. A tasting shall be held during the hours in which alcoholic beverages may be legally sold or served.

d. Product served during a tasting shall be legally obtained by the retailer as prescribed by Iowa Code chapter 123.

e. An off-premises license or permit holder may conduct a tasting when there is no charge for product or access.

f. Food may be provided by the retailer for the participants of a tasting.

16.7(4) *Record keeping.* An industry member shall keep and maintain records in accordance with rule 185—16.18(123).

This rule is intended to implement Iowa Code section 123.186.

[**ARC 2254C**, IAB 11/25/15, effective 12/30/15]