

CHAPTER 16 TRADE PRACTICES

The rules in this chapter, adopted pursuant to Iowa Code section 123.186, apply to transactions between industry members, trade buyers and retailers. The rules specify practices considered to be fair and allowable as well as practices deemed to be unfair or inducements. This chapter does not exempt any industry member, trade buyer or retailer from the requirements of any federal law or regulation.

PART I

As used in this chapter, the words, terms and phrases defined in this part shall apply, unless a different meaning is clearly indicated by the context.

185—16.1(123) Definitions.

“Brand” means each alcoholic liquor, wine, beer, or high alcoholic content beer packaged and sold under a separate name, class, type, or kind designation (wine appellation of origin, wine vintage date, alcoholic liquor age, percentage of alcohol, etc.).

“Cost adjustment factor.” The division shall annually adjust the dollar limitations in rule 185—16.2(123) not to exceed the adjusted annual cost permitted by the federal Bureau of Alcohol, Tobacco, and Firearms contained in 27 CFR 6.83. The division shall annually adjust the dollar limitations in rule 185—16.3(123) not to exceed the adjusted annual cost permitted by the federal Bureau of Alcohol, Tobacco, and Firearms contained in 27 CFR 6.85. The division shall annually adjust the dollar limitations in rule 185—16.16(123) not to exceed the adjusted annual cost permitted by the federal Bureau of Alcohol, Tobacco, and Firearms contained in 27 CFR 6.100. The dollar limitations for the rules listed herein for calendar year 1992 are as follows:

1. Rule 185—16.2(123) Product displays: \$160.
2. Rule 185—16.3(123) Retailer advertising utensils: \$78.
3. Rule 185—16.16(123) Participation in retail association activities: \$160.

“Equipment” includes, but is not limited to, mechanized and nonmechanized refrigeration units and devices used in the storage, dispensing, and cooling of alcoholic liquor, wine and beer, tap boxes, “party wagons,” dispensing systems, and shelving. Equipment does not include tapping accessories (including faucets, rods, vents, taps, hoses, washers, couplings, gas gauges, vent tongues, shanks, check valves and “picnic” pumps) which are used in dispensing wine or beer from kegs or bulk packaging.

“Exclusion,” in whole or in part, of a competitor’s products includes, but is not limited to, any, some or all of the following factors:

1. Position and location of alcoholic beverages products sold during special event.
2. Alcoholic beverages products sold prior to allegation of violation in retail establishment.
3. Industry member and retailer objective intent.
4. Industry member and retailer connection with charitable or civic sponsor of special event.
5. Alcoholic beverages products sold during the event.

6. Sales price and discounts on alcoholic beverages products sold during the event.

7. Any other special considerations or preferential treatment offered by the industry member and accepted by the retailer which were not similarly offered to all retailers in the same market.

“*Fixtures*” includes, but is not limited to, bar sinks, bars, light fixtures, and indoor or outdoor signs used to identify the retail establishment.

“*Furnishings*” includes, but is not limited to, money, services, chairs, tables, lamps, pictures, remodeling costs, bar sinks, menus, carpeting, bar stools, display cabinets and curios, linens, linen services, china and silver or stainless steel eating and other utensils, decorations, and sound systems used by a retailer. (Durable and disposable glassware is addressed in rule 185—16.5(123).)

“*Furnishings, fixtures and equipment*” does not include the items identified in rule 185—16.2(123), subrule 16.3(5), rule 185—16.4(123), rule 185—16.5(123), rule 185—16.6(123), rule 185—16.7(123), subrule 16.13(5), or subrule 16.13(6).

“*Industry member*” means an alcoholic beverages manufacturer, including a distiller, vintner or brewer, bottler, importer, wholesaler, jobber, representative, broker, agent, officer, director, shareholder, partner or employee of each of the above.

“*Product*” means alcoholic liquor, wine, beer, or high alcoholic content beer as defined in Iowa Code chapter 123.

“*Retailer*” means the holder of an alcoholic beverages license or permit, agents, officers, directors, shareholders, partners, and employees who sell alcoholic liquor, wine or beer to consumers for consumption on or off the premises of the licensee or permittee.

“*Sampling*” means the practice of industry members giving product to a retailer for the purpose of market research, education, promotion of the product, or determination of the flavor of the product.

“*Tasting*” means the presentation and serving of a product by industry members or retailers to consumers for the purpose of market research, education, promotion of the product, or determination of the flavor of the product.

“*Trade spending*” means the practice of industry members promoting their brand by purchasing alcoholic beverages for consumers where alcoholic beverages are sold and served for on-premises consumption.

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

[ARC 1992C, IAB 5/13/15, effective 6/17/15; ARC 2254C, IAB 11/25/15, effective 12/30/15]

PART II

The rules in this part specify industry member practices that are allowed, under the conditions and within the limitations prescribed. The rules apply to transactions between industry members and retailers.

185—16.2(123) Product displays. An industry member is prohibited, directly or indirectly, from renting, leasing or buying display space from a retailer, paying a retailer to set up a display, giving a special price on the products featured in the display or other products sold by the

industry member, or providing free merchandise to a retailer in return for a display.

16.2(1) An industry member may give, furnish, sell, rent or loan product displays such as wine racks, bins, barrels, casks and portable, disposable shelving from which alcoholic beverages are displayed and sold, provided that the product display bears conspicuous and substantial advertising matter. A product display is prohibited if it has secondary value to the retailer, for other than advertising purposes. An industry member is prohibited from requiring a retailer to purchase a specific quantity of alcoholic liquor, wine or beer in order to receive a product display.

16.2(2) The total value of all product displays per brand per calendar year may not exceed \$155. The value of the product display is the industry member's original cost of the item.

16.2(3) Industry members may not pool or combine their dollar limitations in order to provide a retailer with a product display which exceeds \$155. Industry members are prohibited from pooling or combining several brands to provide a retailer with a product display which exceeds \$155.

This rule is intended to implement Iowa Code section 123.186.

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

185—16.3(123) Retailer advertising utensils, consumer souvenirs, wearing apparel. An industry member may furnish, give, or sell retailer advertising utensils which bear conspicuous advertising matter permanently affixed to the utensils and which are primarily valuable as point-of-sale advertising intended for use on the premises of the retail establishment. No advertising utensils with secondary value which constitute furnishings, fixtures, or equipment used in the storage, handling, serving, or dispensing of alcoholic beverages, wine, beer, or food within the place of the retail business of a licensee or permittee shall be given, furnished or sold by an industry member to a retailer.

16.3(1) The total value of all retailer advertising utensils which may be furnished, given or sold by an industry member to a retailer per brand per calendar year may not exceed \$76.

16.3(2) Industry members may not pool or combine their dollar limitations in order to provide a retailer with retailer advertising utensils which exceed \$76.

16.3(3) Industry members may not pool or combine the dollar limitations for several brands in order to provide a retailer with retailer advertising utensils which exceed \$76.

16.3(4) The value of the retailer advertising utensil is the industry member's original cost of the item.

16.3(5) An industry member may furnish, give or sell consumer souvenirs to a retailer for unconditional distribution by the retailer to consumers. Consumer souvenirs may include such items as printed recipes, matches, bottle or can openers, corkscrews, shopping bags, pamphlets, leaflets, blotters, postcards, pens or pencils.

Consumer souvenirs must bear conspicuous advertising matter which identifies the industry member or the industry member's alcoholic beverages product. The industry member may not pay or credit the retailer, directly or indirectly, for distributing consumer souvenirs. There is no dollar limitation on consumer souvenirs.

Such souvenirs shall be offered to all retailers by the industry member within the industry member's marketing territory on as equal and equitable a basis as possible. In the event the souvenir also advertises a local event not sponsored by the retailer, the souvenir need only be offered by the industry member to the retailers within the local community where the event is held.

16.3(6) An industry member may sell wearing apparel, including sweatshirts, T-shirts, pants, shorts, hats, caps, polo-type shirts, jackets, jerseys and other similar clothing, which bears substantial permanently affixed advertising identifying the industry member's name or products to a retailer at not less than the industry member's laid-in cost of the items. There is no dollar limitation on wearing apparel which may be sold by an industry member to a retailer.

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

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

185—16.4(123) Wine lists. An industry member may furnish, sell, give, rent or loan wine lists and wine menus to a retailer.

This rule is intended to implement Iowa Code section 123.186.

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

185—16.5(123) Glassware. An industry member engaged in the manufacturing or wholesaling of beer or wine may sell disposable glassware (including foam, paper and one-use plastic cups) to a retailer. An industry member engaged in the manufacturing or wholesaling of beer or wine is prohibited from selling disposable glassware to a retailer at less than the industry member's laid-in cost of the disposable glassware. An industry member engaged in the manufacturing or wholesaling of beer or wine may sell commemorative glassware which bears substantial advertising matter identifying the industry member or the industry member's product to off-premises retailers for resale to consumers. An industry member engaged in the manufacturing or wholesaling of beer or wine is prohibited from selling commemorative glassware to off-premises retailers at less than the industry member's laid-in cost. An industry member engaged in the manufacturing or wholesaling of alcoholic liquor may sell durable or disposable (including foam, paper or one-use plastic cups) glassware to a retailer. The glassware must bear advertising matter which identifies the industry member or the industry member's product. An industry member engaged in manufacturing or wholesaling alcoholic liquor is prohibited from selling durable or disposable glassware to a retailer at less than the industry member's laid-in cost of the disposable or durable glassware.

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

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

185—16.6(123) Tapping accessories and coil cleaning service. An industry member may sell tapping accessories, identified in rule 185—16.1(123), and carbon dioxide to a retailer at not less than the industry member's laid-in cost. An industry member may sell, furnish or give wine and beer coil cleaning services to a retailer.

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

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

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]

185—16.8(123) Sampling.

16.8(1) *Conditions.* An industry member may give product to a retailer who has not purchased the brand from that industry member within the preceding 12 months.

16.8(2) *Quantity.* Product given to a retailer shall not exceed the following amounts within a calendar year.

a. Three liters of any brand of alcoholic liquor.

b. Three liters of any brand of wine.

c. Three gallons of any brand of beer or high alcoholic content beer.

16.8(3) *Procurement.* An industry member shall obtain alcoholic liquor, wine, beer, or high alcoholic content beer used for sampling from the respective wholesaler.

16.8(4) *Identification.* Each container of product used for sampling shall be clearly marked with the word "SAMPLE". The marking shall not obscure the label of the container.

16.8(5) *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]

185—16.9(123) Trade spending. An industry member may engage in the practice of trade spending.

16.9(1) Advertising. Trade spending shall be unannounced and unpublicized.

16.9(2) Quantity. The industry member shall be limited to purchasing one round of alcoholic beverages or nonalcoholic beverages for patrons of an on-premises retailer.

16.9(3) Payment. The industry member shall pay the retailer no more than the ordinary retail price for the alcoholic beverage or nonalcoholic beverage.

16.9(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]

185—16.10(123) Discounts prohibited. An industry member is prohibited from offering discounts to retailers which are not uniformly offered to all retailers in the market area. An industry member is prohibited from refusing to give a retailer a discount which is offered to other retailers in the market area even though the retailer declines to reduce the price to the consumer during the discount period, or to advertise the industry member's product during the promotion period.

This rule is intended to implement Iowa Code sections 123.135(4) and 123.180(4).

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

185—16.11(123) Combination packaging. An industry member may package and distribute alcoholic liquor, wine or beer in combination with other nonalcoholic items or products provided that the items have no secondary value to the retailer other than having the potential of attracting purchasers and promoting sales. The combination package must be designed to be delivered intact to the consumer and the additional cost incurred by the industry member shall be included in the cost to the retailer. (Industry members who sell alcoholic liquor to the division must comply with the division's policies regarding combination packaging.)

This rule is intended to implement Iowa Code section 123.186.

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

185—16.12(123) Coupons. An industry member may offer coupons to the public for mail-in rebates on alcoholic liquor, wine and beer. An industry member must offer all retailers the opportunity to participate in the coupon offering. A retailer may offer its own coupons to consumers, and the retailer's own coupons may be mail-in rebates or instant rebates at the cash register. An industry member is prohibited from reimbursing the retailer more than the ordinary and customary handling fee for redeeming the coupons.

This rule is intended to implement Iowa Code section 123.186.

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

185—16.13(123) Advertising. An industry member is prohibited from paying a retailer, directly or indirectly, to advertise the industry member's alcoholic beverages products.

16.13(1) An industry member is prohibited, directly or indirectly, from sharing the cost of an advertisement with a retailer.

16.13(2) An industry member is prohibited from purchasing advertising from a retailer on such things as, but not limited to, signs, scoreboards, programs, scorecards, and tote boards in ballparks, stadiums, auditoriums, racetracks, arenas, bowling alleys and all other retail establishments.

16.13(3) An industry member may furnish a billboard or “spectacular” sign to a retailer. The sign must bear conspicuous, permanently affixed advertising which identifies the industry member or the industry member’s alcoholic beverages products. The sign may be displayed within the establishment or on a fence or similar enclosure facing into the establishment.

If the billboard or sign has secondary value (i.e., electronic, mechanical or manual message center, scorekeeping capabilities, menu board) other than mere advertising, an industry member may furnish a billboard or “spectacular” sign to a retailer provided:

- a. The sign is not on a premises covered by a license or permit;
- b. The sign is not owned by a retail licensee or permittee;
- c. The retailer is not compensated, directly or indirectly, in conjunction with the placement of the sign or advertising thereon;
- d. The furnishing of the “spectacular” sign by an industry member shall not result in exclusion (which includes, but is not limited to, preferential treatment), in whole or in part, of a competitor’s alcoholic beverages products in the retail establishment; and
- e. The billboard or “spectacular” sign does not contain or show an advertisement naming or advertising any retailer, or provide any other secondary utility value for the retailer.

16.13(4) An industry member may purchase advertising in a publication owned by an incorporated nonprofit trade association of retail members. The publication shall be disseminated to the membership of the association on a regular basis. No revenue derived from the advertising shall be used for the benefit or use of any individual member.

The fact that an industry member did not advertise in the publication shall not be used in any way by the membership jointly or severally to effect a restraint of trade of the brands carried by the industry member failing to advertise.

16.13(5) An industry member may give, furnish, loan, rent, or sell copy ready art, newspaper cuts, mats or engraved blocks to retailers for use in retailers’ advertisements.

16.13(6) An industry member may furnish a retailer with inside signs, including posters, placards, mechanical devices and window decorations and point-of-sale advertising matter (table tents, menu clip-ons) which have no secondary value to the retailer and are designed solely to promote the alcoholic beverages product. An industry member is prohibited from paying the retailer for any incidental expenses related to the operation of the inside sign.

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

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

185—16.14(123) Stocking and product rotation. An industry member may stock and rotate alcoholic liquor, wine or beer sold by the industry member. An industry member may affix

prices to alcoholic liquor, wine or beer sold by the industry member at the time of delivery, provided that the retailer independently determines the price of the alcoholic liquor, wine and beer. An industry member may build product displays either at the time of delivery or at other times. An industry member may not reset or rearrange another industry member's products without the explicit consent of the retailer. An industry member is prohibited from removing another industry member's point-of-sale advertising matter.

This rule is intended to implement Iowa Code section 123.186.

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

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]

185—16.16(123) Participation in seminars and retail association activities. An industry member may provide educational seminars for retailers regarding such topics as merchandising and product knowledge, tours of alcoholic beverages manufacturing facilities; however, an industry member is prohibited from paying a retailer's expenses or compensating a retailer for attending such seminars and tours.

16.16(1) An industry member may participate in retail association activities in the following manner:

- a.* Display its products at a trade show or convention.
- b.* Rent display booth space provided that the rental fee is not excessive and is the same paid by all exhibitors.
- c.* Provide hospitality for the persons attending the trade show or convention. The hospitality provided by the industry member shall be independent from association-sponsored activities.
- d.* Purchase tickets, attend functions, and pay registration fees, provided that such payments are not excessive and are the same paid by all exhibitors.
- e.* Pay for advertising in programs or brochures issued by retail associations at a convention or trade show, provided that the total payments made by an industry member do not exceed \$155 per calendar year to any one retail association.

16.16(2) Reserved.

This rule is intended to implement Iowa Code section 123.186.

185—16.17 Reserved.

185—16.18(123) Record keeping. Industry members are required to keep and maintain accurate records for a three-year period regarding each of the items which may be provided to retailers in rules 185—16.2(123) (product displays), 185—16.3(123) (retailer advertising utensils, consumer souvenirs, wearing apparel), 185—16.5(123) (glassware), 185—16.7(123) (tastings, samplings, and trade spending), 185—16.15(123) (sponsorships and special events), and 185—16.16(123) (participation in seminars and retail association activities). Commercial records or invoices may be used to satisfy this record-keeping requirement if all the required information appears on the record or invoice. These records shall state the following: the name and address of the retailer receiving the item, the date furnished, sold, given, loaned, leased or rented, the item furnished, the industry member's laid-in cost of the item furnished, and charges to the retailer for the item. Such records shall be open to representatives of the division during normal business hours of the industry member, and may be subject to administrative subpoena issued by the division administrator.

This rule is intended to implement Iowa Code section 123.186.

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

185—16.19 to 16.39 Reserved.

PART III

The rules in this part specify industry member practices that are a means to induce a retailer and that are prohibited. The rules apply to transactions between industry members and retailers.

185—16.40(123) Equipment, furnishings, fixtures. An industry member is prohibited from giving, selling, renting, or lending equipment, furnishings or fixtures to a retailer for use by the retailer or in the retail establishment.

16.40(1) An industry member is prohibited from obtaining equipment, furnishings, or fixtures for a retailer from a third party at a special price.

16.40(2) Reserved.

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

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

185—16.41(123) Interest in a retail establishment.

16.41(1) An industry member is prohibited, directly or indirectly, from:

a. Acquiring or holding a partial or complete ownership interest in a retail establishment.

b. Acquiring or holding an interest in the real or personal property owned, occupied or used by the retailer in the conduct of the retail establishment.

c. Acquiring a mortgage on the real or personal property owned by the retailer.

d. Guaranteeing any loan or paying a financial obligation of the retailer, including, but not limited to, personal loans, home mortgages, car loans, operating capital obligations, or utilities.

e. Providing financial, legal, administrative or other assistance to a retailer to obtain a license or permit.

16.41(2) Reserved.

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

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

185—16.42(123) Free warehousing prohibited. An industry member is prohibited, directly or indirectly, from providing free warehousing of products for a retailer.

This rule is intended to implement Iowa Code section 123.186.

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

185—16.43(123) Extension of credit and prepaid accounts. An industry member is prohibited from extending credit on the sale of alcoholic liquor, beer, wine coolers, or spirit coolers to a retailer. An industry member may extend credit to a retailer on the sale of wine for not more than 30 days from the date of the sale. An industry member engaged in the manufacturing or wholesaling of beer is prohibited from extending credit to a retailer on the sale of disposable or commemorative glassware. An industry member engaged in the manufacturing or wholesaling of wine may extend not more than 30 days' credit to a retailer on the sale of durable or disposable glassware.

16.43(1) An industry member may establish prepaid accounts in which retailers deposit a sum of money in the hands of the industry member to pay for future purchases of alcoholic beverages products, although a retailer is not required to purchase any quota of alcoholic liquor, wine or beer. The industry member may not hold the money so deposited as "security" for future payment of a debt. The industry member must transfer the amount of the invoice from the retailer's prepaid account each time that the industry member makes a sale and a delivery to the retail establishment. An industry member is not required to establish separate escrow accounts for prepaid accounts; however, the industry member is responsible for accurately and honestly accounting for the funds so held. A retailer may withdraw the money placed in a prepaid account at any time. An industry member is prohibited from utilizing prepaid accounts to require a retailer to take and dispose of any quota of alcoholic liquor, wine or beer.

16.43(2) Reserved.

This rule is intended to implement Iowa Code sections 123.45 and 123.181(2).

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

185—16.44(123) Quota sales, tie-in sales. An industry member is prohibited from requiring a retailer to purchase and sell any quota of alcoholic liquor, wine or beer. An industry member is prohibited from requiring a retailer to purchase one product in order to purchase another. This prohibition 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

prohibited from selling at a special combination price, two or more kinds or brands of products to a retailer, provided that the retailer has the option of purchasing either product at the usual price, and the retailer is not required to purchase any product not wanted by the retailer.

This rule is intended to implement Iowa Code section 123.186.

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

185—16.45 to 16.59 Reserved.

PART IV

The rule in this part specifies that exclusive outlet arrangements with retailers are prohibited. The rule applies to transactions between industry members and retailers.

185—16.60(123) Implied or express contracts prohibited. An industry member and a retailer are prohibited from entering into implied or express contracts for the future sale and purchase of alcoholic beverages.

This rule is intended to implement Iowa Code section 123.186.

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

185—16.61 to 16.74 Reserved.

PART V

The rule in this part specifies industry member practices that are a means to induce a trade buyer and that are prohibited. The rule applies to transactions between industry members and employees, officers, or representatives of trade buyers.

185—16.75(123) Commercial bribery. An industry member is prohibited from offering or giving a retailer free trips, bonuses or prizes based on sales of the industry member's alcoholic beverages products.

This rule is intended to implement Iowa Code section 123.186.

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

185—16.76 to 16.89 Reserved.

PART VI

The rule in this part specifies that consignment sales arrangements are prohibited. The rule applies to transactions between industry members and trade buyers.

185—16.90(123) Consignment sales. An industry member is prohibited from selling alcoholic liquor, wine or beer to a retailer on consignment. Consignment means a sale under which the retailer is not obligated to pay for the alcoholic liquor, wine or beer, until the product is sold by the retailer. An industry member may accept the return of alcoholic liquor, wine and beer for ordinary and usual commercial reasons, but it is not obligated to do so. Ordinary and usual commercial reasons for the return of alcoholic liquor, wine and beer include the following: defective products, error in products delivered and discovered by the retailer and reported to the industry member within seven days of the date of delivery, products which may no longer be lawfully sold, termination of retailer's business, termination of franchise, change in formula, proof, label or container of the product, discontinued product. An industry member is prohibited

from accepting the return of overstocked or slow moving or seasonal products. An industry member may repack alcoholic liquor, wine and beer for the purpose of assisting the retailer to sell slow moving or overstocked products.

This rule is intended to implement Iowa Code section 123.186.

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

185—16.91 to 16.104 Reserved.

PART VII

The rules in this part govern the penalties for violations of rules within this chapter.

185—16.105(123) Industry member, retailer—subject to penalties. An industry member or a retailer who commits, permits or assents to the prohibitions in this chapter shall be subject to administrative penalties including administrative fines, suspension or revocation of the certificate of compliance, license or permit.

This rule is intended to implement Iowa Code section 123.45.

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

185—16.106(123) Contested case—burden. In any contested case alleging a violation of this chapter, the burden of demonstrating compliance with the lawful requirements for retention of the license or permit or certificate of compliance shall be placed on the licensee, permittee, or certificate of compliance holder.

This rule is intended to implement Iowa Code sections 17A.18(3) and 123.39.

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185—16.107 to 16.119 Reserved.

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Title 27: Alcohol, Tobacco and Firearms

PART 6—"TIED-HOUSE"

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Subpart A—Scope of Regulations

§ 6.1 General.

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

§ 6.2 Territorial extent.

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

§ 6.3 Application.

(a) *General.* This part applies only to transactions between industry members and retailers. It does not apply to transactions between two industry members (for example, between a producer and a wholesaler), or to transactions between an industry member and a retailer wholly owned by that industry member.

(b) *Transaction involving State agencies.* The regulations in this part apply only to transactions between industry members and State agencies operating as retailers as defined in this part. The regulations do not apply to State agencies with regard to their wholesale dealings with retailers.

§ 6.4 Jurisdictional limits.

(a) *General.* The regulations in this part apply where:

(1) The industry member induces a retailer to purchase distilled spirits, wine, or malt beverages from such 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; and

(2) If: (i) The inducement is made in the course of interstate or foreign commerce; or

(ii) The industry member engages in the practice of using an inducement to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products; or

(iii) The direct effect of the inducement is to prevent, deter, hinder or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce.

(b) *Malt beverages.* In the case of malt beverages, this part applies to transactions between a retailer in any State and a brewer, importer, or wholesaler of malt beverages inside or outside such State only to the extent that the law of such State imposes requirements similar to the requirements of section 105(b) of the Federal Alcohol Administration Act (27 U.S.C. 205(b)), with respect to similar transactions between a retailer in such State and a brewer, importer, or wholesaler or malt beverage in such State, as the case may be.

§ 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.

§ 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.

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. Examples of different brands are products having a different brand name or class, type, or kind designation; appellation of origin (wine); vintage date (wine); age (distilled spirits); or percentage of alcohol. Differences in packaging such as difference in label design or color, or a different style, type or size of container are not considered different brands.

Equipment. All functional items such as tap boxes, glassware, pouring racks, and similar items used in the conduct of a retailer's business.

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 warehousemen 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.

Retail establishment. Any premises where distilled spirits, wine or malt beverages are sold or offered for sale to consumers, whether for consumption on or off the premises where sold.

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.

Subpart C—Unlawful Inducements

General

§ 6.21 Application.

Except as provided in subpart D, it is unlawful for any industry member to induce, directly or indirectly, any retailer to purchase any products from the industry member to the exclusion, in whole or in part, of such products sold or offered for sale by other persons in interstate or foreign commerce by any of the following means:

- (a) By acquiring or holding (after the expiration of any license held at the time the FAA Act was enacted) any interest in any license with respect to the premises of the retailer;
- (b) By acquiring any interest in the real or personal property owned, occupied, or used by the retailer in the conduct of his business;
- (c) By furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services or other thing of value, subject to the exceptions contained in subpart D;
- (d) By paying or crediting the retailer for any advertising, display, or distribution service;
- (e) By guaranteeing any loan or the repayment of any financial obligation of the retailer;
- (f) By extending to the retailer credit for a period in excess of the credit period usual and customary to the industry for the particular class of transactions as prescribed in §6.65; or
- (g) By requiring the retailer to take and dispose of a certain quota of any such products.

Interest in Retail License

§ 6.25 General.

The act by an industry member of acquiring or holding any interest in any license (State, county or municipal) with respect to the premises of a retailer constitutes a means to induce within the meaning of the Act.

§ 6.26 Indirect interest.

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

§ 6.27 Proprietary interest.

(a) *Complete ownership.* Outright ownership of a retail business by an industry member is not an interest which 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.

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.

§ 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.

§ 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.

§ 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.

§ 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 sold. Further, the negotiation by an industry member of a special price to a retailer for equipment from an equipment company is the furnishing of a thing of value within the meaning of the Act.

§ 6.44 Free warehousing.

The furnishing of free warehousing by delaying delivery of distilled spirits, wine, or malt beverages beyond the time that payment for the product is received, or if a retailer is purchasing on credit, delaying final delivery of products beyond the close of the period of time for which credit is lawfully extended, is the furnishing of a service or thing of value within the meaning of the Act.

§ 6.45 Assistance in acquiring license.

Any assistance (financial, legal, administrative or influential) given the retailer by an industry member in the retailer's acquisition of the retailer's license is the furnishing of a service or thing of value within the meaning of the Act.

§§ 6.46-6.47 [Reserved]

Paying for Advertising, Display or Distribution Service

§ 6.51 General.

The act by an industry member of paying or crediting a retailer for any advertising, display, or distribution service constitutes a means to induce within the meaning of the Act, whether or not the advertising, display, or distribution service received by the industry member in these instances is commensurate with the amount paid therefor. This includes payments or credits to retailers that are merely reimbursements, in full or in part, for such services purchased by a retailer from a third party.

§ 6.52 Cooperative advertising.

An arrangement in which an industry member participates with a retailer in paying for an advertisement placed by the retailer constitutes paying the retailer for advertising within the meaning of the Act.

§ 6.53 Advertising in ballparks, racetracks, and stadiums.

The purchase, by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail concessionaire constitutes paying the retailer for an advertising service within the meaning of the Act.

§ 6.54 Advertising in retailer publications.

The purchase, by an industry member, of advertising in a retailer publication for distribution to consumers or the general public constitutes paying the retailer for advertising within the meaning of the Act.

§ 6.55 Display service.

Industry member reimbursements to retailers for setting up product or other displays constitutes paying the retailer for rendering a display service within the meaning of the Act.

§ 6.56 Renting display space.

A promotion whereby an industry member rents display space at a retail establishment constitutes paying the retailer for rendering a display service within the meaning of the Act.

Guaranteeing Loans

§ 6.61 Guaranteeing loans.

The act by an industry member of guaranteeing any loan or the repayment of any financial obligation of a retailer constitutes a means to induce within the meaning of the Act.

Extension of Credit

§ 6.65 General.

Extension of credit by an industry member to a retailer for a period of time in excess of 30 days from the date of delivery constitutes a means to induce within the meaning of the Act.

§ 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.

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.

§ 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.

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.

§ 6.82 [Reserved]

§ 6.83 Product displays.

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

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

(c) *Conditions and limitations.* (1) The total value of all product displays given or sold by an industry member under paragraph (a) of this section may not exceed \$300 per brand at any one time in any one retail establishment. Industry members may not pool or combine dollar

limitations in order to provide a retailer a product display valued in excess of \$300 per brand. The value of a product display is the actual cost to the industry member who initially purchased it. Transportation and installation costs are excluded.

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

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

§ 6.84 Point of sale advertising materials and consumer advertising specialties.

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

(b) *Definitions* — (1) *Point of sale advertising materials* are items designed to be used within a retail establishment to attract consumer attention to the products of the industry member. Such materials include, but are not limited to: posters, placards, designs, inside signs (electric, mechanical or otherwise), window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, clocks, calendars, and alcoholic beverage lists or menus.

(2) *Consumer advertising specialties* are items that are designed to be carried away by the consumer, such as trading stamps, nonalcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, pencils, shirts, caps, and visors.

(c) *Conditions and limitations.* (1) All point of sale advertising materials and consumer advertising specialties must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed. The name and address of the retailer may appear on the point of sale advertising materials.

(2) The industry member may not directly or indirectly pay or credit the retailer for using or distributing these materials or for any expense incidental to their use.

§ 6.85 Temporary retailers.

(a) *General.* The furnishing of things of value to a temporary retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act.