

ALCOHOLIC BEVERAGES DIVISION[185]

Adopted and Filed

Rule making related to federal regulations for trade practices

The Alcoholic Beverages Division hereby amends Chapter 16, “Trade Practices,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 123.10 and 123.186.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 123.186.

Purpose and Summary

Pursuant to Iowa Code section 123.186, the Division is required to adopt as rules the substance of the federal regulations found in 27 CFR Parts 6, 8, 10, and 11 prescribed by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury. These regulations govern allowable and prohibited trade practice activity among alcohol manufacturers, wholesalers, and retailers in the areas of tied house, exclusive outlets, commercial bribery, and consignment sales.

The adopted amendments to Chapter 16 make necessary updates to align the Division’s rules with the current federal regulations unless otherwise preempted by Iowa law. The Division believes the updates make the regulatory requirements clearer and make it easier for manufacturers, wholesalers, and retailers to do business in Iowa.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 16, 2022, as **ARC 6667C**. A public hearing was held on December 6, 2022, at 1 p.m. via video/conference call.

Only one organization attended the public hearing and provided public comment requesting changes to the rule making. Written public comments were also received.

Based on public comment and 2023 legislation, the following changes were made from the published Notice:

1. Did not adopt a definition for “division” and instead added a definition for “department” to coincide with the enactment of 2023 Iowa Acts, Senate File 514. References to “division” were replaced with “department” throughout the rule making.
2. Amended the definition of “exclusion” in rule 185—16.1(123) to clarify that exclusion can occur in whole or in part.
3. Amended the definition of “furnishings, fixtures and equipment” in rule 185—16.1(123) to clarify that the items identified in subrule 16.3(1) are not included in the definition.
4. Revised new subrule 16.3(1) to clarify that billboards are considered retailer advertising utensils allowed to be supplied, given, or sold by industry members to retailers.
5. Revised new subrule 16.11(2) to remove the requirement that any additional cost incurred by an industry member related to a combination package be included in the cost of the package to the retailer. This requirement does not appear in federal regulation.
6. Revised new paragraph 16.14(2)“a” to reinstate the prohibition against an industry member resetting or rearranging another industry member’s products without the explicit consent of the retailer.

7. Did not adopt new paragraph 16.14(2)“b” since it was no longer needed with the revisions to new paragraph 16.14(2)“a.” The remaining new paragraph 16.14(2)“c” was relettered as necessary.

8. Revised new subrule 16.60(1) to clarify that an industry member and a retailer may enter into a supply contract of one year or less where the industry member sells alcoholic liquor, wine, or beer to the retailer on an “as needed” basis, provided the retailer is not required to purchase any minimum quantity of such product. This aligns with the corresponding federal regulation.

9. Revised new subrule 16.60(2) to add an example of a prohibited third-party arrangement.

10. Did not adopt amendments to rule 185—16.75(123).

11. Did not adopt amendments to 185—Chapter 16, Part V preamble, since amendments to rule 185—16.75(123) were not adopted. Added amendments to clarify that Part V applies to transactions between industry members and retailers.

12. Did not adopt rule 185—16.76(123).

Adoption of Rule Making

This rule making was adopted by the Administrator, with the approval of the Alcoholic Beverages Commission, on April 26, 2023.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 185—Chapter 19.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on July 5, 2023.

The following rule-making action is adopted:

ITEM 1. Amend rule 185—16.1(123) as follows:

185—16.1(123) Definitions.

“Alcoholic liquor” means “alcoholic liquor” as defined in Iowa Code section 123.3(5). For the purposes of this chapter, “alcoholic liquor” includes “native distilled spirits” as defined in Iowa Code section 123.3(34).

“Beer” means “beer” as defined in Iowa Code section 123.3(7). For the purposes of this chapter, “beer” includes “canned cocktail” as defined in Iowa Code section 123.3(11) and “high alcoholic content beer” as defined in Iowa Code section 123.3(22).

“*Brand*” means each alcoholic liquor, wine, or 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.~~

“*Department*” means the department of revenue.

“*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: means a practice by an industry member, whether direct, indirect, or through an affiliate, that 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 such practice results in the retailer’s purchasing less than it would have of a competing industry member’s product. The following criteria are indications that a particular practice places retailer independence at risk. A practice need not meet all of the criteria specified below in order to place retailer independence at risk.

- ~~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.~~

1. 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.

2. The industry member obligates the retailer to participate in a promotion to obtain the industry member’s product.

3. The retailer has a continuing obligation to purchase or otherwise promote the industry member’s product.

4. The retailer has a commitment not to terminate its relationship with the industry member with respect to purchase of the industry member’s products.

5. 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.

6. 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.

“*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)~~ subrules 16.3(1) and 16.3(2), ~~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)~~. or paragraph 16.13(2)“a.”

“Industry member” means an alcoholic beverages manufacturer, including a distiller, vintner or brewer, bottler, importer, wholesaler, ~~jobber~~, representative, broker, agent, officer, director, shareholder not considered an institutional investor as defined in Iowa Code section 123.3(27), 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 not considered institutional investors as defined in Iowa Code section 123.3(27), 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 buyer” means a person who is a wholesaler or retailer of alcoholic liquor, wine, or beer.

“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.

“Wine” means “wine” as defined in Iowa Code section 123.3(53). For the purposes of this chapter, “wine” includes “native wine” as defined in Iowa Code section 123.3(36).

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

ITEM 2. Amend rule 185—16.2(123) as follows:

185—16.2(123) Product displays.

16.2(1) ~~An~~ Except as otherwise provided in this rule, an industry member is prohibited, directly or indirectly, from inducing a retailer to purchase any products from the industry member to the exclusion, in whole or in part, of products sold or offered for sale by other industry members by any of the following means:

- ~~a. renting~~ Renting, leasing, or buying display space from a retailer;
- ~~b. paying~~ Paying a retailer to set up a display;
- ~~c. giving~~ Giving a special price on the products featured in the display or other products sold by the industry member;
- ~~d. or providing~~ Providing free merchandise to a retailer in return for a display.

16.2(1) 16.2(2) 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 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 display. 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) 16.2(3) The total value of all product displays ~~per brand per calendar year~~ may not exceed ~~\$155~~ \$300 per brand at any one time in any one retail establishment. The value of the product display is the industry member’s original cost of the item.

~~16.2(3)~~ **16.2(4)** Industry members may not pool or combine their dollar limitations in order to provide a retailer with a product display which exceeds ~~\$155~~ \$300. Industry members are prohibited from pooling or combining several brands to provide a retailer with a product display which exceeds ~~\$155~~ \$300.

16.2(5) An industry member shall keep and maintain records in accordance with rule ~~185—16.18~~16.18(123).

This rule is intended to implement Iowa Code section 123.186.

ITEM 3. Amend rule ~~185—16.3~~16.3(123) as follows:

185—16.3(123) Retailer advertising utensils, consumer ~~souvenirs~~, advertising specialties, retailer wearing apparel.

16.3(1) Retailer advertising utensils.

a. An industry member may furnish supply, 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.~~ Such materials include, but are not limited to, posters, placards, designs, inside signs (electric, mechanical or otherwise), billboards, 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.

b. All retailer advertising utensils 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.

c. An industry member shall not pay or credit a retailer, directly or indirectly, for using retailer advertising utensils or for any expense incidental to their use.

~~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)~~ **16.3(2) Consumer advertising specialties.**

a. An industry member may furnish, give, or sell consumer ~~souvenirs~~ advertising specialties to a retailer for unconditional distribution by the retailer to consumers. Consumer ~~souvenirs~~ advertising specialties may include such items as ~~printed recipes, matches, nonalcoholic mixers, bottle or can openers, corkscrews, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, postcards, pens or pencils, shirts, caps, and visors.~~

b. Consumer ~~souvenirs~~ advertising specialties must bear conspicuous and substantial advertising matter which identifies the industry member or the industry member's alcoholic beverages product about the product or the industry member that is permanently inscribed or securely affixed.

c. ~~The An~~ industry member ~~may shall~~ not pay or credit ~~the a~~ retailer, directly or indirectly, for distributing consumer ~~souvenirs~~ advertising specialties or for any expense incidental to their use. There is no dollar limitation on consumer souvenirs.

d. ~~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 a consumer advertising specialty also advertises a local event not sponsored by the retailer, the souvenir~~

consumer advertising specialty need only be offered by the industry member to the retailers within the local community where the event is held.

~~16.3(6)~~ **16.3(3)** *Retailer wearing apparel.* 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 for use by the retailer and the retailer's employees 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.

16.3(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 sections 123.45 and 123.186.

ITEM 4. Rescind and reserve rule **185—16.4(123)**.

ITEM 5. Amend rule 185—16.5(123) as follows:

185—16.5(123) Glassware.

16.5(1) *Disposable beer or wine glassware.*

a. 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.

b. 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.

16.5(2) *Commemorative beer or wine glassware.*

a. 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.

b. 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.

16.5(3) *Durable or disposable alcoholic liquor glassware.*

a. 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.

b. 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.

16.5(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 sections 123.45 and 123.186.

ITEM 6. Amend rule 185—16.6(123) as follows:

185—16.6(123) Tapping accessories and coil cleaning service.

16.6(1) *Tapping accessories.*

a. 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.

b. An industry member may install tapping accessories at a retail establishment provided the retailer bears the cost of initial installation.

16.6(2) *Coil cleaning service.* An industry member may sell, furnish or give wine and beer coil cleaning services, including carbon dioxide filters and other necessary accessories to properly clean the

coil and affix carbon dioxide filters, to a retailer. The manufacturer shall be responsible for paying for the costs if carbon dioxide filters are provided.

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

ITEM 7. Amend subparagraphs **16.7(1)“a”(3)** and **(4)** as follows:

(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.”~~ Iowa Code section 123.3.

ITEM 8. Amend paragraph **16.7(2)“b”** as follows:

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)~~ Iowa Code section 123.3.

(3) No change.

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

(5) and (6) No change.

ITEM 9. Amend paragraph **16.8(2)“c”** as follows:

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

ITEM 10. Amend subrule 16.8(3) as follows:

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.

ITEM 11. Amend rule ~~185—16.10(123)~~ as follows:

~~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).

ITEM 12. Amend rule ~~185—16.11(123)~~ as follows:

~~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.~~

~~**16.11(1)** provided that the items Combination packages shall not have no secondary value to the retailer other than having the potential of attracting purchasers and promoting sales. The combination package must~~

~~**16.11(2)** Combination packages shall 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.~~

~~**16.11(3)** (Industry members who sell alcoholic liquor to the ~~division~~ department must comply with the ~~division’s~~ department’s policies regarding combination packaging.)~~

This rule is intended to implement Iowa Code section 123.186.

ITEM 13. Rescind rule ~~185—16.12(123)~~ and adopt the following **new** rule in lieu thereof:

~~185—16.12(123) Consumer promotions.~~

16.12(1) Coupons. The act by an industry member of furnishing to consumers coupons which are redeemable at a retail establishment does not constitute a means to induce provided the following conditions are met:

a. All retailers within the market where the coupon offer is made may redeem such coupons.

b. An industry member may not reimburse a retailer for more than the face value of all coupons redeemed, plus a usual and customary handling fee for the redemption of coupons.

16.12(2) Direct offerings. Contest prizes, premium offers, refunds, and like items may be offered by industry members directly to consumers. Officers, employees, and representatives of wholesalers or retailers are excluded from participation.

This rule is intended to implement Iowa Code section 123.186.

ITEM 14. Rescind rule 185—16.13(123) and adopt the following new rule in lieu thereof:

185—16.13(123) Advertising, display or distribution service.

16.13(1) Prohibition. The act of an industry member paying or crediting a retailer, directly or indirectly, for any advertising, display, or distribution service is prohibited if the act results in exclusion. Such acts include, but are not limited to, the following:

a. Making 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.

b. Directly or indirectly sharing the cost of an advertisement with a retailer.

c. 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.

d. Purchasing advertising in a retailer publication for distribution to consumers or the general public.

e. Providing reimbursements to retailers for setting up product or other displays.

f. Paying the retailer via a promotion where the industry member rents display space at a retail establishment.

16.13(2) Exceptions.

a. 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.

b. An industry member may list the names and addresses of two or more unaffiliated retailers selling the products of an industry member in an advertisement of that industry member provided all of the following conditions are met:

(1) The advertisement does not also contain the retail price of the product.

(2) The listing is the only reference to the retailers in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole.

(3) The advertisement does not refer only to one retailer or only to retail establishments controlled directly or indirectly by the same retailer.

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

ITEM 15. Amend rule 185—16.14(123) as follows:

185—16.14(123) Stocking and product rotation.

16.14(1) Allowable activities.

a. An industry member may stock, ~~and~~ rotate, and reset alcoholic liquor, wine or beer sold by the industry member.

b. 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.

c. An industry member may build product displays either at the time of delivery or at other times.

d. An industry member may provide a retailer with a recommended shelf plan or shelf schematic for alcoholic liquor, wine, and beer.

16.14(2) Prohibited activities.

a. An industry member may not reset or rearrange another industry member's products without the explicit consent of the retailer.

b. 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.

ITEM 16. Rescind rule 185—16.15(123) and adopt the following new rule in lieu thereof:

185—16.15(123) Sponsorships and special events.

16.15(1) An industry member may contribute to charitable, civic, religious, fraternal, educational and community entities.

16.15(2) If such entity is conducting a special event as a retailer or in conjunction with a retailer, an industry member's contribution shall not induce the retailer, directly or indirectly, to purchase any products from the industry member to the exclusion, in whole or in part, of products sold or offered for sale by other industry members at the special event.

16.15(3) An industry member shall keep and maintain records in accordance with rule 185—16.18(123).

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

ITEM 17. Amend rule 185—16.16(123) as follows:

185—16.16(123) Participation in educational seminars and retail association activities.

16.16(1) *Educational seminars.* An industry member may ~~provide~~ give or sponsor educational seminars for employees of retailers either at the industry member's premises or at the retail establishment regarding such topics as ~~merchandising and product knowledge,~~ use of a retailer's equipment, training seminars for employees of retailers, and 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)~~ **16.16(2)** *Retail association activities.* 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~~ \$300 per calendar year to any one retail association.

~~16.16(2)~~ Reserved.

This rule is intended to implement Iowa Code section 123.186.

ITEM 18. Amend rule 185—16.18(123) as follows:

185—16.18(123) Record keeping.

16.18(1) 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 the following rules:

- a.* 185—16.2(123) (product displays);
- b.* 185—16.3(123) (retailer advertising utensils, consumer ~~souvenirs~~ advertising specialties, retailer wearing apparel);
- c.* 185—16.5(123) (glassware);
- d.* 185—16.7(123) (~~tastings, samplings, and trade spending~~ tasting);
- e.* 185—16.8(123) (sampling).
- f.* 185—16.9(123) (trade spending).
- g.* 185—16.15(123) (sponsorships and special events), ~~and~~

h. 185—16.16(123) (participation in educational 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

16.18(2) Records shall state the following:

- a. ~~the~~ The name and address of the retailer receiving the item;
- b. ~~the~~ The date the item was furnished, sold, given, loaned, leased, or rented;
- c. ~~the~~ The item furnished;
- d. ~~the~~ The industry member's laid-in cost of the item furnished;
- e. ~~and~~ The charges to the retailer for the item.

16.18(3) Commercial records or invoices may be used to satisfy the requirements of this rule provided all of the required information appears on the record or invoice.

16.18(4) ~~Such records~~ Records shall be open to representatives of the ~~division~~ department during normal business hours of the industry member, and may be subject to administrative subpoena issued by the ~~division administrator~~ department.

This rule is intended to implement Iowa Code ~~section~~ sections 123.33 and 123.186.

ITEM 19. Amend rule 185—16.40(123) as follows:

185—16.40(123) Equipment, furnishings, fixtures.

16.40(1) An industry member is 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.

~~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.~~ A prohibited indirect inducement includes, but is not limited to, obtaining equipment, furnishings, or fixtures for a retailer through a third-party arrangement where the resulting benefits flow to an individual retailer.

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

ITEM 20. Amend rule 185—16.42(123) as follows:

185—16.42(123) Free warehousing prohibited. An industry member is prohibited, directly or indirectly, from providing free warehousing of products for a retailer by delaying delivery of alcoholic liquor, wine, or beer 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.

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

ITEM 21. Amend rule 185—16.43(123) as follows:

185—16.43(123) Extension of credit and prepaid accounts.

16.43(1) *Extension of credit.* An industry member is prohibited from extending credit on the sale of alcoholic liquor, ~~or 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) 16.43(2) *Prepaid accounts.*

a. 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.~~

b. ~~The~~ An industry member may not hold the money ~~so~~ deposited as “security” in a prepaid account for future payment of a debt.

c. ~~The~~ An industry member ~~must~~ shall 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.

d. An industry member is not required to establish separate escrow accounts for prepaid accounts;

e. ~~however, the~~ An industry member is responsible for accurately and honestly accounting for the funds ~~so~~ held in a prepaid account.

f. A retailer may withdraw the money placed in a prepaid account at any time.

g. An industry member is prohibited from utilizing prepaid accounts to require a retailer to ~~take and dispose of purchase~~ 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).

ITEM 22. Amend rule 185—16.44(123) as follows:

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~~ sections 123.45 and 123.186.

ITEM 23. Adopt the following new rule 185—16.45(123):

185—16.45(123) Tie-in sales. 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 sections 123.45 and 123.186.

ITEM 24. Amend rule 185—16.60(123) as follows:

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

16.60(1) Implied or express contracts.

a. Any contract or agreement, written or unwritten, which has the effect of requiring the retailer to purchase alcoholic liquor, wine, or beer from the industry member beyond a single sales transaction is prohibited, except as provided in paragraph 16.60(1) "b." Examples of such contracts are:

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

(2) A sales contract awarded on a competitive bid basis which has the effect of prohibiting the retailer from purchasing from other industry members by requiring that, for the period of the agreement, the retailer purchase a product or line of products exclusively from the industry member or requiring that the retailer purchase a specific or minimum quantity during the period of the agreement.

b. An industry member and a retailer may enter into a supply contract for one year or less under which the industry member agrees to sell alcoholic liquor, wine, or beer to the retailer on an "as needed" basis provided that the retailer is not required to purchase any minimum quantity of such product.

16.60(2) Third-party arrangements.

a. Industry member requirements, by agreement or otherwise, with nonretailers which result in a retailer's being required to purchase the industry member's products are prohibited, regardless of whether the agreement or other arrangement originates with the industry member or the third party.

EXAMPLE: A supplier enters into a contractual agreement or other arrangement with a third party. This agreement or arrangement contains an industry member requirement as described above. The third party—a ballclub or municipal or private corporation not acting as retailer—leases the concession rights and is able to control the purchasing decisions of the retailer. The third party, as a result of the requirement, by agreement or otherwise, with the industry member, requires the retailer to purchase the industry member's products to the exclusion, in whole or in part, of products sold or offered for sale by other industry members.

b. Prohibited business arrangements between an industry member and a third party may consist of such things as sponsoring radio or television broadcasting, paying for advertising, or providing other services or things of value.

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

ITEM 25. Amend **185—Chapter 16**, Part V preamble, as follows:

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

ITEM 26. Amend **185—Chapter 16**, Part VI preamble, as follows:

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

ITEM 27. Amend rule 185—16.90(123) as follows:

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.

ITEM 28. Adopt the following new rule 185—16.91(123):

185—16.91(123) Return of alcoholic liquor, wine, and beer. An industry member may accept the return of alcoholic liquor, wine, and beer for ordinary and usual commercial reasons but is not obligated to do so.

16.91(1) Ordinary and usual commercial reasons for exchanges and returns.

a. Defective products.

(1) Products which are unmarketable because of product deterioration, leaking containers, damaged labels, or missing or mutilated tamper evident closures may be exchanged for an equal quantity of identical products or may be returned for cash or credit against outstanding indebtedness.

(2) Freshness dating. An industry member may accept a return of beer for cash or credit against outstanding indebtedness or exchange the beer for freshness reasons provided all of the following conditions are met:

1. The manufacturer of the beer has policies and procedures in place that specify the date the retailer must pull the product.

2. The industry member's freshness return/exchange policies and procedures are readily verifiable and consistently followed by the industry member.

3. The beer container has identifying markings that correspond with the pull date.

4. The beer product pulled by the trade buyer may not reenter the retail marketplace.

b. Error in products delivered. Any discrepancy between products ordered and products delivered may be corrected, within a reasonable period after delivery, by exchange of the products delivered for those which were ordered, or by a return for cash or credit against outstanding indebtedness.

c. Products which may no longer be lawfully sold. Products which may no longer be lawfully sold may be returned for cash or credit against outstanding indebtedness. This would include situations where, due to a change in regulation or administrative procedure over which the trade buyer or an affiliate of the trade buyer has no control, a particular size or brand is no longer permitted to be sold.

d. Termination of business. Products on hand at the time a trade buyer terminates operations via cancellation of the trade buyer's license or permit may be returned for cash or credit against outstanding indebtedness. This does not include the temporary seasonal shutdown of a trade buyer holding a 12-month license or permit.

e. Termination of franchise. When an industry member has sold products for cash or credit to one of its wholesalers and the distributorship arrangement is subsequently terminated, stocks of the product on hand may be returned for cash or credit against outstanding indebtedness.

f. Change in product. Except as provided in paragraph 16.91(2) "b," a trade buyer's inventory of a product which has been changed in formula, proof, label, or container may be exchanged for equal quantities of the new version of that product.

g. Discontinued products. When a producer or importer discontinues the production or importation of a product, a trade buyer's inventory of that product may be returned for cash or credit against outstanding indebtedness.

h. Seasonal dealers. Industry members may accept the return of products from retailers holding an eight-month seasonal license or permit upon cancellation of the license or permit. These returns shall be for cash or for credit against outstanding indebtedness.

16.91(2) Reasons not considered ordinary and usual. The following are not considered ordinary and usual commercial reasons for exchanges and returns. Exchanges and returns for these reasons are prohibited.

a. Overstocked or slow-moving products.

b. Products for which there is only a limited or seasonal demand.

This rule is intended to implement Iowa Code section 123.186.

ITEM 29. Amend **185—Chapter 16**, Part VII preamble, as follows:

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

ITEM 30. Rescind rule **185—16.105(123)**.

ITEM 31. Renumber rule **185—16.106(123)** as **185—16.105(123)**.

[Filed 5/8/23, effective 7/5/23]

[Published 5/31/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/31/23.