

**DATE:** October 11, 2024

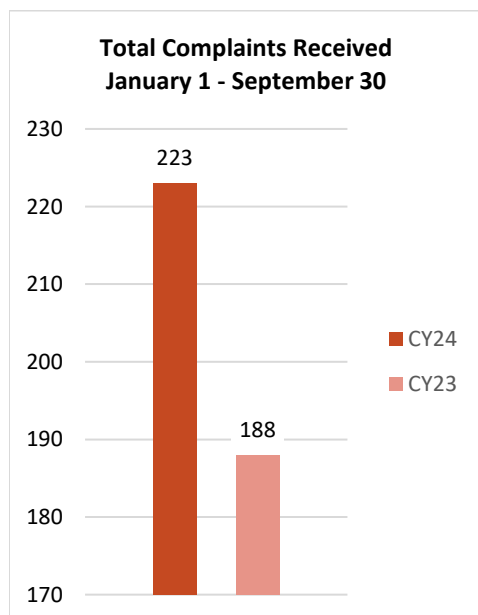
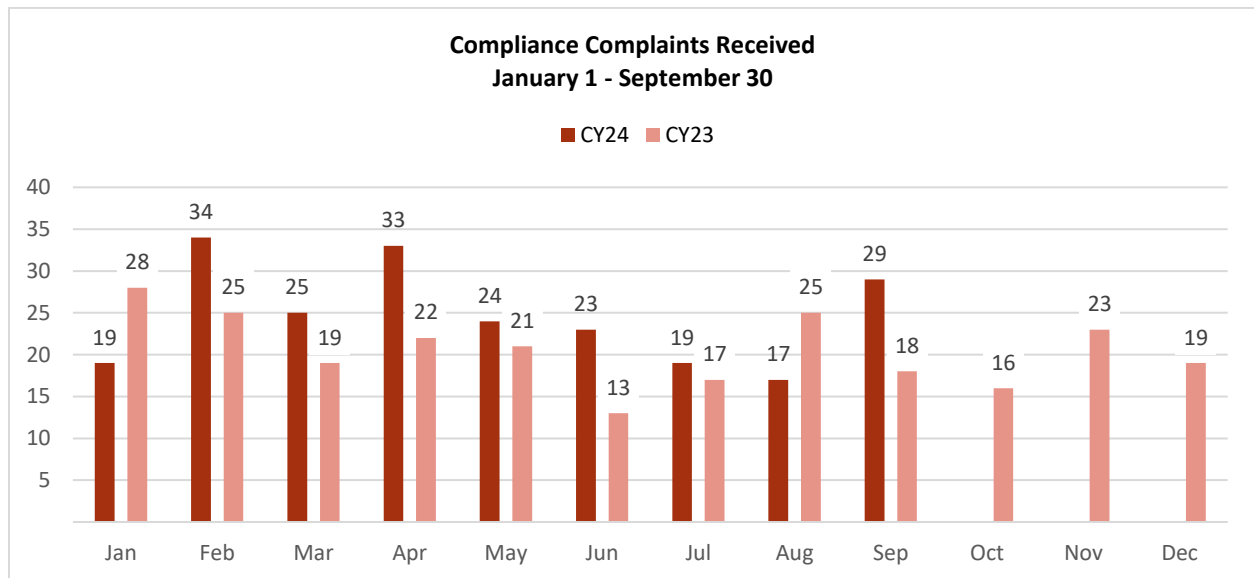
**FR:** Alcohol Regulation Unit – DeMario A. Luttrell, Bureau Chief

**RE:** State of Alcohol Regulation - For the period September 1 through September 30

The October 2024 Regulatory Compliance Report reflects Calendar Year summarized data.

## Compliance Complaints

A comparison of compliance complaints received in CY24 to CY23 is shown in the chart below.



**Top 5 Complaint Categories  
Resulting in Investigations  
January 1 – September 30, 2024**

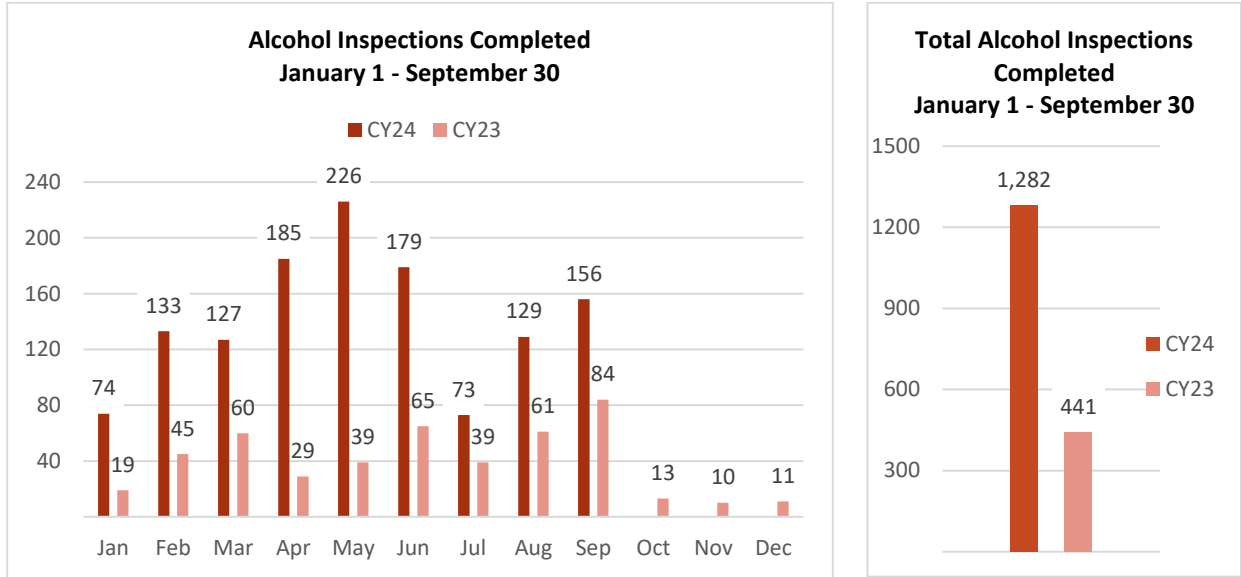
- Selling / Serving Underage Person (Alcohol)
- Criminal Activity
- Bootlegging
- Overserving
- After Hours

# Alcohol Compliance Program

The Alcohol Compliance Program consists of inspections, investigations, and audits.

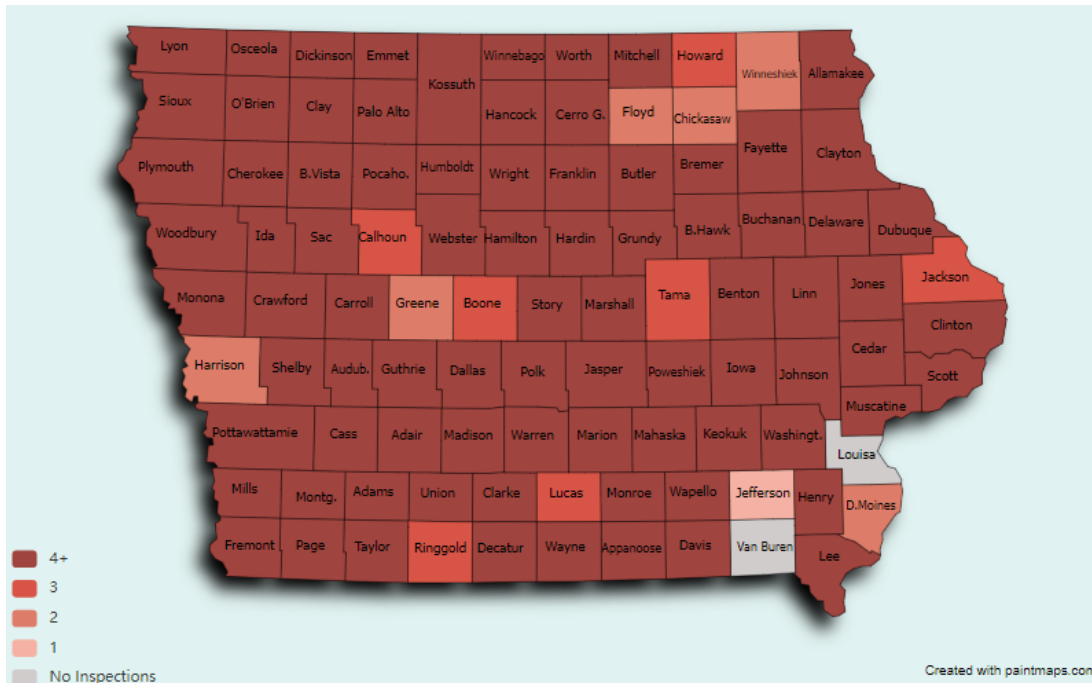
## Alcohol Inspections

A comparison of alcohol compliance inspections completed in CY24 to CY23 is shown in the charts below.

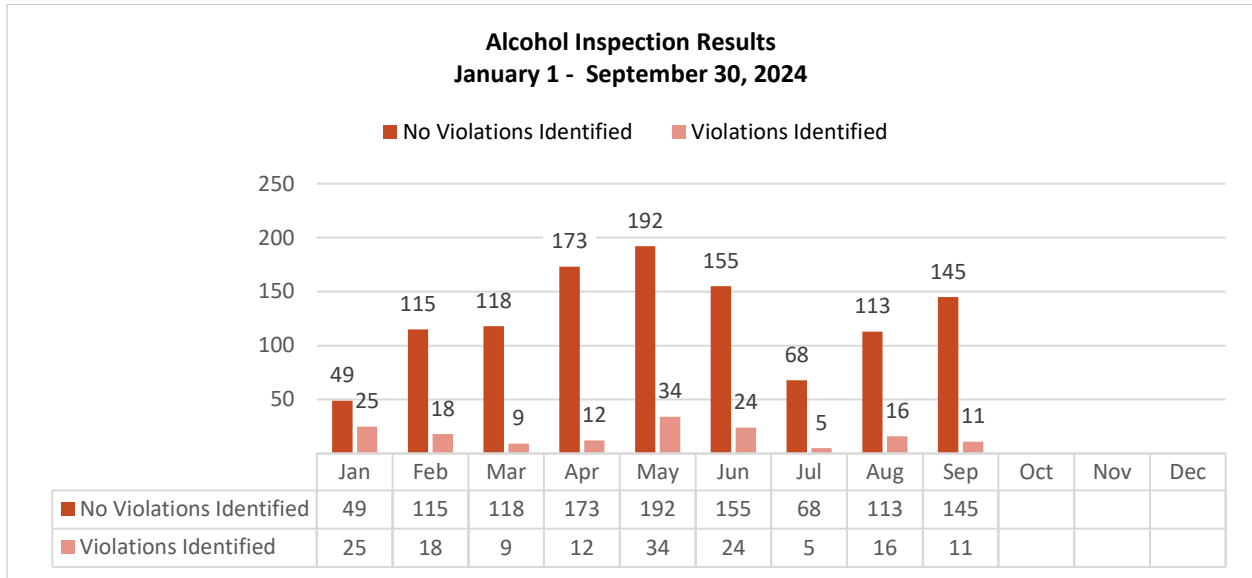


In Calendar Year 2024, alcohol compliance inspections were conducted in 97 of Iowa’s 99 counties detailed in the map below.

**Iowa State Map of Alcohol Inspections by County  
January 1 – September 30, 2024**

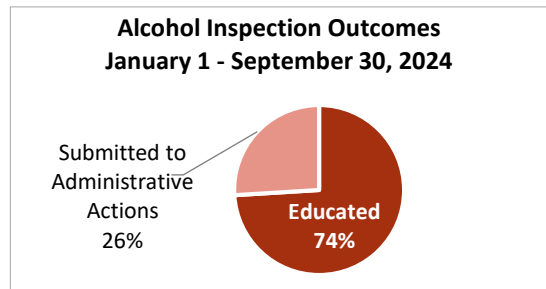


Alcohol compliance inspection results for Calendar Year 2024 are shown in the chart below.



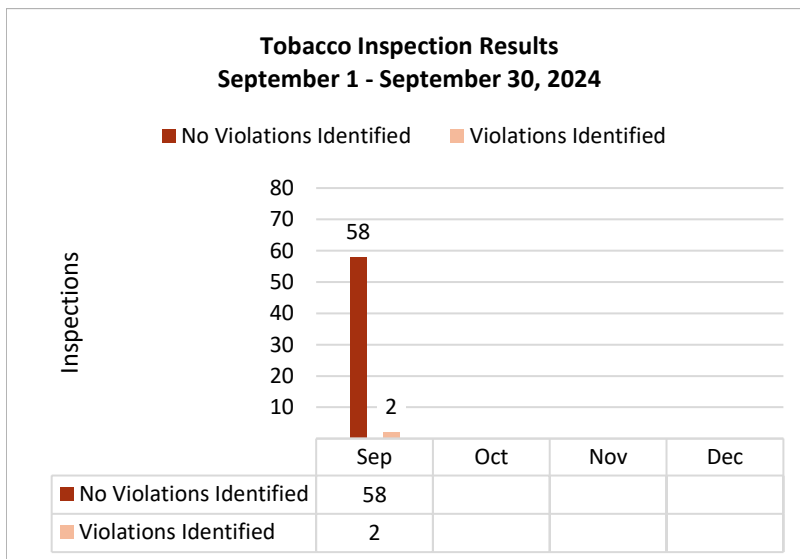
#### Top 5 Violations Identified by Inspection January 1 – September 30, 2024

- Smokefree Air Act
- Failure to display license
- Infusing
- Failure to maintain/produce records
- Illegal gambling



## Tobacco Inspections

Tobacco compliance inspection results for Calendar Year 2024 are shown in the chart below.



#### Top Tobacco Violations Identified by Inspection

##### Month of September 2024

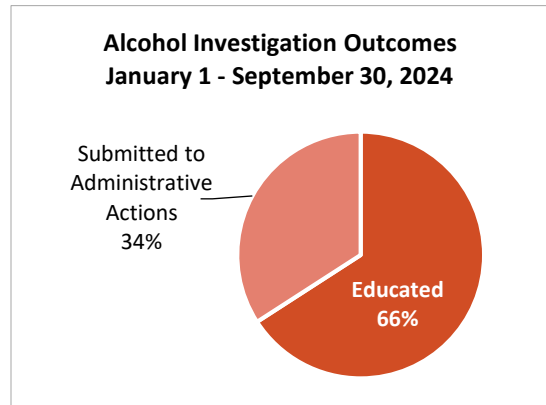
- Blacked out stamp
- Expired tobacco permit

# Alcohol Investigations

## Investigations Completed

In January through September, 2024, 170 investigations were completed as compared to 140 investigations completed in January through September, 2023.

Investigation outcomes for Calendar Year 2024 are detailed in the chart to the right.



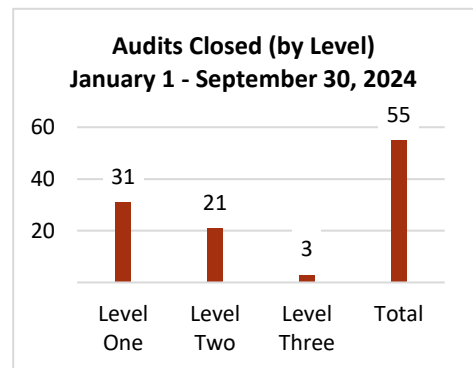
# Alcohol Tax Audits

## Alcohol Tax Audit Program

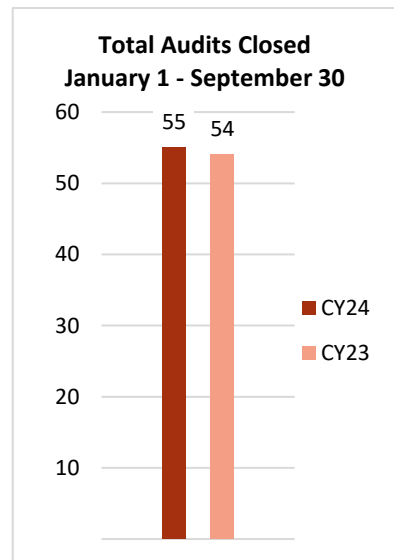
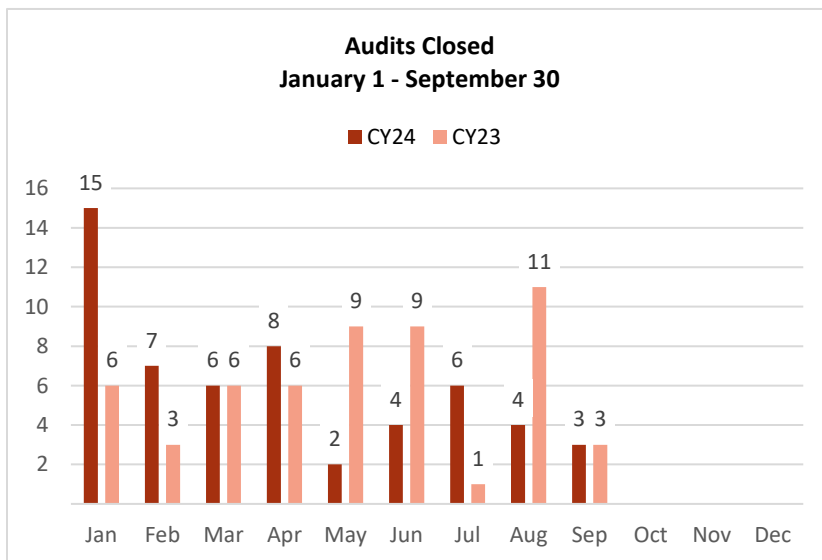
- The Tax Audit Program is a three-level system:
- Level 1 – Three month’s records review
- Level 2 – One year’s records review
- Level 3 – More than 1 year’s records review

The purpose of the three-level system is to conduct audits more efficiently by focusing efforts on the more complex Level 2 and Level 3 audits. The Level 1 audits allow the Division to reach more licensees and permittees in the state.

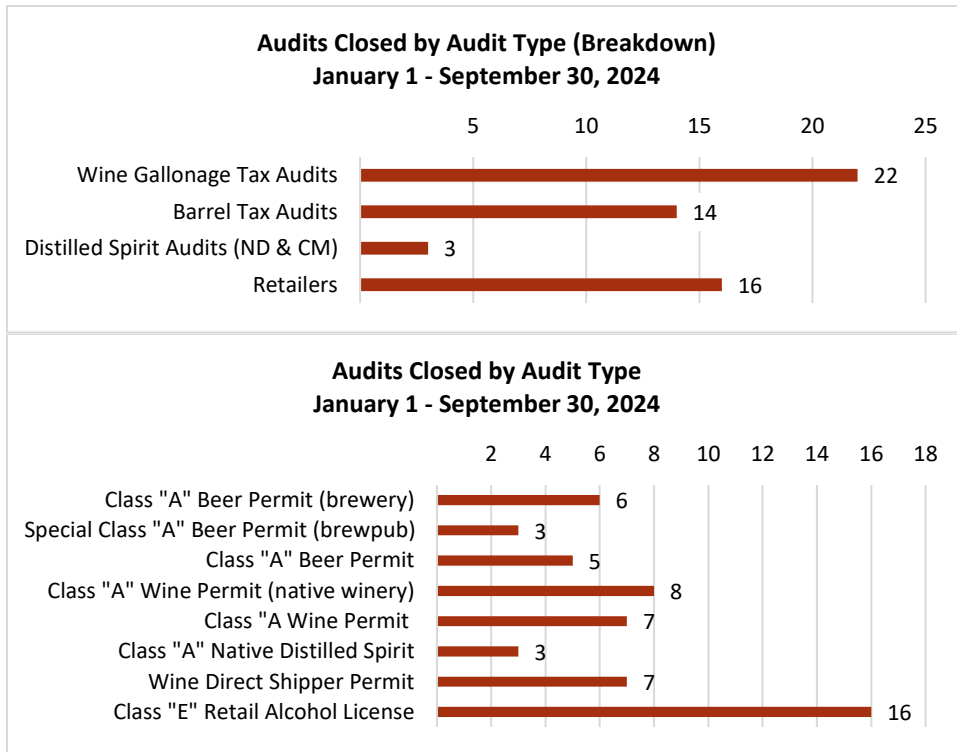
Audits Closed by Level in CY24 is shown in the chart to the right.



A comparison of audits closed for CY24 to CY23 is shown in the two charts below.



Audits Closed by Audit Type for Calendar Year 2024 are shown in the two charts below.

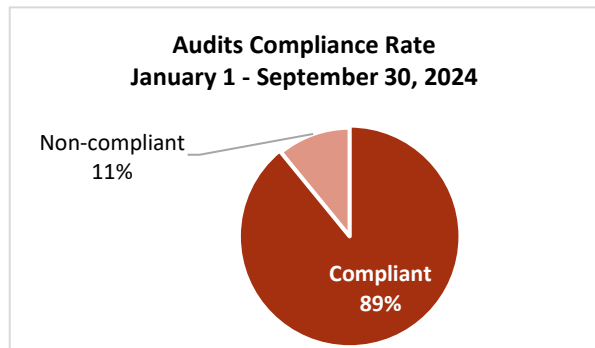


### Alcohol Tax Audits Compliance

Three audits were closed in September 2024 with a compliance rate of 67%. Non-compliant is defined as audits where additional barrel, wine gallonage, and Iowa sales tax liabilities are identified and assessed.

All audits conducted incorporate education in laws, rules, and the reporting of gallons.

The compliance rate for Calendar Year 2024 is shown in chart to the right.

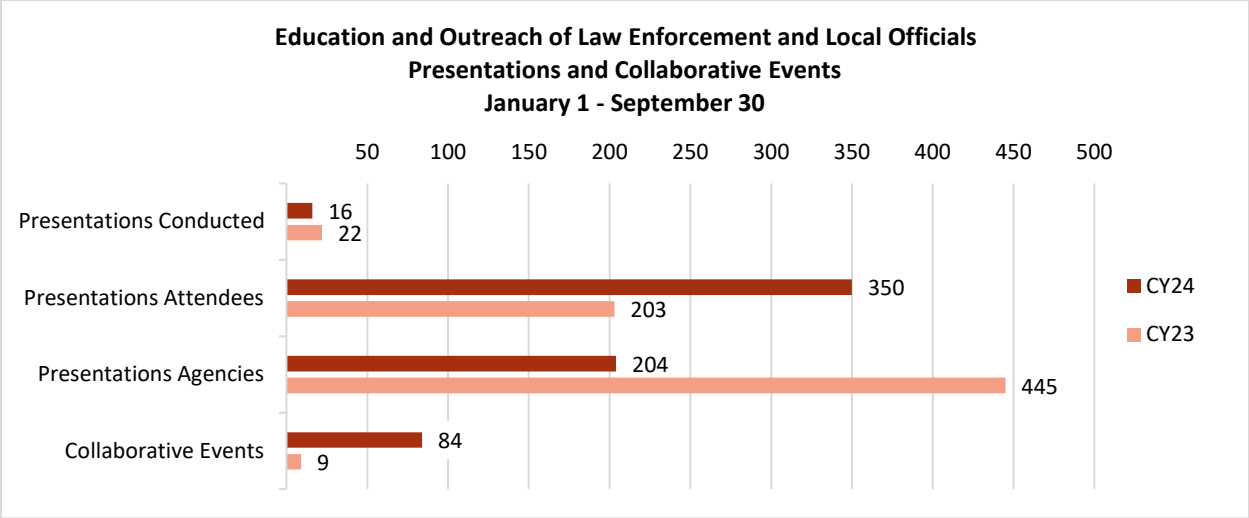


### Education and Outreach of Law Enforcement and Local Officials Presentations and Collaborative Enforcement/Education

The Education and Outreach Program is designed to address the educational needs of non-licensee stakeholders to include law enforcement, prosecutors, city and county clerks, and other local authorities.

The focus of the program is to provide educational content designed to strengthen collaboration with Iowa Department of Revenue. Comprehensive presentations cover regulatory rules and laws, and best practices on topics specific to local authorities.

A comparison of program results for CY24 and CY23 is shown in the chart below.

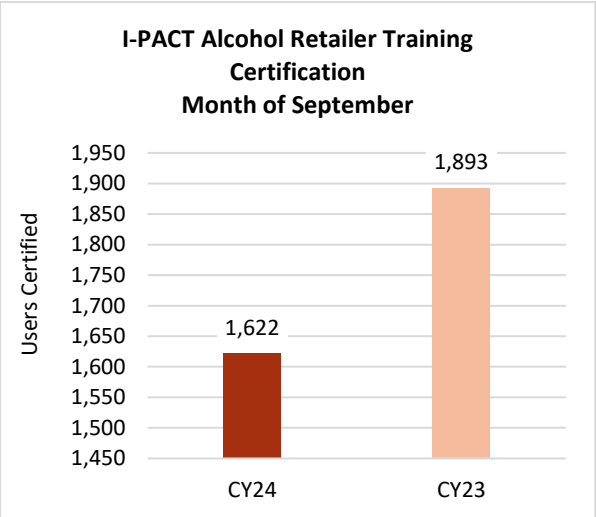


## Education and Outreach of Retailers

### I-PACT Alcohol Retailer Training Certification

A comparison of I-PACT Alcohol Retailer Training Certification results for September is contained in the chart to the right.

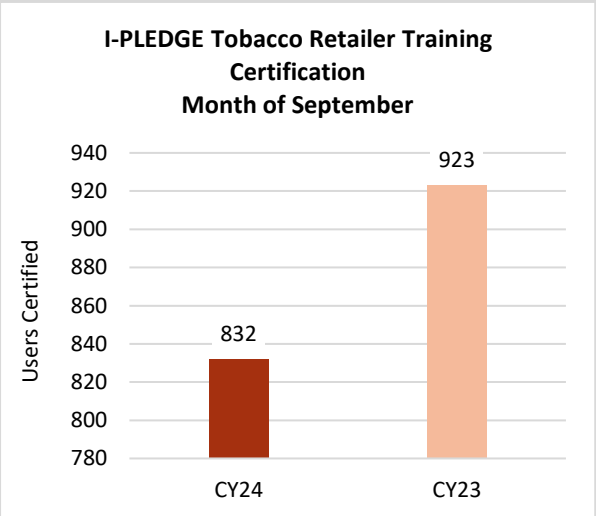
A decrease of 271 users were certified in CY24 September as compared to CY23 September.



### I-pledge Tobacco Retailer Training Certification

A comparison of I-pledge Tobacco Retailer Training Certification results for September is contained in the chart to the right.

A decrease of 91 users were certified in CY24 September as compared to CY23 September.



# I-Pledge Tobacco, Alternative Nicotine & Vapor Product Enforcement Program

## Tobacco Compliance Checks

No tobacco underage-buy compliance checks were performed in partnership with local law enforcement and/or the Iowa State Patrol during September.

The program is structured with no enforcement work occurring from July through September each fiscal year. This is due to requirements by the federal government not allowing enforcement work prior to October 1<sup>st</sup>. This requirement has to be followed because the Substance Abuse and Mental Health Services Administration (SAMSHA) uses a portion of the data generated from this program.

The break in enforcement work also allows time for staff to prepare for the new fiscal program year. This preparation includes entering approximately 3,500 tobacco permit applications into the state tobacco enforcement system, executing 28E agreements with roughly 200 law enforcement agencies, assigning retailers to law enforcement agencies, and providing training materials to law enforcement agencies training law enforcement officers.

## Iowa ABD Age-To-Purchase App

Iowa Mobile ID can be accepted as a valid form of ID at businesses throughout the state by using the Iowa ABD Age-to-Purchase App from the Alcoholic Beverages Division of the Iowa Department of Revenue.

- Iowa Mobile ID is available in the Apple Store and Google Play.
- The app allows residents to keep a digital version of their Iowa-issued driver’s license or ID on their smartphone.
- The app is free and optional for all Iowans to download.
- The Iowa Mobile ID is a companion to the physical card and does not replace it.
- Iowans should still carry their physical ID card.

### Security

Through the use of a QR code, Iowa’s Mobile ID creates a contactless and more secure way to verify identity. In addition, it allows Iowans to be in greater control of their information as users approve requests for each transaction before any information is shared.

Age-to-Purchase App Usage Month of September		
Validations	CY24	CY23
Physical ID	16,624	6,157
Mobile ID	8	*0

\* Functionality not available during CY23 September.

Age-to-Purchase App Usage January 1 – September 30		
Validations	CY24	CY23
Physical ID	163,250	110,672
Mobile ID	99	*0

\* No mobile ID functionality available during this timeframe.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

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BUCKEL FAMILY WINE LLC,

Plaintiff,

v.

MARY MOSIMAN, Director of Iowa  
Department of Revenue, STEPHEN  
LARSON, Director of Iowa Alcoholic  
Beverages Division, BRENNA BIRD,  
Attorney General of State of Iowa, STEPHAN  
K. BAYENS, Commissioner of Iowa  
Department of Public Safety,

Defendants.

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**No. 4:23-cv-00256-RGE-WPK**

**ORDER GRANTING IN PART  
AND DENYING IN PART  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT AND  
GRANTING IN PART  
AND DENYING IN PART  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

**I. INTRODUCTION**

Plaintiff Buckel Family Wine LLC is a Colorado-based winery wanting to sell wine directly to Iowa retailers. In order to do so, they need a class “A” permit. But a class “A” permit is only available to wineries with premises in Iowa. As such, Iowa law currently prohibits out-of-state wineries from selling directly to Iowa retailers. In contrast, in-state wineries have the opportunity to do so. Because Iowa law allows in-state wineries to receive class “A” wine permits and sell directly to Iowa retailers but prevents out-of-state wineries from doing so, the Court finds Iowa law violates the dormant Commerce Clause of the Constitution of the United States.

For the reasons set forth more fully below, the Court grants Buckel’s motion in part, grants Defendants’ motion in part, and denies Defendants’ motion in part.



## II. BACKGROUND

### A. Factual Background

There is no genuine issue in dispute as to the following facts. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

Buckel is a winery operating out of Gunnison, Colorado. Buckel Decl. ¶ 1–2, Pl.’s App. Supp. Mot. Summ. J., ECF No. 30-3. Buckel is licensed by the State of Colorado and the Federal Alcohol and Tobacco Tax and Trade Bureau. *Id.* ¶ 3. Buckel wants to sell wine directly to retailers in Iowa. *Id.* ¶ 5. Buckel contacted wine retailers in Des Moines, Iowa, to sell wine to those retailers, but did not—and will not—take additional steps toward selling wine to them because Iowa’s laws prohibit out-of-state wine manufacturers from securing a class “A” wine permit. *Id.* ¶ 6, 12–14; Iowa Code §§ 123.30 (retail alcohol licenses), 123.173(2) (“All class ‘A’ premises shall be located within the state.”). Iowa has a single wine permit, the class “A” wine permit, which authorizes entities with premises in Iowa to “manufacture and sell, or sell at wholesale, in this state, wine.” Iowa Code § 123.173(2); *see* Defs.’ Consol. Br. Supp. Mot. Summ. J. and Resist. Pl.’s Mot. Summ. J. 3, ECF No. 35-1.<sup>1</sup> Manufacturers of wine within Iowa, who necessarily hold a class “A” wine permit, may sell their wine directly to Iowa retailers. *See* ECF No. 35-1 at 3 (citations omitted). Because Buckel does not have premises within Iowa, Iowa law prohibits Buckel from obtaining a class “A” wine permit and thus from selling its own wine directly to Iowa retailers. *Id.* at 2–3.

Additional facts are discussed below as necessary.

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<sup>1</sup> Iowa defines “licensed premises” or “premises” as “all rooms, enclosures, contiguous areas, or places susceptible of precise description satisfactory to the director where alcoholic beverages, wine, or beer is sold or consumed under authority of a retail alcohol license, wine permit, or beer permit. A single licensed premises may consist of multiple rooms, enclosures, areas, or places if they are wholly within the confines of a single building or contiguous grounds.” Iowa Code § 123.3(29).

## B. Procedural Background

The operative instrument here is the amended complaint. Am. Compl., ECF No. 24. The amended complaint seeks a judgment declaring portions of Iowa Code §§ 123.3(40), 123.173(2),<sup>2</sup> 123.175(2)(c), and 123.176(9) as unconstitutional under the Commerce Clause. ECF No. 24 at 5; *see also* U.S. Const. art. I, § 8, cl. 3. Buckel also requests an injunction prohibiting Defendants from enforcing the residency restrictions in Iowa for the same provisions.<sup>3</sup> *Id.* Buckel and Defendants both move for summary judgment. Pl.’s Mot. Summ. J., ECF No. 30; Defs.’ Consol. Mot. Summ. J. and Resist. Pl.’s Mot. Summ. J., ECF No. 35. Defendants argue Buckel lacks standing to challenge the residency restrictions because Buckel “is a limited liability company and not a sole proprietorship or partnership.” ECF No. 35-1 at 13. Buckel does not contest this point but does not specify which specific provisions it does not have standing to pursue. *See* Pl.’s Consol. Br. Resist. Defs.’ Mot. Summ. J. and Reply Supp. Pl.’s Mot. Summ. J. 4, ECF No. 36. The Court finds this concession applies to Buckel’s requests for relief relating to its dormant Commerce Clause challenges against Iowa Code §§ 123.3(40) and 123.175(2)(c) because these challenges

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<sup>2</sup> In the amended complaint’s prayer for relief, Buckel seeks judgment “declaring that the provision in Iowa Code § 123.173(c) requiring that all class ‘A’ premises shall be located within the state of Iowa is unconstitutional under the Commerce Clause.” ECF No. 24 at 5. The Court finds Buckel’s use of subsection (c) in its amended complaint is a scrivener’s error. The Court finds Buckel intended to cite to Iowa Code § 123.173(2) as Buckel did elsewhere in the amended complaint and throughout its briefing. *See* ECF No. 24 at 2; *see also* Pl.’s Br. Supp. Mot. Summ. J. 4–5, ECF No. 30-1; ECF No. 36-1 at 6, 9. The language in Buckel’s requested relief and Iowa Code § 123.173(2) is almost identical. *See* Iowa Code § 123.173(2) (“All class ‘A’ premises shall be located within the state.”). Additionally, the Iowa Code does not contain a section 123.173(c).

<sup>3</sup> Buckel seeks injunctive relief from Iowa Code § 123.175(c). The Court also finds this is a scrivener’s error because the cited section does not exist. The Court finds Buckel intended to seek injunctive relief from Iowa Code § 123.175(2)(c) and thus mirror its prior request of the Court to declare Iowa Code § 123.175(2)(c) unconstitutional. *See* ECF No. 24 at 5. Buckel also appears to request injunctive relief from residency restrictions in Iowa Code § 123.173(2). However, Iowa Code § 123.173(2) contains no residency restriction.

center on citizenship and residency requirements. *See* ECF No. 24 at 5. The Court additionally finds Buckel concedes its requests for injunctions “prohibiting defendants from enforcing the residency restrictions” in Iowa Code §§ 123.3(40), 123.175(2)(c), and 123.176(9). Based on these concessions, the Court grants Defendants’ motion for summary judgment in part as detailed below.

Buckel does not move for the Court to find Iowa Code § 123.176(9)—concerning native wine manufacturing licenses—unconstitutional in its motion for summary judgment, nor does it directly address whether it concedes this argument. *See* ECF No. 30 at 4 (listing the “laws at issue”); ECF No. 36 at 4. Notwithstanding arguments generally sweeping broadly, Defendants also do not directly discuss Iowa Code § 123.176(9)’s constitutionality. *See* ECF No. 35-1; ECF No. 37. The Court thus takes no action concerning Iowa Code § 123.176(9)’s constitutionality under the Commerce Clause. Buckel has ten days after the filing of this order to advise the Court of Buckel’s intentions relating to Iowa Code § 123.176(9).

The Court finds the parties’ briefing and exhibits adequately present the remaining issues without need for oral argument. *See* LR 7(c); Fed. R. Civ. P. 78(b). The Court decides the parties’ motions as set forth below.

### **III. LEGAL STANDARD**

#### **A. Standing**

“Federal courts are not courts of general jurisdiction and have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto.” *Marine Equip. Mgmt. Co. v. United States*, 4 F.3d 643, 646 (8th Cir. 1993) (citation omitted). “Article III confines the federal judicial power to the resolution of ‘Cases’ and ‘Controversies.’” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). “For there to be a case or controversy under Article III, the plaintiff must have a ‘personal stake’ in the case—in other words, standing.”

*Id.* (quoting *Raines v. Byrd*, 521 U.S. 811, 819 (1997) (internal quotation marks omitted)). For a plaintiff to have standing, the plaintiff must show 1) an injury in fact, 2) causation, and 3) redressability. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). For an injury to be redressable, it must be “‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’” *Id.* at 561 (citation omitted). When determining whether an injury is redressable, “a court will consider the relationship between ‘the judicial relief requested’ and the ‘injury’ suffered.” *California v. Texas*, 593 U.S. 659, 671 (2021) (citation omitted).

### **B. Summary Judgment Standard**

Summary judgment is appropriate when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). A genuine dispute of fact exists when a factual issue “may reasonably be resolved in favor of either party.” *Anderson*, 477 U.S. at 250 (1986); *accord Torgerson v. City of Rochester*, 643 F.3d 1031, 1042–43 (8th Cir. 2011) (en banc) (“Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.” (citation omitted)). To preclude summary judgment, a genuine dispute of fact must concern a material fact—that is, a fact “that might affect the outcome of the suit under the governing law.” *Anderson*, 477 U.S. at 248. “Factual disputes that are irrelevant or unnecessary will not be counted.” *Id.*

Neither party suggests there is a genuine dispute as to any material fact. *See* ECF No. 30-1 at 5; ECF No. 35-1 at 9; *see also* ECF No. 36; ECF No. 37. Thus, the Court’s task is to determine whether one of the parties is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a).

### **C. Standard Under the Dormant Commerce Clause and Section 2 of the Twenty-First Amendment**

The United States has a long and complicated history with alcohol. *See Granholm v. Heald*,

544 U.S. 460, 472–86 (2005); *see also Tennessee Wine & Spirits Retailers Ass’n v. Thomas*, 588 U.S. 504, 518–33 (2019). Much has been written about alcohol licensing laws and the importation of alcohol into States in the post-Prohibition era. U.S. Const. amend. XVIII; U.S. Const. amend. XXI; *see Granholm*, 544 U.S. at 484–86; *Tenn. Wine*, 588 U.S. at 518–20; *Sarasota Wine Mkt., LLC v. Schmitt*, 987 F.3d 1171, 1175–76 (8th Cir. 2021); *Lebamoff Enters. Inc. v. Whitmer*, 956 F.3d 863, 867–68 (6th Cir. 2020); *B-21 Wines, Inc. v. Bauer*, 36 F.4th 214, 218–19 (4th Cir. 2022). The Court will not reiterate this intriguing history but will instead focus on the Supreme Court’s modern jurisprudence about the dormant Commerce Clause’s relationship with Section 2 of the Twenty-first Amendment, which states:

The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

U.S. Const. amend. XXI, § 2.

Normally, when a state statute discriminates on its face against interstate commerce, it faces an almost certain finding of invalidity by a reviewing court. *Granholm*, 544 U.S. at 476 (“State laws that discriminate against interstate commerce face ‘a virtually *per se* rule of invalidity.’” (quoting *Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978))); *Tenn. Wine*, 588 U.S. at 539 (noting that if a discriminatory law applied to all retailers, it could not be sustained). When the regulation, however, involves Section 2 of the Twenty-first Amendment, a reviewing court engages in a different inquiry. *Granholm*, 588 U.S. at 476; *Tenn. Wine*, 588 U.S. at 539. The parties dispute the exact standard the Court should apply in reviewing Iowa’s wine laws.

Buckel argues when a State’s alcohol laws are discriminatory under the dormant Commerce Clause, the State must justify them with “concrete evidence” showing that restricting

interstate commerce is “reasonably necessary” to protect against alcohol-related public health or safety risks. ECF No. 30-1 at 1 (citations omitted). In addition, Buckel asserts the State must demonstrate nondiscriminatory alternatives would be insufficient. *Id.* (citations omitted). Defendants assert “concrete evidence” is only required when the laws at issue are not “essential features” of a three-tier system. ECF No. 35-1 at 10–11. A three-tiered distribution system for alcohol exists where the law requires a manufacturer or producer to sell to a licensed in-state wholesaler who then sells to a licensed in-state retailer who then sells the alcohol to consumers. *Sarasota Wine*, 987 F.3d at 1176. The system is also one in which “[s]eparate licenses are required for producers, wholesalers, and retailers” of alcohol. *Granholm*, 544 U.S. at 466. Often, States also prohibit the different tiers from having a financial interest in a member of another tier. *Sarasota Wine*, 987 F.3d at 1176.<sup>4</sup> According to Defendants, if the contested law is an essential feature of a three-tier system, then the standard of review is similar to “rationality review” as applied in other constitutional inquiries. ECF No. 35-1 at 10–11. In support of their position, Defendants cite to the Supreme Court’s decision in *Tennessee Wine* and the Eighth Circuit’s decision in *Sarasota Wine*. *Id.* at 17. However, as will be discussed below, neither the Supreme Court nor the Eighth Circuit set forth a new analysis for determining the appropriate standard based on whether a law was an “essential feature” of a State’s three-tiered system.

Based on the Supreme Court’s analyses in *Granholm* and *Tennessee Wine*, the Court

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<sup>4</sup> The primary purpose of the three-tiered system was to prevent the creation of a “tied-house” system. *Tenn. Wine*, 588 U.S. at 521 n.7. A tied-house existed where a manufacturer of alcohol “tied” a retailer to themselves by providing the retailer with certain benefits in exchange for that retailer only selling that manufacturer’s alcohol. *Id.* Often, this system also required the retailer to meet sales requirements which would frequently result in excessive and irresponsible drinking. *Id.* To avoid this direct relationship between the manufacturer and retailer, many States implemented the three-tier system. *Sarasota Wine*, 987 F.3d at 1176.

largely concurs with Buckel regarding the correct standard. In *Granholm*, the Supreme Court consolidated two cases, one from Michigan and one from New York. Michigan’s law allowed in-state wine manufacturers to sell directly to consumers after obtaining a license but prohibited out-of-state wine manufacturers from doing so. 544 U.S. at 468–69. New York’s law authorized in-state wine manufacturers to sell directly to consumers after obtaining a permit but only allowed out-of-state wine manufacturers to do so if they had certain in-state premises. *Id.* at 470–71. The Supreme Court determined both laws discriminated against interstate commerce and the Twenty-first Amendment did not save them because they involved “attempts to discriminate in favor of local producers.” *Id.* at 489. The Court held that analysis under the dormant Commerce Clause demanded more than “mere speculation” regarding a law’s necessity to justify the States’ discriminatory wine laws. *Id.* at 493. The Court also determined the States provided little “concrete evidence” in support of their assertions. *Id.* The Court noted the burden is on the State to show the discriminatory laws are “demonstrably justified.” *Id.* Though the Court struck down Michigan’s and New York’s laws, the Court noted it had previously recognized three-tier systems as “unquestionably legitimate” under the Twenty-first Amendment. *Id.* at 488.

Twelve years later in *Tennessee Wine*, the Supreme Court upheld the basic idea that Section 2 of the Twenty-first Amendment does not sanction discriminatory laws. 588 U.S. at 535. The primary law at issue in *Tennessee Wine* concerned a two-year durational-residency requirement for new retailers wishing to open a liquor store in Tennessee. *Id.* at 510. The defendants in the case attempted to defend the law by claiming it was part of Tennessee’s three-tier model and arguing that striking it down would go against *Granholm*’s approval of the three-tiered system. *See id.* at 535. After finding Tennessee’s law facially discriminated against nonresidents, the Court responded to the defendant’s argument by stating Tennessee’s law was not

an “essential feature” of the three-tier system and “[a]lthough *Granholm* spoke approvingly of that basic model, it did not suggest that § 2 sanctions every discriminatory feature that a State may incorporate into its three-tiered scheme.” *Id.* Thus, the Court merely responded to an argument by the defendants when it used the term “essential feature” and did not create a new analysis for determining the appropriate standard.

In reaching its decision, the *Tennessee Wine* Court set forth a two-step framework for assessing challenges to state liquor laws under the dormant Commerce Clause. First, the reviewing court must determine whether the law discriminates against interstate commerce. *Id.* at 539–40. If it does not, the case will end there. *Id.* If the law does discriminate, the court must assess “whether the challenged requirement can be justified [by the State] as a public health or safety measure or on some other legitimate nonprotectionist ground.” *Id.* at 539. Protectionism, the Court stressed, is not a legitimate State interest under Section 2. *Id.* at 531. In reviewing the purported interests for Tennessee, the Court held the defendant must show with “concrete evidence” that the law is “reasonably related” to the State’s asserted interests and “that nondiscriminatory alternatives would be insufficient to further those interests.” *Id.* at 533, 540. The Supreme Court held the law violated the dormant Commerce Clause and was unconstitutional because it was not supported under this standard of review. *Id.* 539–43.

More recently, the Eighth Circuit addressed challenges to Missouri’s alcohol distribution laws in *Sarasota Wine*. The primary challenge centered on an amendment to these laws which allowed in-state retailers to ship alcohol to consumers but did not allow out-of-state retailers to do so. *Sarasota Wine*, 987 F.3d at 1176. The Eighth Circuit highlighted that the Supreme Court in *Tennessee Wine* “distinguished between the two-year residency requirement at issue and a State’s requirement that retail liquor stores be physically located within the State.” *Id.* at 1183. The Eighth



Circuit, however, did not generally address the appropriate standard for a challenge under the dormant Commerce Clause. *See id.* The Eighth Circuit in *Sarasota Wine* did not need to address this because it found Missouri’s laws did not discriminate against interstate commerce in the first place. *Id.* at 1184. The Eighth Circuit reached this conclusion because Missouri’s laws were essential features and “appl[ied] evenhandedly to all who qualify for a Missouri retailers license.” *Id.* As is discussed below, Iowa’s in-state premises requirement discriminates against interstate commerce and is thus distinguishable from *Sarasota Wine*.

Additionally, *Sarasota Wine* involved restrictions on retailers and the current challenge involves restrictions on manufacturers. As was the case in *Granholm* and *Tennessee Wine*, this distinction is material. While a State may subject alcohol entering into the State to certain regulations through its wholesaler and retailer tiers, it may not discriminate against the origin of that alcohol (i.e., the manufacturer). *See Granholm*, 544 U.S. at 484–85 (“The aim of the Twenty-first Amendment was to allow States to maintain an effective and uniform system for controlling liquor by regulating its transportation, importation, and use. The Amendment did not give States the authority to pass nonuniform laws in order to discriminate against out-of-state goods, a privilege they had not enjoyed at any earlier time.”); *Tenn. Wine*, 588 U.S. at 533–35. Although including residency requirements for wholesalers or retailers of other goods discriminates against interstate commerce, the Supreme Court found the Twenty-first Amendment protected these type of restrictions as to alcohol wholesalers and retailers. *See Granholm*, 544 U.S. at 488–89. Such laws treat alcohol “produced out of state the same as its domestic equivalent.” *Id.* at 489. *Sarasota Wine* thus did not mark a new direction in the jurisprudence for analyzing a dormant Commerce Clause challenge against liquor laws. Instead, it reiterated what the Supreme Court had already stated—a State may require retailers to be in-state and it may also determine how such retailers

can distribute alcohol to consumers. *Sarasota Wine*, 987 F.3d at 1183. But a State may not engage in protectionism and justify its discriminatory laws under the Twenty-first Amendment. *Tenn. Wine*, 588 U.S. at 532.

For the foregoing reasons, the Court follows the two-step framework in *Tennessee Wine*. The two-step framework starts by asking whether the challenged law discriminates against interstate commerce, not whether the law involves an essential feature of the three-tier system. If the law does discriminate against interstate commerce, then the State must show the law is “reasonably necessary” for its purported nondiscriminatory interests with “concrete evidence” and demonstrate that “nondiscriminatory alternatives” would be insufficient. *See id.* at 533, 540; *Granholm*, 544 U.S. at 493.

Notably, even if the level of scrutiny were determined by whether the challenged law is an “essential feature” of Iowa’s three-tiered system, the Court would still apply the same level of scrutiny because the Court would find Iowa’s in-state premises requirement not to be an essential feature of the three-tier scheme. As explained more fully below, Iowa’s current system is not an unadulterated three-tier system and deviates significantly from the “basic” three-tiered scheme. *See Tenn. Wine*, 588 U.S. at 535 (“At issue in the present case is not the basic three-tiered model of separating producers, wholesalers, and retailers . . .”). In fact, Iowa’s wine-distribution model under the class “A” wine permit system essentially creates a two-tier system for wine within Iowa by merging the manufacturer and wholesaler tiers into a single license—going against one of the primary purposes of the three-tier system in separating the different tiers. *See Sarasota Wine*, 987 F.3d at 1176 (“A central feature of the separated tiers is to prohibit a member of one tier from having a financial interest in a member of a higher or lower tier.”). Viewed another way, Iowa’s laws allow for in-state wine manufacturers to bypass a “tier” within the three-tier system

while preventing out-of-state wine manufacturers from doing so. The Supreme Court found unconstitutional a similar wine-distribution scheme in *Granholm* when it held Michigan’s laws unconstitutional because they allowed in-state wineries to bypass the three-tier distribution scheme while requiring out-of-state wineries to go through all the tiers. 544 U.S. at 473–74. Either Iowa’s wine licensing and distribution scheme is more akin to a two-tier system and is not the “unquestionably legitimate” three-tier system, or the Supreme Court has already rejected a similar three-tier system in *Granholm*. Under either interpretation, Iowa’s wine licensing scheme requiring in-state premise requirements for a wine manufacturer to receive a class “A” wine permit is not an “essential feature” and would be subject to a heightened level of scrutiny.

#### IV. DISCUSSION

##### A. Standing

In their reply brief, Defendants argue Buckel lacks standing because there is no redressable injury. ECF No. 37 at 6.<sup>5</sup> Defendants assert that if Buckel obtained a class “A” wine permit it would “be of no use” to Buckel because Buckel is not allowed to hold a wholesaler license under Colorado law. *Id.* Buckel, per its limited Colorado license, may sell only its own wine, but Buckel may not buy and wholesale others’ wines. ECF No. 36 at 6; Colo. Rev. Stat. § 44-3-403(2). To wholesale others’ wine, Buckel would need to obtain a separate license. *See id.* § 44-3-407 (wholesaler’s license). Under Colorado law, however, it is “unlawful for a licensed wholesaler of vinous or spirituous liquors . . . interested financially in or with such a wholesaler to be interested

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<sup>5</sup> Ordinarily, inclusion of a new argument in a reply brief is improper when that argument could have been made in the initial brief. *See* LR 7.1(g) (noting a reply brief is meant “to assert newly-decided authority or to respond to new and unanticipated arguments made in the resistance”); *CruiseCompete, LLC v. Smolinski & Assoc., Inc.*, 859 F.Supp.2d 999, 1009 (S.D. Iowa 2012). The Court, however, briefly discusses Defendants’ newly made standing argument to thoroughly address arguments raised by the parties.

financially in the business of *any* licensed manufacturer or importer of vinous or spirituous liquors . . . .” *Id.* § 44-3-407(3) (emphasis added). Colorado law thus forbids Buckel from obtaining a Colorado wholesale license because Buckel is a wine manufacturer.

Buckel, however, does not ask the Court to enjoin or strike *Colorado’s* law so Buckel can hold both wine manufacturer and wholesaler licenses under Colorado law simultaneously. ECF No. 36 at 5–7. Instead, Buckel asks the Court to enjoin Defendants from enforcing *Iowa’s* law requiring in-state premises for persons seeking a class “A” wine permit, thus putting Buckel on equal footing with in-state Iowa wine manufacturers. *Id.* Granting Buckel’s requested relief would thus redress Buckel’s alleged injury even if it would cause potential problems for Buckel later on with the State of Colorado. *See California*, 593 U.S. at 671. Said another way, the potential conflict that would arise within Colorado’s laws if Buckel obtains a class “A” wine permit is not a bar to the Court redressing Buckel’s alleged injury from Iowa’s laws. Buckel thus has standing to bring this suit and seek its requested relief for an injunction and declaratory judgment that Iowa’s in-state premises requirement violates the Commerce Clause.

**B. Discrimination Under the Dormant Commerce Clause and Section 2 of the Twenty-First Amendment**

**1. Iowa’s wine licensing and distribution system**

Iowa’s alcohol distribution system nominally aligns with the basic three-tier model. *See* Luttrell Aff. ¶¶ 8–13, Defs.’ Consol. App. Supp. Mot. Summ. J. and Resist. Pl.’s Mot. Summ. J., ECF No. 35-4; Iowa Code § 123.45 (generally prohibiting an alcohol manufacturer or alcohol wholesaler from having an interest in an alcohol retailer). As already stated, however, its distribution system for wine differs because a single entity may hold a class “A” wine permit allowing them to be both a wine manufacturer and wine wholesaler. Iowa Code §§ 123.173, 123.177. This permit allows the holder to sell directly to a retailer. *Id.*; *see also* ECF No. 35-1 at

3. To obtain a class “A” wine permit, a wine manufacturer must have in-state premises. Iowa Code § 123.173(2). A wine manufacturer without a class “A” wine permit may sell to a holder of a class “A” wine permit so long as the wine manufacturer has a “vintner’s certificate of compliance.” *See id.* § 123.180. Iowa also allows for direct shipment to Iowa consumers from both in- and out-of-state wine manufacturers so long as the manufacturer obtains a “wine direct shipper permit.” *Id.* § 123.187.

**2. Iowa’s in-state premises requirement to receive a class “A” wine permit**

The parties disagree on whether Iowa’s laws discriminate against Buckel and offend principles of unencumbered interstate commerce. Buckel argues Iowa’s laws violate the dormant Commerce Clause because they discriminate against interstate commerce by allowing in-state wine manufacturers to sell directly to retailers but prohibit out-of-state wine manufacturers from doing so. ECF No. 30-1 at 5–6. In response, Defendants claim Iowa’s laws do not discriminate against interstate commerce because they apply “evenhandedly” and require “all wine” intended for resale by retailers “to flow through Iowa’s three-tier distribution system” which is subject to the “same system of regulation, inspection, and taxation.” ECF No. 35-1 at 3, 11–15. For the following reasons, the Court finds that Iowa’s laws discriminate against interstate commerce.

Under the dormant Commerce Clause and Section 2 of the Twenty-first Amendment, state laws may not discriminate against products, manufacturers, or nonresidents of a State. *See Granholm*, 544 U.S. at 472–76; *Tenn. Wine*, 588 U.S. at 534–35. Even if a law is not facially discriminatory, it may still violate the dormant Commerce Clause if it mandates “differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.” *Granholm*, 544 U.S. at 472 (citing *Oregon Waste Systems, Inc. v. Dep’t of Env’t Quality of Or.*, 511 U.S. 93, 99 (1994)).

Iowa's wine licensing laws resemble the Michigan and New York laws struck down by the Supreme Court in *Granholm*. Michigan's law allowed in-state wine manufacturers to ship directly to consumers but prohibited out-of-state wine manufacturers from doing so. *Id.* at 473–74. “The differential treatment require[d] all out-of-state wine, but not all in-state wine, to pass through an in-state wholesaler and retailer before reaching consumers.” *Id.* at 474. Similarly, Iowa law allows in-state wine manufacturers to sell directly to retailers but prohibits out-of-state wine manufacturers from doing the same. *See* Iowa Code § 123.173(2). This subjects out-of-state wine manufacturers to additional “overhead increas[ing] the cost of out-of-state wines” to Iowa consumers. *Granholm*, 544 U.S. at 474. As with Michigan's law, the “cost differential, and in some cases the inability to secure a wholesaler for small shipments, can effectively bar smaller wineries from the [Iowa] market.” *Id.*; *see also* Buckel Aff. ¶¶ 5–15, Pl.'s App. Mot. Summ J., ECF No. 30-3.

New York's law allowed in-state wine manufacturers to sell directly to consumers so long as they manufactured wine from New York grapes or resold wine from others whose wine was composed from at least seventy-five percent, by volume, of grapes grown in New York. *Granholm*, 544 U.S. at 470. An out-of-state wine manufacturer was allowed to ship wine directly to consumers, but only if it obtained a New York license which required the establishment of “a branch factory, office or storeroom within the state of New York.” *Id.* (citation omitted). Iowa's law closely resembles New York's by only providing class “A” wine permits to entities with premises in Iowa. Iowa Code § 123.173(2). This discriminates against interstate commerce because “the expense of establishing a bricks-and-mortar distribution operation [for most wineries] in 1 State, let alone all 50, is prohibitive.” *Granholm*, 544 U.S. at 475. Like with Michigan's and New York's laws, Iowa's laws discriminate against interstate commerce through its in-state

premises requirement to receive a class “A” wine permit.

Defendants’ arguments to the contrary fall short. First, Iowa does not apply its laws “evenhandedly” to both in- and out-of-state wineries. Instead, Iowa’s laws grant “in-state wineries access to the State’s [retailers] on preferential terms” by requiring out-of-state wine manufacturers to go through additional tiers in Iowa’s system or create an in-state premises. *Id.* Either scenario results in a benefit for in-state wine manufacturers at the expense of burdening out-of-state wine manufacturers, which discriminates against interstate commerce. *See id.* Second, this case is not about “in-state wholesaling.” *See* ECF No. 37 at 2–3. While a State may require all wholesalers to be in-state, it may not deviate from the basic structure of the three-tier system and discriminate against out-of-state manufacturers through that deviation. *See Granholm*, 544 U.S. at 466, 487. By merging its wine manufacturer and wholesaler tier under the class “A” wine permit, Iowa discriminates against out-of-state manufacturers by preventing them from selling directly to Iowa retailers when in-state manufacturers may do so—even when those same in-state manufacturers do not also act as wholesalers for others’ wine. *See* Iowa Code § 123.173(2). Defendants’ framing of the case does not change the fact that in-state wine manufacturers may sell directly to Iowa retailers while out-of-state wine manufacturers may not.

### **C. Defendants’ Evidence and Justifications**

Even if a liquor law discriminates against interstate commerce, a State may justify it under Section 2 of the Twenty-first Amendment by providing “concrete evidence” that the law is “reasonably necessary” to support “public health or safety measures or on some other legitimate nonprotectionist ground.” *Tenn. Wine*, 588 U.S. at 533, 539–40; *supra* Part III.C. When a reviewing court decides whether a State’s laws are supported by “concrete evidence,” the reviewing court is not resolving disputed issues of fact and thus does not go beyond the scope

of a summary judgment motion. *See Tenn. Wine*, 588 U.S. 504 (affirming the lower courts' invalidation of Tennessee's durational-residency requirement on a summary judgment record); *see also Anvar v. Dwyer*, 82 F.4th 1, 10–11 (1st Cir. 2023) (remanding the district court's entry of summary judgment for not "engag[ing] with any 'concrete evidence'" in its decision).

Defendants make various arguments relating to Iowa's legitimate nonprotectionist interests. None succeed. First, Defendants assert the in-state premises requirement promotes effective law enforcement. Defendants maintain that due to limited personnel within the compliance unit, opening class "A" wine permits to entities located out-of-state would effectively create an insurmountable barrier for enforcing laws relating to "illegal importation," "facilitat[ing] a fair and level playing field," and "ensuring proper reporting and payment of taxes on alcoholic beverages." ECF No. 35-1 at 21. Defendants cite the compliance unit's detection of violations in the past as evidence the unit is effective within the current system. *Id.* Defendants, however, do not provide "concrete evidence" to show that allowing out-of-state manufacturers to sell directly to retailers would prevent effective enforcement of Iowa's laws. As it stands, Defendants' assertions are "mere speculation." DeMario A. Luttrell, Iowa Department of Alcohol and Tax Compliance Division's Bureau Chief over sales and excise tax and alcohol regulation, cites no studies supporting the assertions in his affidavit. *See Luttrell Aff.*, ECF No. 35-4 at 10–14. *Granholm* rejected this concern because "improvements in technology have eased the burden of monitoring out-of-state wineries" and "[f]inancial records and sales can be mailed, faxed, or submitted via e-mail." 544 U.S. at 492. Indeed, *Granholm* held nineteen years ago that advances in technology eased any potential burdens for out-of-state monitoring activities, and that conclusion is even stronger today.

Second, Defendants argue expanding the class "A" wine permit to out-of-state entities



would lower the reliability and efficiency for ensuring compliance with wine gallonage tax reporting, collecting taxes, and detecting other violations due to the low number of enforcement personnel. ECF No. 35-1 at 21–23. Advances in technology also undermine this argument, and there is a lack of “concrete evidence” proffered to support the claim. *Granholm*, 544 U.S. at 492. Further, Iowa currently allows out-of-state wineries to ship directly to consumers and is seemingly able to audit and properly tax these permittees despite there being 1,195 active wine direct shippers throughout the United States. ECF No. 35-1 at 23. It likely would be easier for Iowa to regulate shipments to retailers than to consumers as Iowa retailers are licensed entities within the State, whereas individual consumers are not. *See* Iowa Code § 123.30 (classifications for retail alcohol licenses).

Third, Defendants contend the in-state premises requirement creates a connection to the wine manufacturer’s community, thus promoting temperance and care for the community generally. *See* ECF No. 35-1 at 24–25. Defendants also suggest the in-state premises requirement subjects the holder of a class “A” wine permit to the “negative externalities of their business activity” which promotes self-policing. *Id.* at 23. Defendants contend in-person interactions with investigatory staff and auditors also helps improve educational outreach and voluntary compliance with rules by permittees. *Id.* These justifications are difficult to accurately measure given their amorphous nature, not to mention the lack of “concrete evidence” showing they are “reasonably necessary.” But even assuming these community-connection arguments to be true, the Supreme Court in *Tennessee Wine* rejected similar justifications. 588 U.S. at 542. There, the Supreme Court noted that a retailer directly across a state border would be prevented from selling to its immediate neighboring community due to the discriminatory laws. *Id.* Whereas the owner of retail store living hundreds of miles away from the actual location of the retail store, but still within the State, would

be allowed to sell in the State despite having no connection to the community. *Id.* The same logic applies for wine manufacturers. This argument is even more pertinent here because Buckel would not have direct interactions with the community and instead would only sell wine to Iowa retailers—where educational initiatives and community-connection would likely be far more meaningful. As such, even if this justification was supported by concrete evidence, the Court would nevertheless reject it because similar concerns were not found to be a valid justification by the Supreme Court when applied to retailers. *See id.*

Finally, Defendants argue limiting the number of places where wine is imported into Iowa and then distributed throughout Iowa promotes the health and safety of Iowa citizens. ECF No. 35-1 at 21, 23. Defendants contend they currently lack the necessary resources to conduct similar enforcement oversight to entities located outside Iowa’s borders due to the heightened time and travel expenses. ECF No. 35-1 at 21. Given that there are 1,195 wine direct shipper permittees throughout the United States and more than 9,000 retailers eligible to sell wine within Iowa, Defendants claim that expanding the number of class “A” wine permittees, which is currently around 150, would strain resources. *Id.* at 23–24. While these arguments are more convincing, Defendants still do not provide “concrete evidence” that the in-state premises requirement is “reasonably necessary” to achieve these interests. There is no concrete evidence the number of class “A” wine permits would expand to the point where enforcement oversight would become infeasible and endanger public health and safety. Further, the wine would first go to a licensed in-state retailer where safety checks could be performed, even if such checks would be less efficient than checks performed at wholesalers. Defendants also point to no evidence in the record demonstrating why allowing out-of-state wine manufacturers to sell directly to Iowa retailers would be more harmful to public health and safety than allowing out-of-state wine manufacturers

to sell directly to consumers, as is permitted under Iowa law. *See* Iowa Code § 123.187. Thus, while the in-state premises requirement for class “A” wine permittees has some arguable connection to public health and safety, there is no “concrete evidence” that the requirement is “reasonably necessary” to achieve that valid interest. *See Granholm*, 544 U.S. at 492; *Tenn. Wine*, 588 U.S. at 533. The Court finds the above interests are not supported by concrete evidence, were previously rejected by the Supreme Court as not valid, or both.

Even assuming the above interests were supported by concrete evidence demonstrating Iowa’s laws were reasonably necessary to achieve them, Defendants have not shown that “nondiscriminatory alternatives” would be insufficient. *See supra* Part III.C. There are various ways Iowa could support these interests without discriminating against interstate commerce. *See, e.g., Tenn. Wine*, 588 U.S. at 543 (“[T]he State of course remains free to monitor the practices of retailers and to take action against those who violate the law.”); Iowa Code § 123.184(1) (“A penalty of ten percent of the [wine gallonage tax] shall be assessed and collected if the report . . . is not filed and the tax [not] paid . . .”). Iowa could implement limitations on the number of class “A” wine permits issued. *See Tenn. Wine*, 588 U.S. at 543 (“State law empowers the relevant authorities to limit . . . the number of retail licenses . . .”). The objectives could also be achieved through “evenhanded licensing requirement[s].” *Granholm*, 544 U.S. at 492. Additionally, Iowa could implement a system where only licensed wine carriers can transport wine directly to retailers from wine manufacturers to ensure additional oversight, as is done now with wine sold directly to consumers. *See* Iowa Code §§ 123.188 (wine carrier permit and licensing requirements), 123.187 (wine direct shipper permit and licensing requirements). Even if disproving nondiscriminatory alternatives is not required, but is merely persuasive, the above alternatives still bolster the Court’s prior conclusion that Defendants have not met their required showings. *See, e.g., B-21 Wines*,

36 F.4th at 225 (“Although consideration of nondiscriminatory alternatives could have some relevance . . . it does not transform the applicable framework . . .”).

For the reasons set forth above, the Court finds Defendants’ asserted interests do not justify Iowa’s discriminatory laws under Section 2 of the Twenty-first Amendment, and therefore Iowa law violates the dormant Commerce Clause. U.S. Const. art. I, § 8, cl. 3.

**D. Remedy**

Defendants argue that ruling in Buckel’s favor would result in the creation of out-of-state wholesalers. *See* ECF No. 35-1 at 26. If this occurred, it would almost certainly violate the three-tiered distribution scheme courts have repeatedly approved as requiring wholesalers to be in-state. *See Sarasota Wine*, 987 F.3d at 1176. However, Iowa law contains a general severability provision giving explicit authority for courts to sever invalid portions of the Iowa Code:

If any provision of an Act or statute or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act or statute which can be given effect without the invalid provision or application, and to this end the provisions of the Act or statute are severable.

Iowa Code § 4.12. The Court “leave[s] the valid parts in force on the assumption that the legislature would have intended those provisions to stand alone.” *Breden v. Iowa Dept. Corrections*, 887 N.W.2d at 602, 608 (Iowa 2016) (citation omitted). The Iowa Supreme Court declared “the cardinal principle of statutory construction is to save and not to destroy.” *Id.* at 609 (alteration removed) (citation omitted). As was the case in *Tennessee Wine*, this Court severs the unconstitutional provision of Iowa law at issue in this case without otherwise disturbing more than necessary of Iowa’s alcohol distribution system. *See Tenn. Wine*, 588 U.S. at 539.

As such, the Court limits its holding to finding Iowa Code § 123.173(2)’s requirement that “[a]ll class ‘A’ premises shall be located within the state” is unconstitutional as applied to wine

manufacturers. An out-of-state holder of class “A” wine permit may not sell others’ wine directly to retailers. An out-of-state holder of a class “A” wine permit may only directly sell wine they have manufactured themselves. That is, the out-of-state holder of a class “A” wine permit may not use the permit to wholesale others’ wine or otherwise act as a wholesaler of wine.

#### V. ATTORNEY’S FEES

In Buckel’s complaint, it requests “an award of attorney’s fees, costs, and expenses pursuant to 42 U.S.C. § 1988.” ECF No. 24 at 6. Outside of this initial request, Buckel does not make specific requests relating to attorney’s fees, costs, or expenses. Title 42 U.S.C. § 1988(b) provides in civil-rights actions, “the court, in its discretion, may allow the prevailing party . . . a reasonable attorney’s fee.” Despite this permissive language, the Supreme Court has interpreted Section 1988 to entitle a prevailing civil-rights plaintiff to a fee award, absent “special circumstances [that] would render such an award unjust.” *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983). Buckel is the prevailing party because the Court grants a portion of its motion for summary judgment. Within fourteen days of the filing of this order, if Buckel still seeks an award of attorney’s fees, costs, or expenses, it shall file with the Court a motion detailing this request and the specific amounts requested.

#### VI. CONCLUSION

For the foregoing reasons,

**IT IS ORDERED** that Plaintiff Buckel Family Wine LLC’s Motion for Summary Judgment with respect to Iowa Code § 123.173(2), ECF No. 30, is **GRANTED** in part as detailed above.

**IT IS FURTHER ORDERED** that Defendants Mary Mosiman, Stephen Larson, Brenna Bird, and Stephan K. Bayens’s Motion for Summary Judgment with respect to Iowa

Code § 123.173(2), ECF No. 35, is **DENIED**.

**IT IS FURTHER ORDERED** that Defendants Mary Mosiman, Stephen Larson, Brenna Bird, and Stephan K. Bayens's Motion for Summary Judgment with respect to Iowa Code §§ 123.3(40) and 123.175(2)(c), ECF No. 35, is **GRANTED**.

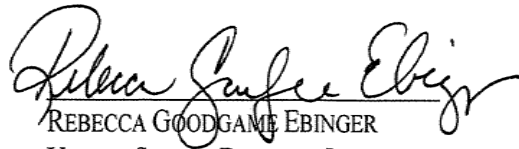
**IT IS FURTHER ORDERED** that Plaintiff Buckel Family Wine LLC has ten days after the filing of this order to file a notice with the Court addressing the status of its claim regarding Iowa Code § 123.176(9).

**IT IS FURTHER ORDERED** that if Plaintiff Buckel Family Wine LLC seeks attorney's fees, costs, or expenses, it shall file a motion with the Court detailing this request and associated amounts within fourteen days of the filing of this order.

**IT IS FURTHER ORDERED** that all other deadlines are suspended, and the trial date is removed from the calendar. Any further matters will be addressed by separate order.

**IT IS SO ORDERED.**

Dated this 30th day of September, 2024.

  
REBECCA GOODGAME EBINGER  
UNITED STATES DISTRICT JUDGE



Warehouse Capacity Project  
Update to Alcoholic Beverages Commission (ABC) 10/16/2024

- Project Charter initiated June 2024
  - Purpose - To analyze warehouse policies & procedures and identify short term and long term opportunities for improvement.
  - High-level results of this analysis:
    - Will call procedures
    - Listing and Delisting policies
    - Minimum/Maximum policy
    - Non-essential items that are not directly associated with the distribution of spirits
  
- Next steps
  - Project team to create an overview of the analysis of the 4 policies/procedures, as well as proposed revisions that would help optimize our warehouse capacity program.
    - Will share these overview and the proposed revisions with ABC
  - Standing Steering Committee (SSC) Approval
    - Scope of proposed revisions and implementation approach
    - Timeline for implementation
    - Communication plan based on a stakeholder analysis so we can seek input/get feedback from the impacted stakeholders
  - Information from SMaRT (IDR's project management tool)
    - Project status reports to ABC
      - Updates will be provided at regular intervals once implementation begins



## Alignment & Modernization

Update to Alcoholic Beverages Commission (ABC) 10/16/2024

### **Alignment Integration: 7/1/23-12/31/24**

- Org Chart: finalized
- Website & emails: updated to revenue.iowa.gov (website) & iowa.gov(emails)
- Administrative Rules review: on time & on track
- DOM-DoIT: IT support includes resources dedicated to Alcohol/Licensing operations
- Financial: GAAP package, budget, financial report aligned for applicable FY
- Security: Coop-COG in progress. Security awareness, confidentiality & disclosure training on track. Policies and procedures updated and published in ERC.
- Legal support: aligning work between legal/administrative actions & operations/compliance
- Declaratory Order opportunity:
  - <https://revenue.iowa.gov/i-need/policy-guidance>
- Data: KPIs identified for IDR strategic plan & operational plan - pillars are revenue generation and department optimization.

### **Modernization Update:**

- Last year of our 5-year modernization project
  - Update legacy system(s) into integrated, configurable system for enhanced operations for internal & external stakeholders
- Preparation includes:
  - Writing, updating, & reviewing business profiles
  - Finalizing scope based on contract with vendor
  - Identifying resources & SMEs
  - Setting up the organization/structure of teams
  - Establishing the kick-off plan - January 2025





Department of Revenue

Iowa Department of Revenue  
Mary Mosiman

Public Information  
Officer  
John Fuller

Alcohol & Tax Compliance Sam Hoerr	Alcohol & Tax Operations Steve Larson	Financial Services Steve French	Internal Services Darina Petkova	Legal Services & Appeals Alana Stamas	Local Government Services Jon Wolfe	Lottery Matt Strawn	Research & Policy Robin Anderson
Sales & Excise Tax & Alcohol Regulation DeMario Luttrell	Alcohol Operations Leisa Bertram	Procurement	Data Analytics Jeff Meis	Appeals	Equalization, Assessor Education, & Distributions	Investigations Steve Waymire	Tax Research & Program Analysis Anthony Girardi
		Budget	Technology Support Kate Cochran			Systems Hale Strasser	
Individual & Corporate Tax & Alcohol Licensing Spencer Morehouse	Tax Operations Chet Eginore	Accounting	Customer Experience Rachael Krier	Legal Services		Sales & Marketing Jon Roth	
Collections Vacant		Lottery Internal Audit / Draw	Human Resources Alex Vongnhay	Administrative Actions	Appraisal	External Relations Mary Neubauer	Policy
			Security & Disclosure Unit				

Date  
July 01, 2024

**MEMORANDUM**

DATE: October 16, 2024

SUBJECT: 2024 Executive Order 10 Rulemaking Update

TO: Iowa Alcoholic Beverages Commission

FROM: Madelyn Cutler, Department Administrative Rules Coordinator

This memorandum provides an update and timeline for rulemaking activity to amend the agency procedure rule chapters and alcohol-related rule chapters moving under 701 Iowa Administrative Code (IAC).

**BACKGROUND**

Pursuant to [Executive Order 10](#), the Department of Revenue (IDR) is required to review from a zero-base approach and re-adopt administrative rule chapters. The overall goal of Executive Order 10 is to remove obsolete, redundant, and unnecessary language, in addition to removing language that is duplicative of statute. The reduction of restrictive language, as well as page and word count of the administrative code are also identified benefits to the review. The deadline for rules currently found under 185 IAC to be reviewed and published as Notices of Intended Action is on December 31, 2024.

Because the Alcoholic Beverages Commission is charged by statute to “serve in an advisory capacity to the director and department,” and “make recommendations regarding the actions of the director under this chapter,” the Department will be providing a copy of the proposed agency procedure rules and alcohol-specific rules.

**TENTATIVE TIMELINE**

IDR will evaluate any feedback received and make updates or have follow up discussions as needed to determine if changes are appropriate. The tentative timeline related to this rulemaking is subject to change, and can be found in the following table:

<b>AGENCY PROCEDURE RULES DATES</b>	<b>ALCOHOL RULES DATES</b>	<b>ACTION</b>
August 23, 2024	August 30, 2024	Retrospective Analysis submitted to the Governor’s Office (IGOV) and published on the IDR website.
August 29, 2024	October 11, 2024	Regulatory Analysis filed with IGOV for pre-clearance.

September 18, 2024	October 30, 2024	Regulatory Analysis published in the Iowa Administrative Bulletin (IAB). Public comment period begins.
October 8, 2024 1-2pm	November 19, 2024	Regulatory Analysis public hearing to receive oral comment. Regulatory Analysis comment period ends.
October 16, 2024	November 24, 2024	Notice of Intended Action filed with IGOV for pre-clearance.
November 13, 2024	December 25, 2024	Notice of Intended Action published in the IAB. Public comment period begins.
December 4, 2024	January 14, 2025	Public hearing to receive oral comment. Public comment period closes.
December 18, 2024 or later	January 29, 2025	Adoption: The Iowa Lottery Commission adopts the proposed agency procedure rulemakings. The Director adopts the proposed alcohol and other remaining rulemakings.
January 22, 2025	February 19, 2025	Adopted rules published in the IAB.
February 26, 2025	March 26, 2025	Earliest possible date for updated rule chapters become effective.

### **AGENCY PROCEDURE RULES OVERVIEW**

The agency procedure rules impacted by alignment for review are department organization, declaratory orders, contested cases, public information and open records, and rulemaking and rule waivers. The [Regulatory Analysis](#), and the proposed text, for IAC 701–Chapters 1 through 7 were published in the September 18, 2024 IAB. There were no public comments received in writing or at the hearing. So far, only one website link has been suggested to be changed in the text when filing the Notice of Intended Action.

IDR originally housed rules pertaining to declaratory orders, rulemaking and rule waivers, and contested cases in an administrative chapter in IAC 701–7. The alignment-related changes led to the decision to break that chapter up and separate various subjects out into their own chapters. However, there are several rules in the new chapters that cross-reference back to Chapter 7 to eliminate redundancy and lower the word count. Chapters dedicated to department organization, declaratory orders, and public information and open records primarily contain amendments related to alignment changes. This means that IAC 185–Chapters 1, 2, 3, 10, 18, and 19 are all proposed to be repealed in this same process.

The rulemaking and rule waiver chapter contains changes to conform to 2024 Iowa Acts, Senate File 2370, effective on July 1, 2024. Many of the updates we are making pursuant to Executive Order 10, are now permanently required by law and reflected in this chapter. For example, the required preclearance from IGOV and filing a regulatory analysis for each rulemaking.

**701–6 Contested Cases for Alcohol and Lottery Related Proceedings (185–10 and 531–5 repealed):**

For contested cases, tax has many unique procedures that differ from alcohol and lottery. The Department is going to maintain a separate chapter of rules on tax contested cases from contested cases dedicated to alcohol and lottery, while utilizing the cross-reference feature when available.

Examples of cross-referenced rules are: 701–6.3 Time requirements, 701–6.9 Consolidation—severance, 701–6.15 Prehearing conferences, 701–6.20 Default, 701–6.21 Ex parte communication and disqualification, 701–6.22 Recording costs, 701–6.23 Interlocutory appeals, and 701–6.26 Applications for rehearing

Current rule or subrule	Proposed new rule or subrule	Proposed change(s)
185–10.4 Statute of limitations	701–6.10(2)(c)	This rule is not a statutory requirement, but an agency self-imposed statute of limitations for hearing complaints alleging a violation of Iowa Code chapter 123 (alcohol matters).
185–10.5 Requests for a contested case proceeding	701–6.4 Requests for a contested case proceeding	This rule language was maintained due to how differently it is handled for alcohol and lottery compared to tax. Tax anticipates long informal reviews prior to contested cases, whereas alcohol and lottery do not, therefore the tax chapter has more detailed rules on how to file there.
185–10.6(1)	701–6.5 Notice of hearing delivery	Language has been added to include methods of delivery that are accepted by the department of inspections, appeals, and licensing as provided for by Iowa Code section 10A.802(4). The applicable rule under 481–10.12 includes first-class mail, which allows for a method that the lottery currently uses. Iowa Code section 17A.18(3) requires personal service or certified mail with return receipt before a license can be sanctioned, therefore first-class mail isn't an available method for delivery for all alcohol-related purposes.
185–10.13(2)	701–6.11(2)	The subrule on service and filing of pleadings and other papers has been amended to include service by electronic service as permitted by the presiding officer and the Iowa Rules of Civil Procedure. This language is added due to the Department of Inspections, Appeals, and Licensing using an electronic filing system for service.
531–5.16 Prehearing conference	701–6.15 Prehearing conference	A rule cross-referenced back to Chapter 7. Alcohol did not have this rule, although the lottery did and used this as an opportunity for parties to stipulate facts and consider additional matters to expedite a hearing. The benefit was to maintain this rule, but without repeating language.
185–10.17(1)(a)	701–6.16(1)(a)	The subrule for application for continuance has been amended to state “a written application for a continuance should be made at the earliest possible time and no less than three days before the hearing except for a good cause showing.” This timeframe has been lessened from tax and lottery which have

		ten day windows.
185–10.17(2)	701–6.16(2)	The subrule for issuance of a continuance has been amended to include language allowing each party to request a continuance, unless a continuance would cause the contested case proceeding to exceed a time limit set forth in another applicable statutes or rules. This language was added in response to rule 531–12.13(3) which states any hearing on a suspension or revocation requested by the licensee will be held within 180 days after the notice has been served.
185–10.18 Withdrawals	701–6.17 Withdrawals	Language states a party requesting a contested case proceeding may withdraw that request prior to the hearing. This rule is currently found in alcohol and lottery chapters, but not found in the tax chapter.
185–10.26 Final decision	701–6.24 Final decision	This rule is currently found in alcohol and lottery chapters, but is more detailed in the tax chapter found under 701–7.18(8). Conforming to that rule would require many tax procedures to be carved out, therefore the decision was made to maintain this rule separately.
185–10.32 Informal settlement	701–6.30 Informal settlement	This rule is not currently addressed in the lottery chapter, but it is provided by Iowa Code chapter 17A. The tax chapter contains an informal procedure that is addressed under rule 701–7.10. Conforming to that rule would require many tax procedures to be carved out, therefore the decision was made to maintain this rule.

### PROPOSED ALCOHOL RULES OVERVIEW

As mentioned before, the overall goal of Executive Order 10 is to remove obsolete, redundant, unnecessary language, and language that is duplicative of statute. Many entire rules or chapters are being removed due to those reasons. Alignment references are also updated throughout the chapters, for example Division to Department and Administrator to Director. Any other substantive rule revisions being proposed are outlined in tables below.

#### 701–Chapter 1000 General Requirements (Previously 185–Chapters 4 and 5):

Current rule/ subrule	Proposed new rule/ subrule	Proposed change(s)
N/A	701–1000.2(4)( c)	Adding language, pursuant to Iowa Code chapter 272D, that states the Department may refuse to issue a license or permit, may revoke, suspend, or not renew any license or permit if the Centralized Collections Unit of the Department has issued a Certificate of Noncompliance.
185–4.4(1)	701–1000.6(1)	Amending language to specify a “place” must be owned or controlled by the prospective licensee or permittee for the entire duration of the applied for license or permit.
185–4.4(3)	701–1000.6(1)	Removing language that requires measurements of distances between selling/ serving areas because it is unnecessary.

	701–1000.6(2) and (3)	Adding two definitions from reserved rule 185–17.1(123) that have been addressed as useful to re-adopt.
185–4.10(3)	701–1000.22(3) (d)	Adding another approved method for a canned cocktail sealed container: a lid permanently affixed with a can seamer. This method is also used for growlers for beer, wine, and native wine.
185–4.13 Outdoor service	701–1000.7 Outdoor service	Amending language to specify the sketch discerning the licensee’s outdoor area must include a contiguous entrance.
185–4.15 Suspension of retail alcohol license, wine permit, or beer permit and 185–4.27 Effect of suspension	701–1000.30 Suspension of license and permit	Language from both rules was combined for clarity and ease of understanding. Amended language that licensees with suspended licenses must not purchase alcoholic beverages from a wholesaler or the Department during the suspension period.
185–4.18 Transfer of license or permit to another location	701–1000.8 Transfer of license or permit to another location	Amended language for license or permit transfers to clean up the requirements for all transfers since they are the same for temporary and permanent. Added language that seasonal, five-day, and fourteen-day retail alcohol licenses are not allowed to be transferred.
185–4.20 Class “E” retail alcohol licensee methods of payment accepted	701–1000.28 Dishonored payment for alcoholic liquor	Rule language was repealed and adopted anew to remove language duplicative with Iowa Code section 123.24. The rule language was created to emphasize the outcomes for dishonored payments for alcoholic liquor to the Department with regard to possible fees, certified funds status period, and possible unenrollment from automatic license renewal.
185–4.26(3)	N/A	Subrule removed due to being unnecessary. A person cannot sell any alcoholic beverages until they receive an approved license.
185–4.41 Vending machines to dispense alcoholic beverages prohibited	701–1000.23 Vending and self-service machines to dispense alcoholic beverages	Amended rule on the prohibition of vending machines dispensing alcoholic beverages to reflect changes in the industry. This was an area identified as a means that should no longer have a strict prohibition and the rule be amended with guardrails to protect the public health, safety, and welfare of Iowans. With the guardrails provided outright to the public in administrative rule, this expanding business model is available for potential licensees to learn and be aware of the restrictions and expectations before starting or investing in the business. Currently, the Department grants or denies rule waiver applications for this business model to operate in the state based on a lengthy and thorough conducted review.
185–5.7 Change of ownership of a licensed premises, new license or permit	701–1000.13 Change of ownership of a licensed premises, new	Amended language that the new owner(s) and the amount of stock held by each is required to be submitted to the Department electronically, or in a manner prescribed by the Director. The same submission requirement is necessary for proof of legal name changes.

required	license or permit required	
185–5.8 Dramshop liability insurance requirements	701–1000.14 Dramshop liability insurance requirements	Amended language for affected licensees and insurers in regards to dramshop liability insurance coverage. <i>For insurers:</i> The rule is amended to require an authorized representative of an insurance carrier to electronically register with the Department. Also, an insurance company’s notice of cancellation must now also include the dramshop liability policy number. <i>For licensees:</i> The rule is being amended highlighting that it is a licensee’s responsibility to obtain and maintain proper dramshop liability insurance coverage for the entire duration of their license. No longer will licensees need to have their dramshop liability insurance policies align with their exact license effective and expiration dates. Additionally, language for an electronic attestation agreement has been added for licensees to agree to abide by all of the dramshop liability insurance requirements set forth in Iowa Code chapter 123 and this rule, and to be aware they are subject to penalty provisions if they do not abide by the requirements. Lastly, the applicable penalty provisions are outlined in the last subrule.
185–5.9 Surety bond requirements	701-1000.16 Surety bond requirements	Language for the notice of cancellation for surety bonds has also added the surety bond number to be included.

**701–Chapter 1001 Alcohol Product Management and Warehousing (Previously 185–Chapter 8):**

Current rule/ subrule	Proposed new rule/ subrule	Proposed change(s)
185–8.1 Definitions	701–1002.1 Definitions	Amended definitions to comply with government reorganization and alignment. Amended the definition of product to specify the term applies for a single stock keeping unit (sku) of alcoholic liquor or native distilled spirit, and not a brand portfolio as a whole.
185-8.3 Listing requests	701–1002.3 Product quote listing requests	Verbiage for ‘listing requests’ has been updated to ‘product quotes’ which is a phrase that suppliers and brokers are more familiar with and is consistent in the listing manual and vendor portal.
185–8.3(3)	701–1002.3(3)	Amended language to state the Director shall approve or deny a product quote not more than 20 business days from the date a product quote was submitted <u>or listing presentation was held, as applicable</u> . Sometimes listing presentations are scheduled past the 20 day product quote submission time frame due to scheduling conflicts so this extends the window to capture this listing requirement as necessary.
185–8.3(4)	701–1002.3(4)	Language amended to comply with 2024 Iowa Acts, Senate File 2385.
185–8.4(3)	701–1002.4(3)	Amended language for pallets that contain multiple product stock keeping units not separated by a pallet layer. If there is significant rework required,

		this inventory will be rejected.
N/A	701-1002.5 Importation of product into the state for manufacturing purposes.	New proposed rule created for the importation of product into the state for manufacturing purposes to comply with Iowa Code 123.24, which states all forms of alcoholic liquor must be imported to the Department. This includes ingredients, so we are proposing a rule where the Director may designate receiving points to manufacturers for this to be a lawful importation. Record keeping requirements are also included in this rule. This rule originally existed as IAC 185-8.2(123) prior to 2021 and was identified as a rule that benefited from being reintroduced.
185-8.7(2)	701-1002.7(2)	Language amended to comply with 2024 Iowa Acts, Senate File 2385.
N/A	701-1002.10 Bailment system.	New proposed rule to incorporate the bailment program agreement and fee of \$1 per case to comply with Iowa Code section 17A.6C.

### **701-Chapter 1002 Personal Importation of Alcoholic Beverages (Previously 185-Chapter 9):**

Current rule/ subrule	Proposed new rule/ subrule	Proposed change(s)
185-9.1	701-1002.1	Paragraph “a” removed as the information is located on the form and is redundant.
185-9.2	701-1002.2	Many subrules that are duplicative of statute and unnecessary have been removed and cleaned up with updated alignment language.

### **185-Chapter 14 Private Wine Sales:**

The intended benefits of this rule chapter are to outline requirements needed for class “A” wine permittees to engage in private wine sales with other licensees within the state. This chapter is proposed to be rescinded due to being outdated, obsolete, and unnecessary.

The most notable change is the repeal of rule 185-14.2(123). This rule required all holders of a vintner’s certificate of compliance to register with the Department any wine labels they wished to distribute for sale in the state. This requirement will no longer exist once this rule repeal goes into effect.

### **701-Chapter 1003 Trade Practices (Previously 185-Chapter 16):**

This chapter was recently amended as Adopted and Filed ARC 7028C, published in the Iowa Administrative Bulletin on May 31, 2023, therefore very few changes have been made in this proposed rulemaking. After a zero-based review was conducted, the entire rule chapter was adopted in its entirety with exceptions to rules 185-16.1 and 185-16.7 that were amended to comply with 2022 Iowa Acts, Senate File 2374. Rule renumbering and cross-reference renumbering were also updated in this chapter.



CHAPTER 4 ~~1000~~  
RETAIL ALCOHOL LICENSES ~~BEER PERMITS~~ ~~WINE PERMITS~~ GENERAL  
REQUIREMENTS

[Ch 4, IAC 7/1/75 rescinded 3/7/79; see Chs 4,5]

[Prior to 10/8/86, Beer and Liquor Control Department[150]]

**~~185—4.1(123)701—1000.1(123)~~ Definitions.**

~~“Act” means the alcoholic beverage control Act.~~

~~“Administrator” means the chief administrative officer of the alcoholic beverages division or a designee.~~

~~“Beverages” as used in Iowa Code section 123.3(21) does not include any alcoholic beverage as defined in section 123.3(4).~~

~~“Director” means the director of the Iowa department of revenue or the director’s designee.~~

~~“Division” means the alcoholic beverages division of the department of commerce.~~

~~“Department” means the Iowa department of revenue.~~

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

[~~ARC 2382C, IAB 2/3/16, effective 3/9/16; ARC 3928C, IAB 8/1/18, effective 9/5/18~~]

**~~185—4.2(123)701—1000.2(123)~~ General ~~r~~Requirements.** All applicants for licenses, permits, or certificates of compliance ~~shall comply with~~ are subject to the following requirements, where applicable, prior to receiving a new or renewed license, permit, or certificate of compliance.

~~4.2(1)1000.2(1)~~ *Cleanliness of premises.* The interior and exterior of the licensed premises shall be kept clean, free of litter or rubbish ~~refuse~~, painted and in good repair. Licensees and permittees shall at all times keep and maintain their respective premises in compliance with ~~the all~~ laws, orders, rules, and ordinances and rules of the state, county, and the local authority, including but not limited to the authorized, county and city applicable health and fire regulations departments, and the Iowa department of inspections, and appeals, and licensing.

~~4.2(2)1000.2(2)~~ *Toilet facilities.* All licensees ~~and permittees~~ who mix, serve, or sell alcoholic beverages for consumption on the licensed premises shall provide for their patrons adequate, conveniently-located indoor or outdoor toilet facilities. Compliance with county, city, and department of inspections, appeals, and appeals’ licensing’s rules and regulations regarding toilet facilities, including any waivers granted by those authorities, shall constitute compliance with this rule. Outdoor toilet facilities shall be approved by the department of inspections, appeals, and appeals licensing and the local ~~approving~~ authority where the licensed premises is located.

~~4.2(3)1000.2(3)~~ *Water.* All licensed premises shall be equipped with hot and cold running water from a source approved by an authorized health department.

~~4.2(4)1000.2(4)~~ *Financial standing and reputation.* A local authority or the ~~administrator~~ director may consider an applicant’s financial standing and good reputation in addition to the other requirements and conditions for obtaining a license, permit, or certificate of compliance, ~~and the local authority or the administrator shall disapprove or deny a~~ An application for a license, permit, or certificate of compliance is subject to denial by the director or local authority if the applicant fails to demonstrate that the applicant complies with the lawful requirements and conditions for holding the license, permit, or certificate of compliance.

*a.* In evaluating an applicant’s “financial standing,” the local authority or the ~~administrator~~ director may consider such factors as, but not limited to, the following:

(1) Verified source(s) of financial support and adequate operating capital for the applicant’s proposed establishment.

(2) A record of timely submission of all required federal, state, or local tax returns or forms and prompt payment of all taxes due.

(3) A record of prompt payment to the local authority of fees or charges made by a local authority

for municipal utilities or other municipal services incurred in conjunction with the proposed establishment.

(4) A record of prompt payment or satisfaction of administrative penalties imposed pursuant to Iowa Code chapter 123.

(5) A record of maintaining, and providing prompt payment for, dramshop liability insurance coverage as required pursuant to Iowa Code chapter 123.

(6) A record of prompt payment for license, permit, or certificate fees.

(7) A record of prompt payment for alcoholic liquor orders placed with the ~~division~~ department.

*b.* In evaluating an applicant's "good reputation," the local authority or the ~~administrator~~ director may consider such factors as, but not limited to, the following:

(1) A pattern or practice of sales of alcoholic beverages to persons under the legal age for which the licensee or ~~permittee~~, or the licensee's or ~~permittee's~~ agents or employees, have pled or have been found guilty.

(2) A pattern or practice by the licensee or permittee, or the licensee's or permittee's agents or employees, of violating alcoholic beverages laws and regulations for which corrective action has been taken since the previous license or permit was issued.

(3) Sales to intoxicated persons.

(4) Licensee or permittee convictions for violations of laws relating to operating a motor vehicle while under the influence of drugs or alcohol and the recency of such convictions.

(5) Licensee or permittee misdemeanor convictions and the recency of such convictions.

(6) A pattern or practice by the licensee or permittee, or the licensee's or permittee's agents or employees, of failing to cooperate with the department of public safety, the ~~division~~ department, the county attorney, the county sheriff and sheriff's deputies, the city police department, or the city attorney.

(7) A pattern or practice by the licensee or ~~permittee~~ of violating local ordinances established by the local authority pursuant to Iowa Code section 123.39(2).

(8) A pattern or practice by the licensee of failing to report any change in the ownership or interest of the business pursuant to Iowa Code section 123.39(1) "b"(3).

*c.* In addition to other reasons specified by statute or rule, the department may refuse to issue a license or permit, or may revoke, suspend, or not renew any license or permit for which it has jurisdiction if the centralized collection unit of the department has issued a certificate of noncompliance pursuant to the procedures set forth in Iowa Code chapter 272D.

This rule is intended to implement Iowa Code sections 123.3(40) ~~and~~, 123.10(11), and 272D.8(2).  
[ARC 5392C, IAB 1/13/21, effective 2/17/21]

**185—4.3(123)701—1000.5(123) Local ordinances permitted.** The foregoing rules shall in no way be construed as to prevent any county, city or town from adopting ordinances or regulations, which are more restrictive, governing licensed establishments within their jurisdiction.

This rule is intended to implement Iowa Code section 123.39.

**185—4.4(123)701—1000.6(123) Licensed premises.**

**1000.6(1) Criteria.** The following criteria must be met before a "place" (as used in Iowa Code section 123.3(29)) may be licensed as a "place susceptible of precise description satisfactory to the ~~administrator~~ director."

**4.4(1) a.** The "place" must be owned by or under the control of the prospective licensee or permittee for the entire duration of the applied for license or permit.

**4.4(2) b.** The "place" must be solely within the jurisdiction of one local approving authority.

**4.4(3) c.** The "place" must be described by a sketch of the "premises" as defined in Iowa Code section 123.3(29) and showing the boundaries of the proposed "place"; showing the locations of selling/serving areas within the confines of the "place"; showing all entrances and exits; and indicating the measurements of the "place" ~~and distances between selling/serving areas~~.

~~4.4(4) d.~~ The “place” must satisfy the health, safety, fire and seating requirements of the ~~division department,~~ local authorities, and the Iowa department of inspections, ~~and appeals, and licensing.~~

~~4.4(5) e.~~ Any other criteria as required by the ~~administrator~~ director.

1000.6(2) “*Square footage of the licensed premises*” means the total interior floor area of the establishment, measured in square feet. This includes all spaces within the establishment used or to be used for:¶

- a. Storage of alcoholic beverages;¶
- b. Distribution of alcoholic beverages;¶
- c. Warehousing of alcoholic beverages;¶
- d. Display of alcoholic-beverage products;¶
- e. Wholesale operations;¶
- f. Retail sales area;¶
- g. Any other spaces used in the operation of the licensed business.¶

1000.6(3) “*Separate premises*” means:¶

a. A clearly defined area bounded on all sides and connecting angles by permanent, solid walls or windows extending from the floor to the ceiling, with entrances and exits that can be closed.

b. The entrances and exits shall not adjoin or provide direct access to an establishment licensed under this chapter for the sale of alcoholic beverages for consumption on the premises.

c. This term describes how holders of other retail alcohol licenses may establish a Class “E” retail alcohol licensed establishment at the same physical address as their other licensed establishment.

d. The separate premises must operate independently from other licensed premises, including but not limited to:¶

1. Maintaining a separate inventory;¶
2. Using a separate cash register;¶
3. Keeping separate books and records.¶

This rule is intended to implement Iowa Code sections 123.3(29), and 123.4, and 123.30.

[ARC 3928C, IAB 8/1/18, effective 9/5/18]

~~185—4.5(123)701—1000.19(123)~~ **Mixed drinks or cocktails not for immediate consumption.** A class “C,” class “D,” or class “F” retail alcohol licensee may mix, store, and allow the consumption of mixed drinks or cocktails which are not for immediate consumption for up to 72 hours, subject to the requirements and restrictions provided in Iowa Code section 123.49(2)“d”; and this rule.

~~4.5(1)~~1000.19(1) *Definitions.*

“*Immediate consumption*” for the purposes of this rule, means the compounding and fulfillment of a mixed drink or cocktail order upon receipt of the order at the time of sale for the mixed drink or cocktail.

“*Mixed drink or cocktail*” for the purposes of this rule, means an alcoholic beverage as defined in Iowa Code section 123.3(32).

~~4.5(2)~~ *Location.* Mixed drinks or cocktails which are not for immediate consumption shall be mixed, stored, and consumed on the retail alcohol licensed premises.

~~4.5(3)~~ *Quantity.* A mixed drink or cocktail which is not for immediate consumption shall be mixed and stored in, and dispensed from, a labeled container in a quantity not to exceed three gallons.

~~4.5(4)~~1000.19(2) *Container Mixing and storing conditions.* A mixed drink or cocktail which is not for immediate consumption shall at all times is to be in a container compliant with applicable state and federal food safety statutes and regulations at all times.

a. The mixed drink or cocktail shall may only be mixed and ~~remain~~ stored in the same container.

b. The mixed drink or cocktail shall may only be removed from the stored container for one of the following dispensing purposes:

(1) To compound and fulfill a mixed drink or cocktail order upon receipt of the order at the time of sale for the mixed drink or cocktail.

(2) For transfer into a pourable container. The pourable container shall have affixed a needs to

~~have an affixed label compliant with subrule 4.5(5) displaying label information identical to that on the container from which the contents were poured. The transfer of product to a pourable container will not extend the expiration date and time shall not be extended by the transfer of product to a pourable container.~~

~~c. The mixed drink or cocktail may be strained into another container when each of the following conditions is met:~~

~~(1) The mixed drink or cocktail is returned without delay to the labeled container from which it was strained.~~

~~(2) d. The container and process are need to be conducted in compliance compliant with applicable state and federal food safety statutes and regulations.~~

~~d. An original package of alcoholic liquor as purchased from the division or an original package of wine shall not be used to mix, store, or dispense a mixed drink or cocktail, pursuant to Iowa Code section 123.49(2) “d” and “e.”~~

~~e. The mixed drink or cocktail shall not be mixed, stored, or dispensed from a container bearing an alcoholic beverage name brand.~~

~~f. A dispensing machine which contains a mixed drink or cocktail is subject to the conditions of rule 701—1000.5(123).~~

~~4.5(5)-1000.19(3) Label Labeling conditions. A label shall be placed on a container when the contents of the mixed drink or cocktail are placed into the empty container.~~

~~a. When a mixed drink or cocktail is placed into a container, a label must be affixed in a conspicuous place, legibly stating the following information:~~

~~1. The month, day, year, and time the contents are placed into the container.~~

~~2. The month, day, year, and time the contents expire.~~

~~3. The title of the recipe used and identity of the person who prepared the contents of the container.~~

~~4. The size of the batch within the container.~~

~~5. The words “CONTAINS ALCOHOL.”~~

~~a. Contents are defined in subrule 4.5(6):~~

~~b. The label shall be is subject to the following conditions requirements and restrictions:~~

~~(1) The label shall be affixed to the container in a conspicuous place.~~

~~(2) The label shall legibly identify the month, day, and year the contents are placed into the empty container.~~

~~(3) The label shall legibly identify the time the contents were placed into the empty container. The time shall be reported to the minute utilizing the 12-hour clock, and include either the ante meridian (AM) or post meridian (PM) part of time.~~

~~(4) The label shall legibly identify the month, day, and year the contents expire.~~

~~(5) The label shall legibly identify the time the contents expire. The time shall be reported in the same manner as reported in subparagraph 4.5(5) “b” (4).~~

~~(6) The label shall legibly specify the title of the recipe used for the contents of the container.~~

~~(7) The label shall legibly identify the person who prepared the contents of the container.~~

~~(8) The label shall legibly identify the size of the batch within the container and be conspicuously marked with the words “CONTAINS ALCOHOL.”~~

~~(9) 1. The label shall must be removed from the container once the entire contents have been consumed, transferred to a pourable container pursuant to subparagraph 4.5(4) “b” (2) 4.5(3) “b” (2); or destroyed and disposed of in accordance with applicable law.~~

~~(10) 2. A label shall mustay not be reused, nor shall a removed label be or reapplied to a container.~~

~~(11) 3. A new label, subject to the requirements and restrictions of paragraph 4.5(5) “b,” shall must be placed on the container for each prepared batch of mixed drinks or cocktails which is not for immediate consumption.~~

~~c. A licensee may access a label template on the website of the division department located at [www.iowaABD.com](http://www.iowaABD.com) [revenue.iowa.gov](http://revenue.iowa.gov).~~

~~4.5(6)~~ **1000.19(4)** *Contents Content conditions.*

a. Contents of a mixed drink or cocktail may include alcoholic beverages, nonalcoholic ingredients, or a combination thereof of both, which are not for immediate consumption.

~~a. b. A licensee is limited to utilizing may only use alcoholic beverages in the mixed drink or cocktail which are authorized allowed by the license type and obtained as specified by Iowa Code chapter 123.~~

~~b. A licensee shall utilize alcoholic beverages in the mixed drink or cocktail which are obtained as prescribed by Iowa Code chapter 123.~~

c. The added flavors and other nonbeverage ingredients of the mixed drink or cocktail shall not include hallucinogenic substances, added caffeine or added stimulants including but not limited to guarana, ginseng, and taurine, or a controlled substance as defined in Iowa Code section ~~124.401~~ 124.101, including tetrahydrocannabinol.

~~4.5(7)~~ **1000.19(5)** *Disposal conditions.*

a. Any mixed drink or cocktail, or portion thereof, not consumed within 72 hours of the contents<sup>2</sup> being placed into the empty container is expired and shall ~~must~~ be destroyed and disposed of in accordance with applicable law.

b. An expired mixed drink or cocktail which is not for immediate consumption shall not be:

- (1) Added to an empty container and relabeled; or
- (2) Added to another mixed drink or cocktail which is not for immediate consumption.

~~4.5(8)~~ **1000.19(6)** *Records Record keeping.* A licensee shall ~~must~~ maintain accurate and legible records for each prepared batch of mixed drinks or cocktails which is not for immediate consumption.

a. Records shall ~~must~~ contain:

- (1) The month, day, ~~and year, and time~~ the contents ~~are were~~ placed into the empty container.
- (2) The time the contents are placed into the empty container. The time shall be reported in the same manner as reported in subparagraph 4.5(5) "b" (4).

~~(3) (2) The contents placed in the container, including alcoholic beverages and nonalcoholic ingredients. Each alcoholic beverage, including needs to state the brand and the amount, placed in the container. The amount of each alcoholic beverage shall be reported utilizing the metric system.~~

~~(4) Each nonalcoholic ingredient placed in the container.~~

(5) (3) The recipe title and directions for preparing the contents of the container.

(6) (4) The size of the batch.

(7) (5) The identity of the person who prepared the contents of the container.

(8) (6) The month, day, ~~and year, and time~~ the contents of the container ~~are were~~ destroyed and disposed of or entirely consumed.

(9) The time the contents of the container are destroyed and disposed of or entirely consumed. The time shall be reported in the same manner as reported in subparagraph 4.5(5) "b" (4) ~~4.5(5) "b" (3)~~.

(10) (7) The method of destruction and disposal or shall ~~specify the record~~ that the entire contents were consumed.

(11) (8) The identity of the person who destroyed and disposed of the contents, if the contents were not consumed.

b. A licensee may access record-keeping forms on the website of the ~~division department~~ located at www.IowaABD.com www.revenue.iowa.gov, by sending a request by fax to (515)281-7375, or by sending a request by mail to Alcoholic Beverages Division, 1918 SE Hulsizer Road, Ankeny, Iowa 50021.

c. Records shall ~~must~~ be maintained on the licensed premises for a period of three years and shall be open to inspection pursuant to Iowa Code ~~section sections~~ 123.30(1) and 123.33.

~~4.5(9)~~ ~~4.5(8)~~ *Dispensing machines.* A dispensing machine which contains a mixed drink or cocktail with alcoholic beverages is subject to the requirements and restrictions of this rule.

~~4.5(10)~~ ~~4.5(9)~~ *Food safety compliance.* A licensee who mixes, stores, and allows the consumption of mixed drinks or cocktails which are not for immediate consumption shall comply with is subject to all applicable state and federal food safety statutes and regulations.

~~4.5(11)~~ 1000.19(7) *Federal alcohol compliance.* A licensee who mixes, stores, and allows the consumption of mixed drinks or cocktails which are not for immediate consumption ~~shall comply with~~ is subject to all applicable federal statutes and regulations. Prohibitions include, but are not limited to, processing with non-tax-paid alcoholic liquor, aging alcoholic liquor in barrels, heating alcoholic liquor, bottling alcoholic liquor, and refilling alcoholic liquor or wine bottles.

~~4.5(12)~~ 1000.19(8) *Violations.* Failure to ~~comply with~~ follow the requirements and restrictions of this rule ~~shall subject~~ subjects the licensee to the penalty provisions of Iowa Code section 123.39.

This rule is intended to implement Iowa Code ~~subsection 123.49(2)~~ sections 123.49 and 123.49A .  
[~~ARC 0204C, IAB 7/11/12, effective 7/1/12; ARC 0406C, IAB 10/17/12, effective 11/21/12~~]

~~185—4.6(123)~~ 701—1000.20(123) **Filling and selling of beer in a container other than the original container.** Class “B,” class “C,” special class “C,” and class “E” retail alcohol licensees, and the licensee’s employees may fill, refill, and sell beer in a container other than the original container, otherwise known as a growler, subject to ~~the requirements and restrictions provided in~~ Iowa Code section 123.31A; and this rule.

~~4.6(1)~~ 1000.20(1) *Definitions.*

“Beer,” for the purposes of this rule, means “beer” as defined in Iowa Code section 123.3(7) and “high alcoholic content beer” as defined in Iowa Code section 123.3(22).

“Growler,” for the purposes of this rule, means any fillable and sealable glass, ceramic, plastic, aluminum, or stainless steel container designed to hold beer or high alcoholic content beer.

“Original container,” for the purposes of this rule, means a vessel containing beer that has been lawfully obtained and has been securely capped, sealed, or corked at the location of manufacture. For special class “A” beer permit holders, an “original container” includes a tank used for storing and serving beer.

~~4.6(2)~~ 1000.20(2) *Filling and refilling requirements conditions.*

- ~~a.~~ A growler shall have the capacity to hold no more than 72 ounces.
- ~~b.~~ A growler shall be filled or refilled only by the licensee or permittee or the licensee’s or permittee’s employees who are 18 years of age or older.
- ~~c.~~ A growler shall be filled or refilled only on demand by a consumer at the time of the sale.
- ~~d.~~ A growler shall be filled or refilled only with beer from the original container procured from a class “A” beer permittee unless the beer being used to fill or refill a growler on the premises of a special class “A” beer permit holder was manufactured by that special class “A” beer permit holder on the permitted premises. a. A growler may only be filled or refilled with beer from the original container purchased from a class “A” beer permittee. However, a special class “A” beer permittee may fill or refill a growler with beer manufactured by the special class “A” beer permittee on the permittee’s licensed premises.

- ~~e.~~ b. A retailer may exchange a growler to be filled or refilled.
- ~~f.~~ c. The filling or refilling of a growler ~~shall at all times~~ must be conducted in compliance with applicable state and federal food safety statutes and regulations.

~~4.6(3)~~ 1000.20(3) *Sealing requirements conditions.* A filled or refilled growler ~~shall~~ must be securely sealed at the time of the sale by the licensee or permittee or the licensee’s or permittee’s employees in the following manner:

- ~~a.~~ A growler shall must bear a cap, lid, stopper, or plug.
- ~~b.~~ A plastic heat shrink wrap band, strip, or sleeve shall must extend around the cap or lid or over the stopper or plug to form a seal that must be broken upon the opening of the growler. A lid permanently affixed with a can seamer ~~shall does not require~~ need a plastic heat shrink wrap band, strip, or sleeve.
- ~~c.~~ The heat shrink wrap seal shall must be so secure that it is visibly apparent when the seal on a growler has been tampered with or a sealed growler has otherwise been reopened.
- ~~d.~~ A growler shall not be deemed an open container, subject to the requirements of Iowa Code sections 321.284 and 321.284A, provided the sealed growler is unopened and the seal has not been tampered with and the contents of the growler have not been partially removed.

~~4.6(4)1000.20(4) Restrictions-Additional conditions.~~

- ~~a. A growler shall not be filled in advance of a sale.~~
- ~~b. a. A growler filled pursuant to this rule may only shall not be delivered or direct-shipped to a consumer.~~
- ~~c. b. A growler filled pursuant to this rule may only shall not be sold or otherwise distributed to a retailer.~~
- ~~d. c. A licensee or permittee or a licensee's or permittee's employees are not to shall not allow a consumer to fill or refill a growler.~~
- ~~e. d. The filling, refilling, and selling of a growler shall be is limited to the hours in which alcoholic beverages may be legally sold.~~
- ~~f. e. A filled or refilled growler is shall not to be sold to any consumer who is under legal age, intoxicated, or simulating intoxication.~~
- ~~g. f. An original container shall may only be opened on the premises of a class "B" and or class "E" retail alcohol licensee for the limited purposes of filling or refilling a growler as provided in this rule, or for a tasting in accordance with rule ~~185—16.7(123)~~185—16.6(123).~~

~~4.6(5)1000.20(5) Violations.~~ Failure to ~~comply with~~ follow the requirements and restrictions of this rule shall subject subjects the licensee or permittee to the penalty provisions provided in Iowa Code chapter 123.

This rule is intended to implement Iowa Code section 123.31A.

~~[ARC 2382C, IAB 2/3/16, effective 3/9/16; ARC 2777C, IAB 10/12/16, effective 11/16/16; ARC 3928C, IAB 8/1/18, effective 9/5/18; ARC 5191C, IAB 9/23/20, effective 10/28/20]~~

~~185—4.7(123)701—1000.12(123) Improper conduct.~~

~~4.7(1)1000.12(1) Illegality on premises.~~ A ~~no~~ retail alcohol licensee, or the licensee's agent or employee, shall ~~must not~~ engage in or knowingly allow any illegal occupation or illegal act on the licensed premises.

~~4.7(2)1000.12(2) Cooperation with law enforcement officers.~~ A ~~no~~ retail alcohol licensee, or the licensee's agent or employee, shall ~~must not~~ refuse, fail, or neglect to cooperate with any law enforcement officer in the performance of such officer's duties to enforce the provisions of the Act.

~~4.7(3) Illegal activities.~~ No retail alcohol licensee, or the licensee's agent or employee, shall knowingly allow in or upon the licensed premises any conduct as defined in Iowa Code sections ~~725.1, 725.2, 725.3, 728.2, 728.3, and 728.5.~~

~~4.7(4) Frequenting premises.~~ No retail alcohol licensee, or the licensee's agent or employee, shall knowingly permit the licensed premises to be frequented by, or become the meeting place, hangout or rendezvous for known pimps, panhandlers or prostitutes, or those who are known to engage in the use, sale or distribution of narcotics, or in any other illegal occupation or business.

~~4.7(5)1000.12(3) Open containers of alcoholic liquor.~~ A ~~no~~ class "C," class "D," class "E," or class "F" retail alcohol licensee, or the licensee's agent or employee, shall ~~must not~~ allow any filled, partially filled, or empty, liquor glasses or liquor bottles, open, or unsealed containers of alcoholic liquor to be taken off the licensed premises, excluding mixed drinks or cocktails pursuant to Iowa Code section 123.49(2)"d"(3). A class "E" retail alcohol licensee, or the licensee's agent or employee, shall not permit other licensees or consumers to remove partially filled, empty, open or unsealed containers of alcoholic liquor from the class "E" retail alcohol licensed premises.

~~4.7(6)1000.12(4) Identifying markers.~~ A licensee shall not keep on the licensed premises nor use for resale alcoholic liquor which does not bear identifying markers as prescribed by the ~~administrator~~ director of the division. Identifying markers shall demonstrate that the alcoholic liquor was lawfully purchased from the division.

This rule is intended to implement Iowa Code subsection 123.49(2).

~~185—4.8(123)701—1000.29(123) Violation by agent, servant or employee.~~ Any violation of the alcoholic beverage control Act or the rules of the division department by any employee, or agent or

servant of a licensee shall be ~~is deemed considered~~ to be the act of the licensee and shall ~~subject subjects~~ the license or permit of said licensee to civil penalty, suspension or revocation.

This rule is intended to implement Iowa Code sections 123.4 and 123.49(2).

~~185—4.9(123)~~ **Gambling evidence.** The intentional possession or willful keeping of any gambling device, as defined in Iowa Code section ~~725.9~~ upon the premises of any establishment licensed by the division shall be prima facie evidence of a violation of Iowa Code section 123.49(2) “a” and subject the license of said licensee to suspension or revocation.

This rule is intended to implement Iowa Code sections 123.4 and 123.49.

~~185—4.10(123)701—1000.22(123)~~ **Filling and selling of mixed drinks or cocktails in a container other than the original container.** Class “C” and class “C” ~~native distilled spirits liquor control retail alcohol~~ licensees and the licensee’s employees may fill and sell mixed drinks or cocktails in a container other than the original container subject to the requirements and restrictions provided in 2020 Iowa Acts, House File 2540, sections 10, 11, 12, and 13, Iowa Code section 123.49(2) “d”(3) and this rule.

~~4.10(1)1000.22(1)~~ **Definitions.**

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

“*Mixed drink or cocktail*,” for the purposes of this rule, means “mixed drink or cocktail” as defined in Iowa Code section 123.3(32).

“*Native distilled spirits*,” for the purposes of this rule, means “native distilled spirits” as defined in Iowa Code section 123.3(34).

“*Original container*,” for the purposes of this rule, means a vessel containing alcoholic liquor or native distilled spirits that has been lawfully obtained and has been securely capped, sealed, or corked at the location of manufacture.

“*Sealed container*,” for the purposes of this rule, means a vessel containing a mixed drink or cocktail that is designed to prevent consumption without removal of the tamper-evident lid, cap, or seal. “Sealed container” does not include a container with a lid with sipping holes or openings for straws, a cup made of plastic that is intended for one-time use, or a cup made of paper or polystyrene foam “sealed container” as defined in Iowa Code section 123.49(2) “d”(4) “a”.

“*Tamper-evident*,” for the purposes of this rule, means a lid, cap, or seal that visibly demonstrates when a container has been opened “tamper-evident” as defined in Iowa Code section 123.49(2) “d”(4) “b”.

~~4.10(2)1000.22(2)~~ **Filling requirements conditions.**

a. A sealed container shall may only be filled and sold ~~only~~ by the licensee or the licensee’s employees who are 18 years of age or older.

b. A sealed container shall may only be filled ~~only~~ upon receipt of an order by a consumer of legal age.

c. A sealed container shall may only be filled ~~only~~ with mixed drinks or cocktails composed in whole or in part with alcoholic liquor or native distilled spirits from an original container purchased from a class “E” ~~liquor retail alcohol~~ licensee.

d. The filling of a sealed container shall at all times needs to be conducted in compliance with applicable state and federal food safety statutes and regulations at all times.

~~4.10(3)1000.22(3)~~ **Sealing requirements conditions.** A sealed container shall must bear one of the following tamper-evident sealing methods:

a. A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid to form a seal that must be broken when the sealed container is opened.

b. A screw top cap or lid that breaks apart when the sealed container is opened.

c. A vacuum or heat-sealed pouch containing the mixed drink or cocktail.

d. A lid permanently affixed to the sealed container with a can seamer.

~~4.10(4)1000.22(4)~~ **Labeling requirements conditions.** A sealed container shall must bear a label



affixed to the sealed container in a conspicuous place legibly ~~indicating~~ stating the following information:

- a. The business name of the licensee that sold the mixed drink or cocktail.
- b. The words “CONTAINS ALCOHOL.”

~~4.10(5)~~ *Sealed container not deemed an open container.* A sealed container shall not be deemed an open container, subject to the requirements of Iowa Code sections 321.284 and 321.284A, provided the sealed container is unopened, the seal has not been tampered with, and the contents of the sealed container have not been partially removed.

~~4.10(6)~~ ~~1000.22(5)~~ *Restrictions—Additional conditions.*

a. A sealed container ~~shall~~ is not allowed be filled in advance of a sale.  
~~b.~~ A sealed container shall not meet the definition of “canned cocktail” as defined in Iowa Code section 123.3(11).

~~e.b.~~ A licensee or a licensee’s employees shall ~~must~~ not allow a consumer to fill a sealed container.

~~d.c.~~ The filling and selling of a sealed container shall be is limited to the hours in which alcoholic beverages may be legally sold.

~~e.d.~~ A sealed container shall must not be sold to any consumer who is under legal age, intoxicated, or simulating intoxication.

~~4.10(7)~~ ~~1000.22(6)~~ *Record keeping requirements.*

a. A licensee shall must maintain records, in printed or electronic format, of all sales of sealed containers. The records shall state the following:

- (1) The business name of the licensee that sold the mixed drink or cocktail.
- (2) The date and time of the sale.
- (3) A description of the product sold.

b. A licensee shall must keep the required necessary records for a three-year period from the date the record was created.

c. Records shall must be open to inspection pursuant to Iowa Code section 123.30(1); and may be subject to administrative subpoena issued by the ~~administrator~~ director.

~~4.10(8)~~ ~~1000.22(7)~~ *Violations.* Failure to ~~comply with~~ follow the requirements and restrictions of this rule shall subject the licensee to the penalty provisions provided in Iowa Code chapter 123.

This rule is intended to implement Iowa Code sections 123.30, 123.33, ~~123.43A~~, and 123.49.

~~185—4.11(123)701—1000.21(123)~~ **Filling and selling of wine and native wine in a container other than the original container.** Class “B,” class “C,” special class “C,” and class “E” retail alcohol licensees; special class “B” and special class “C” retail native wine licensees; and the licensee’s employees may fill, refill, and sell wine or native wine in a container other than the original container, otherwise known as a growler, subject to ~~the requirements and restrictions provided in~~ Iowa Code sections 123.30, 123.31A, ~~and~~ 123.31B, and ~~in~~ this rule.

~~4.11(1)~~ ~~1000.21(1)~~ *Definitions.*

“Growler;” for the purposes of this rule, means any fillable and sealable glass, ceramic, plastic, aluminum, or stainless steel container designed to hold wine or native wine.

“Native wine;” for the purposes of this rule, means “native wine” as defined in Iowa Code section 123.3(36).

“Original container;” for the purposes of this rule, means a vessel containing wine or native wine that has been lawfully obtained and has been securely capped, sealed, or corked at the location of manufacture.

“Wine;” for the purposes of this rule, means “wine” as defined in Iowa Code section 123.3(53).

~~4.11(2)~~ ~~1000.21(2)~~ *Filling and refilling requirements conditions.*

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

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

- ~~e.~~ A growler shall be filled or refilled only on demand by a consumer at the time of the sale.
- ~~d.~~ a. A growler shall may only be filled or refilled ~~only~~ with wine or native wine from the original container ~~procured~~ purchased from a class “A” wine permittee.
- ~~e.~~ b. Special class “B” and special class “C” retail native wine licensees shall may only fill a growler with ~~only~~ native wine.
- ~~f.~~ c. A retailer may exchange a growler to be filled or refilled.
- ~~g.~~ d. The filling or refilling of a growler shall ~~at all times~~ must be conducted in compliance with applicable state and federal food safety statutes and regulations at all times.

**4.11(3)1000.21(3) Sealing requirements conditions.** A filled or refilled growler shall must be securely sealed at the time of the sale by the licensee or the licensee’s employees in the following manner:

- a. A growler shall must bear a cap, lid, stopper, or plug.
- b. A plastic heat shrink wrap band, strip, or sleeve shall must extend around the cap or lid or over the stopper or plug to form a seal that must be broken upon the opening of the growler. A lid permanently affixed with a can seamer shall does not require need a plastic heat shrink wrap band, strip, or sleeve.
- c. The heat shrink wrap seal shall must be so secure that it is visibly apparent when the seal on a growler has been tampered with or a sealed growler has otherwise been reopened.
- ~~d.~~ A growler shall not be deemed an open container, subject to the requirements of Iowa Code sections 321.284 and 321.284A, provided the sealed growler is unopened and the seal has not been tampered with and the contents of the growler have not been partially removed.

**4.11(4)1000.21(4) Restrictions Additional conditions.**

- ~~a.~~ A growler shall not be filled in advance of a sale.
- ~~b.~~ a. A growler filled pursuant to this rule shall ~~is not allowed~~ is not allowed to be delivered or direct-shipped to a consumer.
- ~~e.~~ b. A growler filled pursuant to this rule shall ~~is not allowed~~ is not allowed to be sold or otherwise distributed to a retailer.
- ~~d.~~ c. A licensee or a licensee’s employees shall must not allow a consumer to fill or refill a growler.
- ~~e.~~ d. The filling, refilling, and selling of a growler shall ~~be is~~ is limited to the hours in which alcoholic beverages may be legally sold.
- ~~f.~~ e. A filled or refilled growler shall ~~may must not~~ must not be sold to any consumer who is under legal age, intoxicated, or simulating intoxication.
- ~~g.~~ f. An original container shall may only be opened on the premises of a class “B” ~~and or~~ class “E” retail alcohol licensee for the limited purposes of filling or refilling a growler as provided in this rule, or for a tasting in accordance with rule ~~185—16.7(123)185—16.6(123)~~.

**4.11(5)1000.21(5) Violations.** Failure to ~~comply with follow~~ follow the requirements and restrictions of this rule shall ~~subject~~ subjects the licensee to the penalty provisions provided in Iowa Code chapter 123.

This rule is intended to implement Iowa Code sections 123.30, 123.31A, and 123.31B.

[ARC 5191C, IAB 9/23/20, effective 10/28/20]

**185—4.12(123)701—1000.3(123) Display of license, permit, or signs placards.** All licenses, permits, or signs placards issued by the ~~division department~~ shall must be prominently displayed in full view on the licensed premises.

This rule is intended to implement Iowa Code sections 123.4 and 123.30.

**185—4.13(123)701—1000.7(123) Outdoor service.** Any licensee ~~having an outdoor, contiguous, discernible area on the same property on which their licensed establishment is located may serve the type of alcoholic beverage permitted by the license in the outdoor area. After a licensee satisfies the requirements of this rule, they may serve and sell alcoholic beverages in both the licensee’s indoor licensed establishment and in their outdoor area at the same time because an outdoor area is merely an extension of the licensee’s licensed premise and is not a transfer of their license. A licensee, prior to~~

servicing in the outdoor area, must file with the division:

Any on-premises retail alcohol licensee with a discernible, contiguous, outdoor area on the same property may apply for an outdoor service privilege. An outdoor service privilege allows an on-premises licensee to sell or serve the type of alcoholic beverage permitted by the license in an outdoor area. The privilege is an extension of a licensed premises outlined under rule 185—4.4(123). The department may grant an outdoor service privilege once the licensee provides:

1. A new diagram sketch showing the discernible outdoor area, including a contiguous entrance.
2. Local authority approval of the outdoor area.
3. Insurance company acknowledgment that the outdoor area is covered by the dramshop insurance policy.
4. Any other information deemed necessary by the director.

This rule is intended to implement Iowa Code sections 123.3(29), 123.4 and 123.38.

**~~185—4.14(123)701—1000.31(123)~~ Revocation or suspension by local authority.** When the local authority revokes or suspends a retail alcohol license, the local authority ~~shall~~must notify the ~~division department~~ in writing stating the reasons for the revocation or suspension and, in the case of a suspension, the length of time of the suspension.

This rule is intended to implement Iowa Code sections 123.4, 123.32, and 123.39.

**~~185—4.15(123)701—1000.30(123)~~ Suspension of retail alcohol license, wine permit, or beer permit.**

1000.30(1) Suspensions by a local authority or the department. At the time of ~~the a~~ license or permit suspension of any retail alcohol license, wine permit, or beer permit by the division, a placard furnished by the department there shall must be placed, in a conspicuous place in the front door or window of the licensed or permitted establishment, ~~a placard furnished by the division showing that the license or permit of that establishment has been suspended by the division and such~~ The placard shall also show must state that the license or permit is suspended, the ~~number of days~~ suspension duration, and the reason for the suspension. No licensee or permittee may remove, alter, obscure, or destroy a suspension placard prior to an ordered suspension's expiration without the express written approval of the department.

1000.30(2) Effect of suspension. No licensee or permittee shall remove, alter, obscure, or destroy said placard without the express written approval of the division. Alcoholic beverages must not be sold, served, or consumed on a licensed premises during a suspension period. A licensed premises may be open during a suspension period to conduct other lawful business during the suspension period. A retail alcohol licensee must not purchase alcoholic beverages from a wholesaler or the department during the suspension period.

This rule is intended to implement Iowa Code sections 123.4 and 123.39.

**~~185—4.16(123)~~ Cancellation of beer permits—refunds.** Reseinded.

**~~185—4.17(123)701—1000.25(123)~~ Prohibited storage of alcoholic beverages.** No licensee shall permit alcoholic beverages, purchased under authority of a retail alcohol license, to be kept or stored ~~upon~~ Retail alcohol licensees may only keep or store alcoholic beverages on any premises other than those the licensed premises. However, ~~under special circumstances,~~ the administrator director may authorize the storage of alcoholic beverages on premises other than those covered by the license or permit. The administrator director may allow class “D” retail alcohol licensees to store alcoholic ~~liquor and wine~~ beverages in a bonded warehouse to be used for consumption in Iowa, ~~under the authority of a class “D” retail alcohol license.~~

This rule is intended to implement Iowa Code sections 123.4 and 123.10(11).

**~~185—4.18(123)701—1000.8(123)~~ Transfer of license or permit to another location.** A licensee or

permittee cannot transfer to anyone else the right to use the retail alcohol license, wine permit, or beer permit of the licensee or permittee; the right of transfer is merely an opportunity for a licensee or permittee to use the licensee's or permittee's retail alcohol license, wine permit, or beer permit at a different location. ¶

**1000.8(1) Transfer conditions.** A retail alcohol license, wine permit, or a beer permit may only be transferred within the boundaries-jurisdiction of the local authority which approved the license or permit. A licensee or permittee is only allowed to sell or serve alcoholic beverages at the transferred license or permit location once approved by the department. Sales and service at the original location must stop during the time of the license/ permit transfer. Seasonal, fourteen-day, and five-day retail alcohol licenses may not be transferred.

**4.18(1) 1000.8(2) Permanent +Transfer applications.**

- a. A ~~person~~ licensee or permittee may apply for a permanent or temporary transfer- by providing:
  1. A new sketch showing the premises to be licensed.
  2. Proof of control by the licensee of the premises to be licensed.
  3. Any other information deemed necessary by the director.
- b. The application must be approved by the local authority and the ~~division~~ department prior to the transfer.
- c. The insurance company holding the dramshop policy listing the new address must endorse the application prior to the transfer, if applicable. When the above requirements are met
- d. If a permanent transfer is approved, the division department will shall issue an amended license or permit showing the new permanent address. If a temporary transfer is approved, the department will issue a letter of authorization to the local authority and licensee or permittee showing the new temporary address.¶

**4.18(2) Temporary transfers.** If the transfer of a retail alcohol license or permit is for the purpose of accommodating a special event or circumstance temporary in nature, the minimum time of transfer is hereby set at 24 hours and transfer time shall not exceed seven days.

- a. ~~A person may apply for a temporary transfer.: ¶~~
- b. ~~The application must be approved by the local authority and the division. ¶~~
- c. ~~The insurance company holding the dramshop policy must endorse the application prior to the transfer.¶~~

This rule is intended to implement Iowa Code sections 123.4 and 123.38.

**185—4.19(123)701—1000.27(123) Execution and levy on alcoholic liquor, wine, and beer beverages.** Judgments or orders requiring the payment of money or the delivery of the possession of property may be enforced against retail alcohol licensees, beer permittees, and wine permittees by execution pursuant to the provisions of Iowa Code chapter 626.

**4.19(1)1000.27(1) Definitions.**

“Debtor” for the purposes of this rule, means “debtor” as defined in Iowa Code section 554.9102 “ad.”

“Secured party” for the purposes of this rule, means “secured party” as defined in Iowa Code section 554.9102(1) “by.”

**1000.27(2)** A secured party as defined in Iowa Code section 554.9102(1) “by” may take possession of and dispose of a retail alcohol licensee’s or permittee’s alcoholic liquor, wine, and beer beverages inventory in which the secured party has a security interest in such collateral pursuant to the provisions of Iowa Code chapter 554. The secured party may operate under the retail alcohol license or permit of its debtor as defined in Iowa Code section 554.9102(1) “ad” for the purpose of disposing of the alcoholic liquor, wine, and beer beverages inventory. However, if the debtor is a class “E” retail alcohol licensee, the secured party may not purchase alcoholic liquor from the ~~division~~ department to continue to operate its debtor’s business. A secured party operating under the retail alcohol license or permit of its debtor shall dispose of the alcoholic liquor, wine, and beer beverages inventory by sale only to persons

authorized under Iowa Code chapter 123 to purchase alcoholic liquor, wine, and beer beverages inventory from the debtor. When a secured party takes possession of a retail alcohol licensee's or permittee's alcoholic liquor, wine, and beer beverages inventory, the secured party shall ~~must~~ notify the ~~division department~~ in writing of such action. A secured party shall ~~must~~ further inform the ~~division department~~ of the manner in which it intends to dispose of the alcoholic liquor, wine, and beer beverages inventory and shall state the reasonable length of time in which it intends to operate under the retail alcohol license or permit of its debtor. The secured party shall ~~must~~ notify the ~~division department~~ in writing when the disposition of its collateral has been completed, and the secured party shall ~~must~~ cease operating under the retail alcohol license or permit of its debtor.

~~4.19(2)-1000.27(3)~~ A sheriff or other officer acting pursuant to Iowa Code chapter 626 may take possession of a retail alcohol licensee's or permittee's alcoholic liquor, wine, and beer beverages inventory and may dispose of such inventory according to the provisions of Iowa Code chapter 626; however, the sheriff or other officer must sell the alcoholic liquor, wine and beer beverages inventory only to those persons authorized by Iowa Code chapter 123 to purchase alcoholic liquor, wine, and beer beverages inventory from the retail alcohol licensee or permittee whose inventory is subject to the execution and levy. The sheriff or other officer shall ~~must~~ notify the ~~division department~~ in writing at the time the sheriff or officer takes possession of a retail alcohol licensee's or permittee's alcoholic liquor, wine, and beer beverages inventory and shall ~~must~~ further notify the ~~division department~~ of the time and place of the sale of such property.

This rule is intended to implement Iowa Code sections 123.4, 123.10, and 123.38.

~~185—4.20(123) Class “E” retail alcohol licensee methods of payment accepted.~~ The division may accept personal or business checks from a class “E” retail alcohol licensee made payable to the division for the amount of the purchase which has been certified by the bank on which the check is drawn. Bank drafts, signed by the licensee, will be accepted.

~~4.20(1)~~ A retail alcohol licensed establishment which tenders the division one insufficient funds bank draft for the purchase of alcoholic liquor will lose its bank draft privilege for 90 days from the date the establishment pays the division even though the division does not suspend the liquor license because the establishment paid the division within the 10-day demand period. A retail alcohol licensed establishment which tenders the division more than one insufficient funds bank draft for the purchase of alcoholic liquor will lose its bank draft privilege for 180 days from the date the establishment pays the division even though the division does not suspend the liquor license because the establishment paid the division within the 10-day demand period.

During the period that a licensee may not tender bank drafts to the division in payment for alcoholic liquor, the division may accept from the licensee: a money order payable to the division for the amount of the purchase, a bank cashier's check signed by a bank official and made payable to the division for the amount of the purchase, or the licensee's personal or business check made payable to the division for the amount of the purchase which has been certified by the bank on which the check is drawn.

~~4.20(2)~~ The division may collect from the licensee a \$10 ~~\$25~~ fee for each dishonored bank draft tendered to the division by a licensee for the purchase of alcoholic beverages.

~~4.20(3)~~ The division may require, at the discretion of the administrator, that a licensee submit a letter of credit in a reasonable amount to be determined by the administrator for future purchases of alcoholic liquor from the division, when a licensee tenders to the division a bank draft which is subsequently dishonored by the bank if the licensee fails to satisfy the obligation within ten days after service of notice of nonpayment and penalty.

This rule is intended to implement Iowa Code sections 123.4 and 123.24.

Strike rule ~~185—4.20(123)~~ and replace with the following:

**701—1000.28(123) Dishonored payment for alcoholic liquor.**

**1000.28(1)** If a class “E” retail alcohol licensee tenders payment for alcoholic liquor which is subsequently dishonored, the licensee will enter a certified funds status for a duration determined by the <sup>13</sup>

director. During the certified funds status period, the licensee will tender a bank draft in exact payment in advance of their alcoholic liquor delivery.

**1000.28(2)** The department may collect from the licensee a \$25 fee for each dishonored payment for the purchase of alcoholic liquor.

**1000.28(3)** Any class “E” retail alcohol licensee that is enrolled in automatic license renewal and tenders payment for alcoholic liquor which is subsequently dishonored will be unenrolled from automatic license renewal.

This rule is intended to implement Iowa Code sections 123.4, 123.24, and 123.35.

~~185—4.21(123) Where retailers must purchase wine. Rescinded.~~

~~185—4.22(123) Liquor on licensed premises. Rescinded.~~

~~185—4.23(123) Liquor on unlicensed places. Liquor may be kept and consumed but not sold on unlicensed places under the following conditions:~~

~~4.23(1) Liquor may be kept and consumed in a private home at any time.~~

~~4.23(2) Liquor may be kept and consumed, by the guests or residents, in the residential or sleeping quarters of a hotel or motel at any time. This is considered as an extension of the private home.~~

~~4.23(3) Liquor may be consumed at a private social gathering in a private place at any time.~~

~~4.23(4) A private place is a location which meets all of the following criteria:~~

~~a. One to which the general public does not have access at the time the liquor is kept, dispensed or consumed; one at which the attendees are limited to the bona fide social hosts and invited guests.~~

~~b. One which is not of a commercial nature at the time the liquor is consumed or dispensed at the location.~~

~~c. One where goods or services are neither sold nor purchased at the time the liquor is consumed or dispensed at the location.~~

~~d. One where the use of the location was obtained without charges or rent or any other thing of value was exchanged for its use.~~

~~e. One which is not a licensed premises.~~

~~f. One where no admission fees or other kinds of entrance fees, fare, ticket, donation or charges are made or are required of the invited guests to enter the location.~~

~~This rule is intended to implement Iowa Code section 123.95.~~

~~185—4.24(123) Alcoholic liquor and wine on beer permit premises. Rescinded ARC 3928C, IAB 8/1/18, effective 9/5/18.~~

~~185—4.25(123)701—1000.9(123) Age requirements. Persons 21 years of age or older may hold a retail alcohol license, wine permit, or beer permit. Persons 16 years of age and older may sell alcoholic beverages in off-premises establishments.~~

~~This rule is intended to implement Iowa Code sections 123.30 and 123.49.~~

~~185—4.26(123)701—1000.15(123) Timely filed status.~~

~~4.26(1)1000.15(1) In addition to the requirements which may be imposed by a local authority upon the holder of a retail alcohol license to obtain timely filed status of a renewal application, the ~~division~~ department may grant timely filed status if the applicant complies with the following conditions:~~

~~a. The applicant submits a completed application with the local authority or the ~~division~~ department as required by applicable law.~~

~~b. ~~A~~The applicant submits a current dram-shop liability certificate by the license expiration date has been endorsed by the insurance company if proof of dram-shop liability is required as a condition precedent to the issuance of the license.~~

~~c. The applicant pays the appropriate license fee in full as required by applicable law.~~

d. A bond has been certified by the carrier if a bond is required as a condition precedent to the issuance of the license under applicable law.

~~4.26(2)~~1000.15(2) Timely filed status allows the holder of the license or permit to continue to operate under a license after its expiration and until the local authority and the ~~division~~ department have finally determined whether the license should be issued. If the application for the license is denied, timely filed status continues until the last day for seeking judicial review of the ~~division's~~ department's action.

~~4.26(3)~~ An applicant for a new retail alcohol license may not sell alcoholic liquor, wine or beer in the proposed establishment until a license has been granted by the division.

This rule is intended to implement Iowa Code sections 123.3, 123.32, 123.35 and 17A.18.

~~185—4.27(123)~~ **Effect of suspension.** Subject to the right to convey a suspended establishment under Iowa Code section 123.39, no beer, wine, or liquor can be sold or consumed in an establishment during a suspension period. An establishment may be open during a suspension period to conduct lawful business other than the sale of liquor, wine, and beer as long as no liquor, wine, or beer is sold or consumed during the suspension period.

This rule is intended to implement Iowa Code section ~~123.39~~. Rescind (moving to 4.15)

~~185—4.28(123)~~701—1000.11(123) **Use of licensed establishment during hours alcoholic beverages cannot be consumed.** No one, including a retail alcohol licensee and the licensee's employees, can consume alcoholic beverages in their licensed establishment during hours which alcoholic beverages cannot be sold. An establishment covered by a retail alcohol license ~~licensed establishment~~ can may be used as a restaurant or for any other lawful purpose during the hours which alcoholic beverages ~~cannot~~ are not allowed to be sold, dispensed, or consumed ~~so as long as alcoholic beverages are not consumed during these hours.~~

This rule is intended to implement Iowa Code section 123.49.

~~185—4.29~~ Rescinded, effective 7/1/85.

~~185—4.30(123)~~ **Persons producing fuel alcohol.** Persons producing fuel alcohol for their own use or to be sold commercially do not have to obtain a license or permit from the division.

This rule is intended to implement Iowa Code sections ~~123.4~~ and ~~123.41~~.

~~185—4.31(123)~~ **Storage of beer.** Rescinded.

~~185—4.32(123)~~701—1000.24(123) **Delivery of alcoholic liquor.** Individuals ~~A person~~ who ~~do~~ does not work for ~~this~~ the ~~division~~ department may operate a delivery service in which they ~~will~~ charge class "E" retail alcohol licenses a fee for picking up ~~their~~ the ~~licensee's~~ licensee's alcoholic liquor orders at ~~this~~ the ~~division's~~ department's ~~liquor stores~~ warehouse and delivering ~~it~~ the ~~orders~~ to ~~their establishments~~ the licensee's licensed premises.

This rule is intended to implement Iowa Code sections 123.4 and ~~123.24(10)~~ 123.10(10).

~~185—4.33(123)~~ **Delivery of beer and wine.** Rescinded.

~~185—4.34(123)~~701—1000.4(123) **Determination of population.** Decennial Censuses and Special Censuses done by the U.S. Census Bureau are recognized as being the official population of a town for the purpose of deciding the price of licenses in that town, but estimates done by the U.S. Census Bureau cannot be viewed as being the official population when deciding the price of licenses.

This rule is intended to implement Iowa Code subsection 123.10(11).

~~185—4.35(123)~~701—1000.10(123) **Minors** ~~Persons under the legal age in licensed establishments.~~

~~Because Iowa law does not prohibit minors from being in licensed establishments, a minor can~~ A person under 21 years of age may be in a licensed establishment if the local authority does not have a local ordinance prohibiting minors said persons from being in licensed establishments in its jurisdiction.

This rule is intended to implement Iowa Code ~~subsection 123.21(5)~~ subsections 123.3(28) and 123.10(5).

~~185—4.36(123)701—1000.26(123)~~ **Sale of alcoholic beverages stock when licensee sells business.**

When a retail alcohol licensee goes out of business, the licensee may sell the licensee's stock of alcoholic beverages to the person who is going to operate a licensed establishment in the same location.

This rule is intended to implement Iowa Code subsection 123.10.

~~185—4.37(123)~~ **Business as usual on election days.** Rescinded.

~~185—4.38(123)~~ **Sunday sale of wine.** Rescinded.

~~185—4.39(123)~~ **Intoxication notice.** Rescinded IAB 8/18/93, effective 7/29/93.

~~185—4.40(123)~~ **Warehousing of beer and wine.** A person holding a class "A" wine permit or a class "A" beer permit shall warehouse their wine or beer inventory within the state of Iowa. A warehouse of a person holding a class "A" wine permit or a class "A" beer permit shall be considered a licensed premises.

This rule is intended to implement Iowa Code sections 123.127 and 123.175.

~~185—4.41(123)701—1000.23(123)~~ **Vending and self-service machines to dispense alcoholic beverages prohibited.**

1000.23(1) Vending machines. A retail alcohol licensee shall ~~is not allowed to~~ install or permit the installation of vending machines on the licensed premises for the purpose of selling, dispensing, or serving alcoholic beverages. A vending machine is defined as a slug, coin, currency, or credit card operated mechanical device used for dispensing merchandise, including single cans of beer or other alcoholic beverages, and includes but is not limited to a mechanical device operated by remote control and used for dispensing single cans of beer or other alcoholic beverages. A vending machine is not a unit installed in individual hotel or motel rooms used for the storage of alcoholic beverages and intended for the personal use of hotel or motel guests within the privacy of the guests' rooms or a self-service machine registered and used consistent with this rule.

1000.23(2) Self-service machines. Retail alcohol licensees may utilize a self-service machine to dispense beer or wine as authorized under the licensee's retail alcohol license. Self-service machines are only authorized to operate on an approved retail alcohol licensed premises and shall not be operated under a catering privilege. For the purposes of this rule, "self-service machine" means any mechanical device capable of dispensing a preprogrammed amount of wine or beer, or both, directly to a consumer in exchange for a service card, wristband, or other token activated by the licensee and provided to the consumer.

a. A retail alcohol licensee seeking to use a self-service machine must register the machine with the department in a manner determined by the director at least thirty days prior to the date the licensee intends to begin use of the machine. The director will review the registration for compliance with the requirements conditions of this rule and approve or disapprove the use of the self-service machine. Licensee must submit a new registration prior to implementing any change to the operational plan or capacity of the device. No self-service machine may be used without approval by the director.

b. The requirements conditions for a retail alcohol licensee to use self-service machines to dispense beer or wine are as follows:

- (1) At the time of sale, the retail alcohol licensee, or licensee's employees, must determine the consumer



is of legal age, not intoxicated, or simulating intoxication.

- (2) During operation, the retail alcohol licensee must adequately monitor the self-service machine so as to prevent the sale or service of beer or wine to persons that are under legal drinking age or are intoxicated or simulating intoxication.
- (3) The sale of beer or wine, or both, and the corresponding activation of the service card, wristband, or other token to operate a self-service machine must be conducted in-person by the licensee directly with the consumer and cannot be automated at the machine. This requirement condition includes reactivation of an already-issued service card, wristband, or other token for further use by a consumer.
- (4) A self-service machine must not dispense a serving of more than sixty-four ounces of beer or twenty-four ounces of wine before reactivation of a service card, wristband, or other token is required acquired by the licensee.
- (5) A self-service machine must be programmed to automatically deactivate the service card, wristbands, or other token after the programmed amount of beer or wine purchased by the consumer has been dispensed.
- (6) Service cards, wristbands, or other tokens must be deactivated at the end of each business day. For purposes of this rule, a “business day” means 6:00 a.m. until 2:00 a.m. the following calendar day.
- (7) A licensee, or licensee’s employees, must have the ability to deactivate a self-service machine and all associated service cards, wristbands, or other tokens remotely at all times.

This rule is intended to implement Iowa Code section 123.49.

DRAFT

CHAPTER ~~5~~ 1000  
ALCOHOL LICENSE AND PERMIT DIVISION  
[Ch 5, IAC 7/1/75 renumbered Ch 6,  
IAC 3/7/79] [Prior to 10/8/86, Beer and  
Liquor Control Department [150]]

~~185—5.1(123)701—1000.18(123)~~ **Manufacture and sale of native wine.** Manufacturers of native wine as defined in Iowa Code 123.3(36) may sell, keep or offer for sale and deliver their native wine subject to the following ~~regulations and restrictions~~ conditions.

~~5.1(1)1000.18(1)~~ *Class “A” native wine permit.* A manufacturer of native wine must display the original or a copy of its class “A” native wine permit in each of its native wineries and in each of its retail establishments. A manufacturer of native wine must register its retail establishment on forms or systems provided by the ~~division~~ department.

~~5.1(2)1000.18(2)~~ *Monthly combined wine production and wine gallonage tax report.* A monthly report is ~~required~~ showing the amount of wine on hand at the beginning of the month, the amount produced, the amount sold, the amount of wine gallonage tax due, and any other information requested ~~is to be filed with the department~~. Report forms ~~shall will~~ be furnished by the ~~division~~ department. A manufacturer of native wine ~~shall must~~ submit a report along with any wine gallonage tax payment to the ~~division’s department’s~~ licensing system by the tenth of each month for the preceding month’s business. Reports and wine gallonage tax payments submitted by the tenth of each month for the preceding month ~~shall will~~ be considered timely. This report must be submitted for each month even if no wine sales were made during the month.

This rule is intended to implement Iowa Code sections 123.4, 123.176, and 123.183.

~~185—5.2(123)701—1000.17(123)~~ **Production of a native distillery definitions.**

~~5.2(1)~~ A native distillery is a business as defined in Iowa Code section 123.3(35).

~~5.2(2)~~ *Definitions:*

*“Native distilled spirits”* means an alcoholic beverage as defined in Iowa Code section 123.3(34).

*“Operating still”* means a still that is registered with the Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 CFR 19.75(b) in effect as of April 1, 2023, and is actively used to manufacture spirits.

*“Proof gallon”* means a United States gallon of proof spirits, or the alcoholic equivalent thereof, as defined by the Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 CFR 30.11 in effect as of April 1, 2023.

This rule is intended to implement Iowa Code sections ~~123.3(29), 123.3(35)–123.30(3)“e”(3), 123.43 and 123.43A.~~

[~~ARC 3928C~~, IAB 8/1/18, effective 9/5/18]

~~185—5.3(123) Licensed manufacturers and wholesalers.~~ Rescinded.

~~185—5.4(123) Investigation before issuing license or permit.~~ Rescinded.

~~185—5.5(123) Eligibility for beer and wine wholesalers licenses.~~ Rescinded IAB 5/15/91, effective 6/19/91.

~~185—5.6(123) Living quarters permit.~~ Rescinded.

~~185—5.7(123)701—1000.13(123)~~ **Change of ownership of a licensed premises, new license or permit required.**

~~5.7(1)1000.13(1)~~ A new license or permit and a new bond and a new dramshop policy, as applicable, must needs to be obtained whenever one of the following occurs:

- a. When a business is sold or leased to another person
- b. When a licensee or permittee changes to another form of business, such as: sole proprietorship to a corporation; a corporation to a sole proprietorship; a sole proprietorship to a partnership; a partnership to a sole proprietorship; a partnership to a corporation; or a corporation to a partnership.
- c. When a partner leaves a partnership or when a new partner is added to a partnership.
- d. When a corporation name is changed due to a merger or is voluntarily changed by its owners.
- e. Each time an entity obtains a seasonal or 5- or 14-day license or permit.
- f. When a receiver takes over the operation of an establishment.

~~5.7(2)~~ **1000.13(2)** A new license or permit is not required ~~necessary~~:

- a. When only the trade name of the business is changed.
- b. When the stock of a corporation holding a license or permit is sold. ~~A letter to the division listing the~~ The new owner or owners and the amount of stock held by each is required needs to be submitted to the department electronically or in a manner prescribed by the director.
- c. When a name of a licensee or permittee is changed by marriage, divorce, or other legal proceeding. ~~A letter requesting~~ Proof of the legal name change is required needs to be submitted to the department electronically or in a manner prescribed by the director.
- d. ~~When a license or permit is transferred to another location within the jurisdiction of the local authority as allowed by rule 185—4.18(123).~~¶

This rule is intended to implement Iowa Code sections 123.4, 123.10, 123.31 and 123.49.

~~185—5.8(123)~~ **701—1000.14(123) Dramshop liability insurance requirements.** For the purpose of providing proof of financial responsibility, as required under the provisions of Iowa Code section 123.92, a liability insurance policy shall meet the following requirements.

~~5.8(1)~~ **1000.14(1) Requirements**

a. Proof of coverage - Current certificate required. The dramshop liability certificate of insurance shall must be issued by a company holding a current certificate of authority from the Iowa insurance commissioner authorizing the company to issue dramshop liability insurance in Iowa ~~or issued under the authority and requirements of Iowa Code sections 515.120 and 515.122. The dramshop policy shall take effect the day the license takes effect and shall continue until the expiration date of the license. A new dramshop liability certificate of insurance shall must be provided in the manner designated by the director each time the ~~division~~ department issues a new license. The dramshop liability certificate of insurance shall must contain the following information:~~

1. ~~¶~~ The name of the insurance provider.;
2. ~~¶~~ The policy number; the name and address of the insured.;
3. The policy effective dates.
4. ~~¶~~ The license number of the insured, if applicable; and the policy effective dates. Upon request, an insurance company or an insured shall provide to the division a duplicate original of the policy and all pertinent endorsements.

b. Dates of coverage.

1. If dramshop liability insurance coverage is required as a condition of the license under Iowa Code section 123.92, the applicant and/or licensee must have and maintain dramshop liability insurance that covers the entire license term. ¶
2. If an applicant and/or licensee has proof of a dramshop liability insurance policy that does not cover the entire license term, the applicant and/or licensee will be required to provide, prior the policy's expiration date, proof the policy has been renewed and coverage will continue, or proof a new policy meeting the necessary requirements has been obtained. ¶

c. Electronic attestation. The applicant and/or licensee must agree as a condition of license issuance that he or she has read and will abide by all of the dramshop liability insurance requirements set forth in Iowa Code chapter 123 and this rule. The applicant and/or licensee understands that failure to adhere to these rules means he or she no longer possesses the statutory requirement for licensure and their license may be suspended or canceled. The burden is upon the applicant and/or licensee to ensure that the

department has on file valid proof of dramshop liability insurance.

*d. Electronic verification/endorsement by an authorized insurance representative.* An authorized representative of the insurance carrier providing dramshop liability insurance for the applicant and/or licensee must electronically register with the department. The insurer must electronically provide verification of coverage and notice of cancellation or expiration in accordance with the Iowa Code and this rule. Upon request, an insurance company or an insured must provide a duplicate original of the policy and all pertinent endorsements.

~~5.8(2)~~ **1000.14(2)** *Minimum coverage required.* The dramshop liability insurance policy shall ~~must~~ provide the following minimum liability coverage, exclusive in interests and cost of action, per occurrence:

- a. Fifty thousand dollars for bodily injury to or death of one person in each claim or occurrence.
- b. One hundred thousand dollars for bodily injury to or death of two or more persons in each occurrence.
- c. Twenty-five thousand dollars for loss of means of support of any one person in each occurrence.
- d. Fifty thousand dollars for loss of means of support of two or more persons in each occurrence.

~~5.8(3)~~ **1000.14(3)** *Permitted policies.* All dramshop policies issued under this rule shall ~~must~~ be occurrence-based policies, not claims-made-based policies.

a. *Claims-made-based policies.* Claims-made-based policies provide liability coverage only if a written claim is made during the policy period, or any applicable extended reporting period.

b. *Occurrence-based policies.* Occurrence-based policies provide liability coverage only for injuries or damages that occur during the policy period regardless of the number of written claims made.

~~5.8(4)~~ **1000.14(4)** *Cancellation.* An insurance company or an insured may cancel a liability policy by giving a minimum of 30 days' prior written notice to the division of the party's intent to cancel the liability policy. The 30-day period shall begin on the date that the division receives the notice of cancellation. The party seeking to cancel a liability policy shall mail written notice of such cancellation to the division in Ankeny, Iowa, by certified mail, or other method deemed acceptable by the division, and shall mail a copy of the notice of cancellation to the licensee at that party's post office address. The notice of cancellation shall contain the following: the name of the party to whom the copy of the notice of cancellation was mailed, the address to which the copy of the notice of cancellation was sent, the date on which the notice of cancellation was mailed, the date the liability policy is being canceled, and the retail alcohol license number of the licensee to be affected by such cancellation.

~~5.8(5)~~ **1000.14(4)** *Civil tort liability.* Subject to the ordinary or customary exclusions usually found in a policy of dramshop liability insurance, the policy shall ~~must~~ contain coverage to insure against civil tort liability of the insured, created under Iowa Code sections 123.92, 123.93 and 123.94, as those sections now exist or may hereafter be amended.

~~5.8(6)~~ **1000.14(4)** *Proof of financial responsibility.* A licensee shall be deemed to have furnished proof of financial responsibility as contemplated under the provisions of Iowa Code sections 123.92, 123.93, and 123.94 when the licensee has filed with the division at its offices in Ankeny, Iowa, a properly executed form as described by subrule 5.8(1), or by other method deemed acceptable by the division.

— ~~5.8(7)~~ **1000.14(4)** *Signature required.* Copies of the form described above shall not be deemed properly executed unless the authorized company representative executing the same shall first have filed with the division a sample of the representative's signature. Electronic and facsimile signatures will be acceptable.

— ~~5.8(8)~~ **1000.14(4)** *Single insurance policies for multiple establishments.* Any licensee that holds multiple licenses throughout the state may purchase a single dramshop insurance policy for all locations provided that:

— a. The single dramshop insurance policy provides at least the minimum level of coverage required under this rule for each and every location covered by the policy.

— b. All other provisions of this rule are met by the single dramshop insurance policy.

~~5.8(9)~~ **1000.14(5)** *Assault and battery policy requirement.* Any dramshop insurance policy issued under this rule shall ~~must~~ not contain an exclusionary clause for assault and battery or intentional force with regard to:

- a. Employees, agents or any person acting as an agent of the establishment.
- b. All patrons or visitors to the establishment.

1000.14(6) Single insurance policies for multiple establishments. Any licensee that holds multiple licenses throughout the state may purchase a single dramshop insurance policy for all locations provided that:

a. The single dramshop insurance policy provides at least the minimum level of coverage required under this rule for each and every location covered by the policy.

b. All other provisions of this rule are met by the single dramshop insurance policy.

1000.14(7) Change of coverage by licensee. A licensee may change its dramshop liability insurer at any time, but the duty is upon the licensee to provide proof of its new insurer as set out in this rule. Additionally, the licensee must maintain dramshop liability insurance coverage with no gaps in its coverage.

1000.14(8) Cancellation of coverage by insurer.

a. An insurance company may cancel a dramshop liability insurance policy by giving a minimum of 30 days' prior notice in writing or electronically to the department of the party's intent to cancel the policy. The 30-day period will begin on the date that the notice of cancellation is received by the department. The dramshop insurance company must also mail a copy of the notice of cancellation to its insured licensee.¶

b. The insurance company's notice of cancellation must contain the following information:¶

1. The name of the party to whom the copy of the notice of cancellation was mailed and, if different, the name of the affected licensee;

2. The address to which the copy of the notice of cancellation was sent and, if different, the address of the affected licensee;

3. The date on which the notice of cancellation was mailed;

4. The date the dramshop liability insurance policy is being canceled;

5. The dramshop liability insurance policy number;

6. The affected licensee's retail alcohol license number; and

7. The reason for canceling the dramshop liability insurance policy.

1000.14(9) Violations. Failure to comply with this rule may subject the applicant and/or licensee to the penalty provisions provided in Iowa Code chapter 123, including, but not limited to, denial, suspension, or revocation.

This rule is intended to implement Iowa Code sections 123.92, 123.93 and 123.94.

~~185—5.9(123)701—1000.16(123)~~ **Surety bond requirements.** Each surety bond shall must meet the following requirements~~conditions~~.

~~5.9(1)1000.16(1)~~ **Certificate of authority.** The surety bond ~~is~~ shall be issued by a company holding a current certificate of authority from the commissioner of insurance authorizing the company to issue bonds in Iowa.

~~5.9(2)1000.16(2)~~ **Forfeiture of bond.** The surety bond shall contain a provision for the principal and surety to consent to the forfeiture of the principal sum of the bond in the event of revocation of the license or permit by the violation of any Iowa Code provision which requires forfeiture of the bond.

~~5.9(3)1000.16(3)~~ **Cancellation.** A surety company or a principal may cancel a bond by giving the department a minimum of 30 days' written 30-day written notice to the division of the party's intent to cancel the bond. The 30-day period shall commence begins on the date that the division department receives the notice of cancellation.

a. The party seeking to cancel a bond shall must submit written notice of such cancellation to the division department in Ankeny, Iowa, and further shall submit a copy of the notice of cancellation to the other party.

b. The notice of cancellation shall must contain the following:

1. ~~the~~ The name of the party to whom the copy of the notice of cancellation was submitted;

2. ~~the~~ The date on which the notice of cancellation was submitted;

3. ~~the~~ The date the bond is being canceled; and

4. The surety bond number, and

- ~~5. the The affected licensee's or permittee's license or permit number of the licensee or permittee to be affected by such cancellation.~~

~~5.9(4)1000.16(4) Proof of bond.~~ A licensee or permittee ~~shall be deemed~~ is considered to have furnished a surety bond when the licensee or permittee has:

~~a. Filed with the division department a form prescribed by the division department containing the following:~~

- ~~1. the The name of the bond provider; 2. ¶~~
- ~~2. the The city and state where the bond provider is located; 2. ¶~~
- ~~3. the The bond number, the names of the principal, and the city and state where the principal is located; 2. ¶~~
- ~~4. the The amount of the bond; 2. ¶~~
- ~~5. the The type of license or permit guaranteed by the bond; 2. ¶~~
- ~~6. the The effective date of the bond; 2. ¶~~
- ~~7. signatures Signatures of the principal and the bond provider; 2. ¶~~
- ~~8. and And any other information the administrator director of the division department may require, or ¶~~

~~b. Met this requirement by any other method deemed acceptable by the administrator director of the division department or a designee.~~

~~5.9(5) Alternate for surety bond.~~ Rescinded IAB 5/15/91, effective 6/19/91.

~~5.9(6) Two bonds.~~ Rescinded IAB 5/15/91, effective 6/19/91.

~~5.9(7) Class "E" bond.~~ Rescinded IAB 10/31/01, effective 12/5/01.

This rule is intended to implement Iowa Code sections 123.30, 123.50, 123.127, and 123.175. [~~ARC 3928C, IAB 8/1/18, effective 9/5/18~~]

~~185—5.10(123) Combination wine licenses and permits.~~ Rescinded IAB 5/19/99, effective 6/23/99.

~~185—5.11(123) Fees and surcharge enacted by the legislature for combination wine licenses and permits.~~ Rescinded IAB 5/19/99, effective 6/23/99.

~~185—5.12(123) Distribution of fees and the surcharge enacted by the legislature for combination wine licenses and permits.~~ Rescinded IAB 5/19/99, effective 6/23/99.

~~185—5.13(123) Bonds for combination wine and beer permits.~~ Rescinded IAB 5/19/99, effective 6/23/99.

~~185—5.14(123) Effect on retail and wholesale bottled wine licenses and permits.~~ Rescinded IAB 5/19/99, effective 6/23/99.

~~185—5.15(123) Refunds for fees for wholesale and retail bottled wine licenses.~~ Rescinded IAB 5/19/99, effective 6/23/99.

~~185—5.16(123) Liquor license surcharge enacted by the legislature.~~ Rescinded IAB 5/19/99, effective 6/23/99.

~~185—5.17(123) Calculating liquor license cost with Sunday Sales Privilege and surcharge enacted by the legislature.~~ Rescinded IAB 5/19/99, effective 6/23/99.

~~185—5.18(123) Surcharge on seasonal licenses.~~ Rescinded IAB 5/19/99, effective 6/23/99.

~~185—5.19(123) Surcharge refund.~~ Rescinded IAB 5/19/99, effective 6/23/99.

CHAPTER 8 1001

ALCOHOL PRODUCT MANAGEMENT TRANSPORTATION AND WAREHOUSE  
WAREHOUSING

[Ch 8, IAC 7/1/75 rescinded 3/7/79;  
see 5.8, 5.9] [Prior to 10/8/86, Beer and  
Liquor Control Department[150]]

**185—8.1(123)701—1001.1(123) Definitions.**

*“Administrator”* means the administrator of the alcoholic beverages division of the department of commerce.

*“Category”* means the classification of an alcoholic liquor product, such as rum, vodka, or whiskey.

*“Commission”* means the alcoholic beverages commission established in Iowa Code chapter 123.

*“Delist”* means the removal of products from the ~~division’s department’s~~ product inventory.

*“Director”* means the director of the department of revenue or the director’s designee.

*“Division”* means the alcoholic beverages division of the department of commerce.

*“Department”* means the Iowa department of revenue.

*“Product”* means stock keeping units of “alcoholic liquor” or “native distilled spirits” as defined in Iowa Code chapter 123.

*“Supplier”* means a manufacturer, distiller, or importer of alcoholic liquors or native distilled spirits shipping, selling, or having such alcoholic beverages brought into this state for resale by the ~~division~~ department.

**185—8.2(123)701—1001.2(123) Listing classifications.** Each product available for sale by the ~~division~~ department shall be assigned to one of the following listing classifications. Suppliers may indicate their preferred listing classification; however, final determination shall will be made by the ~~administrator~~ or the ~~administrator’s designee~~ director.

**8.2(1)1001.2(1) Permanent.** Products with a permanent listing shall will be available for sale by the ~~division~~ department on an ongoing basis, unless otherwise delisted or temporarily out of stock.

**8.2(2)1001.2(2) Temporary.** Temporary listings shall will have a duration determined by the ~~administrator~~ or the ~~administrator’s designee~~ director; and the duration may be extended at the discretion of the ~~administrator~~ or the ~~administrator’s designee~~ director.

**8.2(3)1001.2(3) Size extension.** A supplier shall must submit a listing request product quote for each additional size of a product that is currently listed for sale. All listed sizes of the product should meet sales criteria established by the ~~administrator~~, or the ~~administrator’s designee~~ director; in order for a size extension listing request product quote to be approved as a permanent listing.

**8.2(4)1001.2(4) Special order.** Products that are not currently listed for sale by the ~~division~~ department may be purchased through a special order placed with the supplier of the product.

a. A request for a special order will be placed with the ~~division~~ department by a class “E” retail alcohol licensee. Special order requests shall may be submitted electronically or in a manner prescribed by the ~~administrator~~ or the ~~administrator’s designee~~ director. The ~~administrator~~, or the ~~administrator’s designee~~ director may reject a special order request if it is determined that the requested product is in violation of the requirements set out in subparagraphs 8.3(3) 1001.3(3) “a”(1) and 8.3(3) “a”(2).

b. If the ~~division~~ department accepts a special order request, the request shall will be forwarded on to the supplier of the product. The supplier may approve or deny the special order request.

c. All ~~special~~ Special order products shall may only be sold and distributed by the ~~division~~ department to class “E” retail alcohol licensees by the case ~~only~~.

d. Special order products are not eligible for return to the ~~division~~ department by a class “E” retail alcohol licensee without approval from the ~~administrator~~ or the ~~administrator’s designee~~ director.

**8.2(5)1001.2(5) Special order on hand.** Products that are frequently sold as special orders ~~but do not qualify for permanent listing~~ may be listed as special order on hand.

a. To be eligible for classification as a special order on-hand listing, a product must have been previously sold as a special order and meet sales criteria established by the ~~administrator or the administrator's designee~~ director.

b. Products that have been delisted ~~shall~~ are not be eligible to be moved from permanent listing to special order on-hand listing.

~~8.2(6)1001.2(6)~~ *Highly allocated.* Highly allocated products are products of a limited supply as determined by the supplier.

a. Highly allocated products may be sold via a lottery system as deemed necessary by the ~~administrator or the administrator's designee~~ director.

b. Highly allocated products ~~shall not be~~ are not available for sale as special orders.

~~8.2(7)1001.2(7)~~ *Quantity limitations.* Quantities of listed products available for purchase by class "E" retail alcohol licensees may be limited at the ~~administrator's, or the administrator's designee's,~~ director's discretion.

~~185—8.3(123)701—1001.3(123)~~ **Listing Product quote listing requests.** The supplier of a product to be sold by the ~~division department~~ shall must submit a ~~listing request product quote~~ for consideration by the ~~administrator or the administrator's designee~~ director.

~~8.3(1)1001.3(1)~~ *Submitting a listing request product quote.* ~~Listing requests Product quotes shall~~ must be submitted electronically or in a manner prescribed by the ~~administrator or the administrator's designee~~ director.

~~8.3(2)1001.3(2)~~ *Listing request Product quote requirements.*

a. A ~~complete listing request product quote shall contain~~ contains the following information:

(1) A control state code number for the product issued by the National Alcohol Beverage Control Association.

(2) The supplier's f.o.b. cost per case. The case price ~~shall needs to~~ be evenly divisible by the number of bottles in the case. The supplier ~~shall determine~~ determines the number of bottles that ~~constitute form~~ a case for the product.

(3) The product's case quantity size and standard of fill.

(4) An image of the product.

(5) A brief description of the product.

(6) The weights and dimensions of the product container, case, and pallet.

(7) The product's 14-digit shipping container code.

(8) The product's universal product code.

(9) Any other information ~~required~~ deemed necessary by the ~~administrator or the administrator's designee~~ director.

b. The ~~administrator, or the administrator's designee,~~ director may require a supplier to conduct a listing presentation for ~~new products that have not been previously~~ to become listed.

~~8.3(3)1001.3(3)~~ *Decisions.*

a. The criteria used to determine whether a ~~listing request product quote shall~~ may be approved or denied ~~shall will~~ include, but not be limited to, the following:

(1) Whether the product violates the code of responsible practices established by the Distilled Spirits Council of the United States.

(2) The reasonable potential of the product to unduly jeopardize the welfare, health, peace, morals, or safety of the people of the state.

b. The ~~administrator, or the administrator's designee,~~ director shall approve or deny a product quote listing request not more than 20 business days from the date the product quote listing request was submitted or listing presentation was held, as applicable. Suppliers ~~shall~~ will be notified of the decision in writing delivered electronically or in a manner prescribed by the ~~administrator or the administrator's designee~~ director.

~~8.3(4)1001.3(4)~~ *Appeals. Appeal to the director.*

a. ~~Appeal to administrator~~ director.



(1) ~~a.~~ A supplier may appeal the denial of a listing request product quote by the administrator's designee to the administrator director by filing a A notice of appeal needs to be filed within 30 calendar days of the date of denial.

(2) ~~b.~~ A notice of appeal ~~shall~~ must be in writing and ~~must~~ shall specify the specific findings or conclusions to which exception is taken, the relief sought, and the grounds for relief.

(3) ~~c.~~ A notice of appeal ~~shall~~ will be considered filed at the time it is received by the administrator director.

(4) ~~d.~~ The administrator director shall affirm, reverse, or modify the denial of the listing request product quote and shall notify the supplier of the decision in writing.

~~e.~~ The director's decision makes up final agency action for the purposes of Iowa Code chapter 17A.

~~b.~~ *Appeal to commission.*

(1) If the administrator director denies a listing request or affirms the denial of a listing request by the administrator's designee, the supplier may appeal the administrator's director's decision to the commission by filing a A notice of appeal needs to be filed with the commission within 30 calendar days of the date of the administrator's director's decision.

(2) A notice of appeal shall must be in writing and shall specify the specific findings or conclusions to which exception is taken, the relief sought, and the grounds for relief.

(3) A notice of appeal shall must be considered filed at the time it is received by the commission.

(4) The commission shall have ~~has~~ discretion as to on whether to hear the appeal. If the commission chooses to hear the appeal, it shall will be heard at the next scheduled commission meeting or a special meeting called for by the commission chairperson, the administrator director, or at least three members of the commission.

(5) If the commission reverses the decision of the administrator director, the listing request shall will be approved.

(6) If the commission affirms the administrator's director's decision or chooses not to hear the appeal, the listing request shall will be denied.

(7) The commission's decision shall constitute makes up final agency action for the purposes of Iowa Code chapter 17A.

~~8.3(5)1001.3(5)~~ *Resubmission of a listing request product quote.* If a listing request for a product is denied, a new listing request for the product may be submitted by the supplier not less than three months after the denial date of the original listing request. If a product quote is denied, the supplier may submit a new request three months after the original request denial date.

~~8.3(6)1001.3(6)~~ *Moratorium.* The administrator, or the administrator's designee, director may implement a moratorium on new permanent listing requests product quotes and determine the duration period. The duration of the moratorium period shall be determined by the administrator or the administrator's designee. The administrator, or the administrator's designee, director may allow a supplier to trade out a permanently listed product for a new product during a moratorium period.

~~185—8.4(123)701—1001.4(123)~~ **Shipment of product to the division department.** Shipments of product intended for sale by the division department shall may only be made in accordance with this rule.

~~8.4(1)1001.4(1)~~ *Product shipments into the state.* Product shipments shall may only be made into the state of Iowa by suppliers.

~~8.4(2)1001.4(2)~~ *Product shipment locations.* Product shipments shall may only be made to a state warehouse or to receiving points designated by the administrator director.

~~8.4(3)1001.4(3)~~ *Pallet requirements.*

a. Products shipped to the division shall be The department will only accept products shipped on securely stretch-wrapped pallets that are in good repair. ~~The administrator, or the administrator's designee, may establish additional requirements as deemed necessary.~~

b. Products shipped to the division on slip sheets shall not be accepted by the division and shall be returned to the supplier. The department will not accept any products shipped on slip sheets. Suppliers

will be notified by the department to make arrangements to pick up product shipped on slip sheets.

*c. The department will not accept pallets that contain multiple product stock keeping units not separated by a pallet layer.*

*d. The director may establish additional requirements as deemed necessary.*

***8.4(4)1001.4(4) Case labeling requirements.***

*a. Each case of product shipped to the ~~division~~ department shall ~~must~~ include a case code label placed on an end panel of the case.*

*b. The case code label shall ~~needs to~~ contain the following information:*

*(1) The control state code number issued by the National Alcohol Beverage Control Association for the product.*

*(2) The product's universal product code and corresponding barcode.*

*(3) The 14-digit shipping container code and corresponding barcode. The shipping container code and barcode shall ~~needs to~~ meet the minimum requirements established by the American National Standards Institute and the International Organization for Standardization.*

*(4) Any other information ~~required~~ ~~deemed necessary~~ by the ~~administrator~~ or the ~~administrator's~~ ~~designee~~ director.*

***8.4(5)1001.4(5) Bottle deposit requirements.***

*a. All products intended for resale by the ~~division~~ department shall ~~must~~ meet the requirements of Iowa Code section 455C.5 and rule 567—107.3(455C). Products that do not meet the requirements will ~~shall~~ not be made available for sale until the requirements are met.*

*b. Suppliers may purchase bottle deposit refund stickers from the ~~division~~ department. The cost of the stickers to suppliers shall ~~not~~ ~~cannot~~ exceed the ~~division's~~ ~~department's~~ cost of producing and distributing the stickers.*

***8.4(6)1001.4(6) Special Product shipment special handling charges.*** Product shipments that do not meet the requirements of subrule ~~8.4(3)1001.4(3)~~, ~~8.4(4)1001.4(4)~~, or ~~8.4(5)1001.4(5)~~ shall ~~will~~ result in the assessment of special handling charges against the supplier, ~~in an~~ ~~The amount of charges may not~~ ~~to~~ exceed the ~~division's~~ ~~department's~~ actual cost to bring the shipments into compliance. The ~~division's~~ ~~department's~~ actual cost shall ~~be~~ ~~is~~ determined using the negotiated hourly rate of the third party the ~~division~~ ~~department~~ has contracted with for warehousing services.

**701—1001.5(123) Importation of product into the state for manufacturing purposes.** Shipments of product intended for manufacturing purposes may only be made in accordance with this rule.

**1001.5(1) Product shipments into the state.** Product shipments may only be made into the state of Iowa by suppliers with an appropriate certificate of compliance to manufacturers who have obtained prior approval from the director.

**1001.5(2) Product shipment locations.** Product shipments may only be made to a state warehouse or to receiving points designated by the director.

**1001.5(3) Record keeping.** All records related to the importation of product into the state will be maintained on the licensed premises for a period of three years and must be open to inspection pursuant to Iowa Code section 123.33. In accordance with Iowa Code sections 123.98 and 123.101, records will include all product received for each supplier, date received, and an accounting of disposition of all product received.

**185—8.5(123)701—1001.6(123) Inventory levels.** The ~~administrator~~, or the ~~administrator's~~ ~~designee~~, ~~director~~ shall ~~will~~ establish maximum and minimum inventory levels for each listed product. ~~The~~ ~~director~~ may ~~adjust~~ the ~~Maximum~~ ~~maximum~~ and minimum inventory levels ~~may be adjusted at the~~ ~~discretion of the administrator or the administrator's designee.~~

**8.5(1)1001.6(1) Purchase orders.** Suppliers shall submit purchase orders to the ~~division~~ ~~department~~ to maintain proper inventory levels. Purchase orders will be submitted electronically; or in a manner prescribed by the ~~administrator~~ or the ~~administrator's~~ ~~designee~~, ~~director~~ ~~as needed to maintain~~ appropriate inventory levels.

1001.6(2) Maximum inventory levels. Suppliers with products exceeding maximum inventory levels will be contacted by the department to pick up the excess inventory.

~~8.5(2)~~1001.6(3) Maximum inventory level exception. A supplier may request from the ~~division department~~ an exception to the established maximum inventory level for a product. Requests for a maximum inventory level exception ~~shall will~~ be submitted to the ~~division department~~ electronically or in a manner prescribed by the ~~administrator or the administrator's designee~~ director. The ~~administrator, or the administrator's designee,~~ shall approve or deny the request, and the supplier shall be notified of the decision in writing delivered either electronically or in a manner prescribed by the ~~administrator or the administrator's designee.~~ The director will approve or deny the request, and notify the supplier of the decision electronically, or in a manner prescribed by the director.

~~185—8.6(123)701—1001.7(123) Pricing.~~

~~8.6(1)~~1001.7(1) Permanent price changes. Suppliers may make permanent price changes to the case cost of products in any listing classification.

a. The frequency at which permanent price changes may be made ~~shall will~~ be determined by the ~~administrator or the administrator's designee~~ director.

b. Permanent price changes shall be submitted electronically, or in a manner prescribed by the ~~administrator or the administrator's designee~~ director, at least 20 business days prior to the effective date.

~~8.6(2)~~1001.7(2) Temporary price reductions. Suppliers may make temporary price reductions to the case cost of products with a permanent or temporary listing classification.

a. Products with a listing classification of special order, special order on hand, or highly allocated ~~shall are~~ not be eligible for temporary price reductions.

b. Temporary price reductions ~~shall will~~ become effective as determined by the ~~administrator or the administrator's designee~~ director.

c. Temporary price reductions ~~shall will~~ be submitted electronically, or in a manner prescribed by the ~~administrator or the administrator's designee~~ director, at least 20 business days prior to the effective date.

~~8.6(3)~~1001.7(3) Price lists. The ~~division department~~ shall publish a price list electronically on a monthly basis showing the price to be paid by class “E” retail alcohol licensees for each brand, variety, and category of product available for sale by the ~~division department~~. The price list ~~shall will~~ be published on the ~~division's department's~~ website at [shop.iowaabd.com](http://shop.iowaabd.com) and may be distributed to class “E” retail alcohol licensees as deemed necessary by the ~~administrator or the administrator's designee~~ director.

~~185—8.7(123)701—1001.8(123) Delisting.~~ Listed products that do not meet sales guidelines established by the ~~administrator, or the administrator's designee,~~ director may be delisted. The frequency of delisting ~~shall be is~~ determined by the ~~administrator or the administrator's designee~~ director.

~~8.7(1)~~1001.8(1) Notification. Suppliers of delisted products shall be notified of the decision in writing delivered electronically or in a manner prescribed by the ~~administrator or the administrator's designee.~~ The director must notify suppliers of the decision of delisted products. The decision will be notified in writing electronically or in a manner prescribed by the director.

~~8.7(2)~~1001.8(2) Appeals. Appeal to the director.

a. ~~Appeal to administrator~~ director.

(1) a. A supplier may appeal the delisting of a product by the ~~administrator's designee~~ to the ~~administrator~~ director, by filing a A notice of appeal needs to be filed within 30 calendar days of the date of delisting notification.

(2) b. A notice of appeal shall specify the ~~specifie~~ findings or conclusions to which exception is taken, the relief sought, and the grounds for relief.

(3) c. A notice of appeal shall be considered filed at the time it is received by the ~~administrator~~

director.

(4) ~~d.~~ The ~~administrator~~ director shall affirm, reverse, or modify the delisting and shall notify the supplier of the decision in writing.

e. The director's decision makes up final agency action for the purposes of Iowa Code chapter

17A.

*b. Appeal to commission.*

(1) ~~If the administrator~~ director delists a product, or if the administrator affirms a delisting by the administrator's designee, the supplier may appeal the administrator's ~~director's~~ decision to the commission by filing a A notice of appeal needs to be filed with the commission within 30 calendar days of the date of the administrator's ~~director's~~ decision.

(2) A notice of appeal shall specify the specific findings or conclusions to which exception is taken, the relief sought, and the grounds for relief.

(3) A notice of appeal shall must be considered filed at the time it is received by the commission.

(4) ~~The commission shall have~~ has discretion as to ~~on~~ whether to hear the appeal. If the commission chooses to hear the appeal, it shall will be heard at the next scheduled commission meeting or a special meeting called for by the commission chairperson, the administrator ~~director~~, or at least three members of the commission.

(5) If the commission reverses the decision of the administrator ~~director~~, the product shall will remain listed under terms established by the commission.

(6) ~~If the commission affirms the administrator's~~ director's decision, or chooses not to hear the appeal, the product shall be delisted.

(7) ~~The commission's decision shall constitute~~ makes up final agency action for the purposes of Iowa Code chapter 17A.

**8.7(3)1001.8(3)** *Removal of delisted products.*

a. Delisted products shall be removed from the ~~division's~~ department's warehouse by the supplier or by the supplier's agent or employee within a time frame established by the ~~administrator or the administrator's designee~~ director.

b. A supplier may authorize the ~~division~~ department to destroy a delisted product in lieu of removal of the product by the supplier from the ~~division's~~ department's warehouse.

~~c. New listing requests~~ product quotes submitted by a supplier shall will not be considered by the ~~division~~ department until all of the supplier's delisted product has been removed from the ~~division's~~ department's warehouse.¶

**8.7(4)1001.8(4)** *Resubmission of a delisted product for listing.* If a product in a permanent listing classification is delisted, a new ~~listing request~~ product quote for the product may be submitted not less than six months after the date the product was removed from the warehouse.

**185—8.8(123)701—1001.9(123)** **Barrel programs.** A supplier may offer a barrel program, allowing a class "E" retail alcohol licensee to purchase the bottled contents of a barrel-aged product along with the aging barrel.

**8.8(1)1001.9(1)** Barrel programs shall must be uniformly offered to all class "E" retail alcohol licensees.

**8.8(2)1001.9(2)** Suppliers may sample barrel-aged products pursuant to rule ~~185—16.8(123)701—~~ 1003.7(123).

**8.8(3)1001.9(3)** Barrel program products shall be classified as special orders.

**8.8(4)1001.9(4)** Products purchased as part of a barrel program shall must be sold and delivered to the ~~individual~~ class "E" retail alcohol licensee that placed the special order. Barrel program ~~special orders and products~~ shall must not be split between two or more class "E" retail alcohol licensees.

**8.8(5)1001.9(5)** Aging barrels sold in conjunction with a barrel program shall must bear conspicuous and substantial advertising matter.

**8.8(6)1001.9(6)** Bottles from a barrel program may bear customized labels.

**701—1001.10(123) Bailment system.** Suppliers are paid for their product once it is sold by the department to class “E” retail alcohol licensees.

**1002.10(1) Bailment agreement.** A supplier shall consent to the department’s bailment system by signing a bailment agreement prior to listing a product for sale in Iowa.

**1002.10(2) Bailment fee.** The department shall charge suppliers a bailment fee in the amount of \$1 per case of product sold, or in a corresponding rate for the portion of a case sold.

These rules are intended to implement Iowa Code sections 123.10(2), 123.10(3), 123.10(6), 123.10(10), and 123.22.

DRAFT

CHAPTER 9-1002  
PERSONAL IMPORTATION OF ALCOHOLIC LIQUOR, WINE, AND BEER  
BEVERAGES

**185—9.1(123)701—1002.1(123) Tax liability.**

~~a.~~ The division makes no judgment or decision regarding any tax liability resulting from the personal importation of alcoholic liquor, wine, or beer as provided in Iowa Code section 123.10, 123.22, 123.171, or 123.122, as applicable.

~~b.~~ The requester has the sole responsibility to ensure that all tax obligations to the department are met. Tax Worksheet 32-007 found at [revenue.iowa.gov/forms](http://revenue.iowa.gov/forms) must be accurately completed and sent to the department as instructed.

**185—9.2(123)701—1002.2(123) Personal importation in excess of the amounts provided—waiver.**

The administrator may provide for the issuance of a waiver for an individual of legal age desiring to import alcoholic liquor, wine, or beer in excess of the amounts provided in Iowa Code section 123.22, 123.171, or 123.122. The decision on whether the circumstances justify the issuance of a waiver shall be made at the discretion of the administrator upon consideration of all the relevant factors. Persons seeking a waiver to import alcohol pursuant to Iowa Code subsection 123.10(13) must submit a completed and accurate Personal Importation form provided at [revenue.iowa.gov/forms](http://revenue.iowa.gov/forms).

**9.2(1) Criteria.** The division may, in response to a completed request, issue a waiver, as applied to the circumstances of a specific situation if the division finds each of the following:

- ~~a.~~ The requester is an individual of legal age;
- ~~b.~~ The requester is an individual who was domiciled outside the state within one year of the request;
- ~~c.~~ The alcoholic liquor, wine, or beer ~~beverages~~ imported pursuant to the waiver shall be only for personal consumption in a private home or other private accommodation and only if it is not sold, exchanged, bartered, dispensed, or given in consideration of purchase for any property or services or in evasion of the requirements of Iowa Code chapter 123; and
- ~~d.~~ The alcoholic liquor, wine, or beer imported pursuant to the waiver shall be in unopened original containers.

**9.2(2)1002.2(1) Domicile.** Domicile, for the purposes of establishing when an individual is “domiciled outside the state,” shall be determined in accordance with rule 701—38.17(422) ~~701-300.17(422)~~.

**9.2(3) Request.** All requests for a waiver to import alcoholic liquor, wine, or beer in excess of the amount provided in Iowa Code section 123.22, 123.171, or 123.122 shall be submitted in writing by completing a request for import authorization form and returning it to the division, as instructed.

**9.2(4) Content of form.** A request for import authorization form shall be prescribed by the division and shall include the following information: the name, date of birth, and personal contact information of the requester; full residential history of the requester for the past three years without gaps; a statement of reasons that the requester believes will justify import authorization; the destination address for the imported alcoholic beverages; the name, date of birth, and personal contact information of the recipient of the alcoholic beverages, if different from that of the requester; a detailed inventory of the alcoholic beverages for which the requester seeks import authorization; and any other information the administrator may require.

**9.2(5) Burden of persuasion.** When a request is filed for a waiver pursuant to this rule, the burden of persuasion shall be on the requester to demonstrate by clear and convincing evidence that the division should exercise its discretion in the granting of the waiver.

**9.2(6) Notice.** The division shall acknowledge a request for a waiver upon receipt of a completed request for import authorization form.

**9.2(7)1002.2(2) Additional information.** Prior to granting or denying a request for a waiver, the ~~division~~ department may request additional information from the requester relative to the request and surrounding circumstances and may conduct an investigation as the director deems necessary to verify the accuracy of the information.

**9.2(8) Investigation.** The division may conduct an investigation as the administrator deems necessary to determine that the requester meets the criteria in subrule 9.2(1) or to verify the accuracy of the information provided by the requester.

**9.2(9)1002.2(3) Ruling.** A letter granting or denying a request for a waiver to import alcoholic

~~liquor, wine, or beer beverages~~ in excess of the amount provided in Iowa Code section 123.22, 123.171, or 123.122 shall be in writing and shall contain a description of the precise scope and duration of the waiver if one is issued.

~~9.2(10)1002.2(4)~~ *Duration of waiver.* A waiver issued pursuant to this rule shall allow only for the importation of the inventory of alcoholic beverages detailed on the request for import authorization form. If a waiver is granted, there is no automatic right to renewal.

~~9.2(11)1002.2(5)~~ *Public availability.* The ~~division department~~ shall maintain a record of all waivers granted or denied under this rule. ~~All rulings in response to requests for waivers shall be indexed and available to members of the public at the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021. W~~Waivers forms and rulings shall be open to the public; ~~containing~~ information that the ~~division department~~ is authorized or required to keep confidential shall be edited prior to public inspection.

~~9.2(12)1002.2(6)~~ *Cancellation.* A waiver issued by the ~~division department~~ pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice, the ~~division department~~ finds any of the following:

- a. The requester ~~of the waiver withheld~~ or misrepresented material facts relevant to the propriety or desirability of the waiver; or
- b. The recipient of the waiver ~~has failed to comply with any of the conditions contained in the waiver.~~

~~9.2(13)1002.2(7)~~ *Violations.* Violation of a condition in a waiver is equivalent to a violation of Iowa Code section 123.10, 123.22, 123.171, or 123.122, as applicable. The recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the applicable Iowa Code section.

~~9.2(14)1002.2(8)~~ *Defense.* After the ~~division department~~ grants a waiver under this rule, the waiver is a defense within its terms and the specific facts indicated therein for the recipient of the waiver in any proceedings in which the waiver in question is sought to be invoked.

~~9.2(15)1002.2(9)~~ *Appeals.* Granting or denying a request for a waiver is final agency action under Iowa Code chapter 17A.

These rules are intended to implement Iowa Code sections 123.10, 123.22, 123.59, ~~123.22~~123.122, and 123.171.

CHAPTER 14  
PRIVATE WINE SALES

[Prior to 10/8/86, Beer and Liquor Control Department[150]]

**185—14.1(123) Wine definition.** Wine means any beverage containing more than 5 percent, but not more than 17 percent, of alcohol by weight obtained by the fermentation of the natural sugar content of fruits or other agricultural products by excluding any product containing alcohol derived from malt or by the distillation process from grain cereal, molasses, or cactus. Any wines obtained by the process defined herein that contain more than 17 percent of alcohol by weight will be considered an alcoholic liquor.

This rule is intended to implement Iowa Code section 123.3(37).

**185—14.2(123) Bottle label requirements and registration.** All holders of a vintner's certificate of compliance must register with the division the labels on all wines they wish to distribute for sale in the state. Applications for label approval will be in letter form and will include a copy of the approved ATF Form 1649, along with the front and back label of the brand for which approval is being requested. No additional approval is required on size extensions unless there is a label change. No wines will be distributed for sales without prior label approval from the division. Requests for approval will be submitted to: The Alcoholic Beverages Division, 1918 S.E. Hulsizer, Ankeny, Iowa 50021, Attn: Products Division.

This rule is intended to implement Iowa Code section 123.21, subsection 7.

**185—14.3(123) Wholesaler discrimination.** Rescinded IAB 5/15/91, effective 6/19/91.

**185—14.4(123) Price postings by all holders of vintner's certificates of compliance.** Price postings by all holders of vintner's certificates of compliance will be required for all wines they wish to distribute within the state. These price postings will be submitted in the format as determined by the division. Prices posted will be the most current case price and should reflect the f.o.b. cost at the winery, out-of-state warehouse, or port of entry. Information will be made available by the division to all interested parties.

This rule is intended to implement Iowa Code section 123.21, subsection 6.

**185—14.5(123) Price postings.** Price postings will be required on all prices charged in sales between Class "A" wine permitholders and Class "B" permitholders. These price postings will contain the most current prices and will be submitted in the format as determined by the division. Frequency of submission will be monthly, commencing July 31, 1985, and each month thereafter as changes occur. The division will post a list of the most current price of wines it lists in a conspicuous place in the agency's central office and in all state liquor stores. Price postings from both the Class "A" wine permitholder and the division will be consolidated in a master price list each month. This information will be made available to all interested parties.

This rule is intended to implement Iowa Code section 123.21, subsection 6.

**185—14.6(123) Coupons.** Rescinded IAB 5/15/91, effective 6/19/91.

**185—14.7(123) Supplier discrimination.** A holder of a vintner's certificate of compliance shall not discriminate on the sale of wine to wholesalers of wine which the vintner designates and files with its application for a vintner's certificate of compliance as a wholesaler with whom it intends to do business.



~~Nothing in this rule shall be construed to require any holder of a vintner's certificate of compliance to do business with any wine wholesaler. The holder of a vintner's certificate of compliance may appoint more than one wine wholesaler to service the same geographical territory.~~

~~This rule is intended to implement Iowa Code section 123.180.~~

~~**185—14.8** Rescinded, effective July 1, 1986.~~

~~These rules are intended to implement Iowa Code section 123.4.~~

DRAFT

CHAPTER ~~16~~ 1003  
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)-701—1003.1(123)~~ Definitions.**

*“Alcoholic liquor”* means “alcoholic liquor” as defined in Iowa Code section ~~123.3(5)~~123.3(4). 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)~~123.3(6). For the purposes of this chapter, “beer” includes “canned cocktail” as defined in Iowa Code section ~~123.3(11)~~123.3(10) and “high alcoholic content beer” as defined in Iowa Code section 123.3(22).

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

*“Department”* means the Iowa 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, 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. 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, 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)701—1003.4(123)~~.)

*“Furnishings, fixtures and equipment”* does not include the items identified in rule ~~185—16.2(123)701—1003.2(123)~~, subrules ~~16.3(1)1003.3(1)~~ and ~~16.3(2)1003.3(2)~~, rule ~~185—16.5(123)701—1003.4(123)~~, rule ~~185—16.6(123)701—1003.5(123)~~, rule ~~185—16.7(123)701—1003.6(123)~~, or paragraph ~~16.13(2)“a.” 1003.12(2)“a.”~~

*“Industry member”* means an alcoholic beverages manufacturer, including a distiller, vintner or brewer, bottler, importer, wholesaler, 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, or 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.

~~[ARC 1992C, IAB 5/13/15, effective 6/17/15; ARC 2254C, IAB 11/25/15, effective 12/30/15; ARC 7028C, IAB 5/31/23, effective 7/5/23]~~

## 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)701—1003.2(123)~~ **Product displays.**

~~16.2(1)1003.2(1)~~ 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, leasing, or buying display space from a retailer.
- b. Paying a retailer to set up a display.
- c. Giving a special price on the products featured in the display or other products sold by the industry member.
- d. Providing free merchandise to a retailer in return for a display.

~~16.2(2)1003.2(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(3)~~1003.2(3) The total value of all product displays may not exceed \$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(4)~~1003.2(4) Industry members may not pool or combine their dollar limitations in order to provide a retailer with a product display which exceeds \$300. Industry members are prohibited from pooling or combining several brands to provide a retailer with a product display which exceeds \$300.

~~16.2(5)~~1003.2(5) An industry member shall keep and maintain records in accordance with rule ~~185—16.18(123)701—1003.16(123)~~.

This rule is intended to implement Iowa Code section 123.186.

[~~ARC 1992C, IAB 5/13/15, effective 6/17/15; ARC 7028C, IAB 5/31/23, effective 7/5/23~~]

~~185—16.3(123)701—1003.3(123)~~ **Retailer advertising utensils, consumer advertising specialties, retailer wearing apparel.**

~~16.3(1)~~1003.3(1) *Retailer advertising utensils.*

a. An industry member may supply, give, or sell retailer advertising utensils which are primarily valuable as point-of-sale advertising intended for use on the premises of the retail establishment. 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(2)~~1003.3(2) *Consumer advertising specialties.*

a. An industry member may furnish, give, or sell consumer advertising specialties to a retailer for unconditional distribution by the retailer to consumers. Consumer advertising specialties may include such items as 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 advertising specialties must bear conspicuous and substantial advertising matter about the product or the industry member that is permanently inscribed or securely affixed.

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

d. In the event a consumer advertising specialty also advertises a local event not sponsored by the retailer, the 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(3)~~1003.3(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)~~1003.3(4) *Record keeping.* An industry member shall keep and maintain records in accordance with rule ~~185—16.18(123)701—1003.16(123)~~.

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 7028C, IAB 5/31/23, effective 7/5/23~~]

~~185—16.4(123) Wine lists.~~ Rescinded ~~ARC 7028C, IAB 5/31/23, effective 7/5/23.~~

~~185—16.5(123) 701—1003.4(123) Glassware.~~

**~~16.5(1)~~1003.4(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)~~1003.4(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)~~1003.4(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)~~1003.4(4)** *Record keeping.* An industry member shall keep and maintain records in accordance with rule ~~185—16.18(123)701—1003.16(123)~~.

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 7028C, IAB 5/31/23, effective 7/5/23]~~

**~~185—16.6(123)701—1003.5(123)~~ Tapping accessories and coil cleaning service.**

**~~16.6(1)~~1003.5(1)** *Tapping accessories.*

a. An industry member may sell tapping accessories, identified in rule ~~185—16.1(123)701—1003.1(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)~~1003.5(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.

~~[ARC 1992C, IAB 5/13/15, effective 6/17/15; ARC 7028C, IAB 5/31/23, effective 7/5/23]~~

**~~185—16.7(123)701—1003.6(123)~~ Tasting.**

**~~16.7(1)~~1003.6(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.

(4) No more than two two-fluid-ounce tastes of a mixed drink or cocktail as defined in Iowa Code section 123.3.

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)~~1003.6(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 or 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, or beer may be conducted in an unlicensed private place as defined in Iowa Code section 123.3.

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

(4) Wine and 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)~~1003.6(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)~~1003.6(4) *Record keeping.* An industry member shall keep and maintain records in accordance with rule ~~185—16.18(123)701—1003.16(123)~~.

This rule is intended to implement Iowa Code section 123.186.

~~[ARC 2254C, IAB 11/25/15, effective 12/30/15; ARC 7028C, IAB 5/31/23, effective 7/5/23]~~

~~185—16.8(123)701—1003.7(123)~~ **Sampling.**

~~16.8(1)~~1003.7(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)~~1003.7(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.

~~16.8(3)~~1003.7(3) *Procurement*. An industry member shall obtain alcoholic liquor, wine, or beer used for sampling from the respective wholesaler. If a particular product is not available in a size within the quantity limitations of this section, an industry member may provide to a retailer the next larger size.

~~16.8(4)~~1003.7(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)~~1003.7(5) *Record keeping*. An industry member shall keep and maintain records in accordance with rule ~~185—16.18(123)701—1003.16(123)~~.

This rule is intended to implement Iowa Code section 123.186.

[~~ARC 2254C, IAB 11/25/15, effective 12/30/15; ARC 7028C, IAB 5/31/23, effective 7/5/23~~]

~~185—16.9(123)701—1003.8(123)~~ **Trade spending**. An industry member may engage in the practice of trade spending.

~~16.9(1)~~1003.8(1) *Advertising*. Trade spending shall be unannounced and unpublicized.

~~16.9(2)~~1003.8(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)~~1003.8(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)~~1003.8(4) *Record keeping*. An industry member shall keep and maintain records in accordance with rule ~~185—16.18(123)701—1003.16(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)701—1003.9(123)~~ **Discounts**. 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; ARC 7028C, IAB 5/31/23, effective 7/5/23~~]

~~185—16.11(123)701—1003.10(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)~~1003.10(1) Combination packages shall not have secondary value to the retailer other than having the potential of attracting purchasers and promoting sales.

~~16.11(2)~~1003.10(2) Combination packages shall be designed to be delivered intact to the consumer.

~~16.11(3)~~1003.10(3) Industry members who sell alcoholic liquor to the department must comply with the department’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; ARC 7028C, IAB 5/31/23, effective 7/5/23~~]

~~185—16.12(123)701—1003.11(123)~~ **Consumer promotions**.

~~16.12(1)~~1003.11(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)~~1003.11(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.

[~~ARC 7028C, IAB 5/31/23, effective 7/5/23~~]

~~185—16.13(123)701—1003.12(123)~~ **Advertising, display or distribution service**.

**~~16.13(1)~~1003.12(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)~~1003.12(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.

[~~ARC 7028C, IAB 5/31/23, effective 7/5/23~~]

**~~185—16.14(123)701—1003.13(123) Stocking and product rotation.~~**

**~~16.14(1)~~1003.13(1) Allowable activities.**

- a. An industry member may stock, 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)~~1003.13(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.

[~~ARC 1992C, IAB 5/13/15, effective 6/17/15; ARC 7028C, IAB 5/31/23, effective 7/5/23~~]

**~~185—16.15(123)701—1003.14(123) Sponsorships and special events.~~**

**~~16.15(1)~~1003.14(1)** An industry member may contribute to charitable, civic, religious, fraternal, educational and community entities.

**~~16.15(2)~~1003.14(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)~~1003.14(3) An industry member shall keep and maintain records in accordance with rule ~~185—16.18(123)701—1003.16(123)~~.

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

~~[ARC 7028C, IAB 5/31/23, effective 7/5/23]~~¶

~~185—16.16(123)701—1003.15(123)~~ **Participation in educational seminars and retail association activities.**

~~16.16(1)~~1003.15(1) *Educational seminars.* An industry member may give or sponsor educational seminars for employees of retailers either at the industry member's premises or at the retail establishment regarding such topics as 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(2)~~1003.15(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 \$300 per calendar year to any one retail association.

This rule is intended to implement Iowa Code section 123.186.

~~[ARC 1992C, IAB 5/13/15, effective 6/17/15; ARC 7028C, IAB 5/31/23, effective 7/5/23]~~¶

~~185—16.17~~ Reserved.¶

~~185—16.18(123)701—1003.16(123)~~ **Record keeping.**

~~16.18(1)~~1003.16(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)701—1003.2(123)~~ (product displays).
- b. ~~185—16.3(123)701—1003.3(123)~~ (retailer advertising utensils, consumer advertising specialties, retailer wearing apparel).
- c. ~~185—16.5(123)701—1003.4(123)~~ (glassware).
- d. ~~185—16.7(123)701—1003.6(123)~~ (tasting).
- e. ~~185—16.8(123)701—1003.7(123)~~ (sampling).
- f. ~~185—16.9(123)701—1003.8(123)~~ (trade spending).
- g. ~~185—16.15(123)701—1003.14(123)~~ (sponsorships and special events).
- h. ~~185—16.16(123)701—1003.15(123)~~ (participation in educational seminars and retail association activities).

~~16.18(2)~~1003.16(2) Records shall state the following:

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

~~16.18(3)~~1003.16(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)~~1003.16(4) Records shall be open to representatives of the department during normal business hours of the industry member and may be subject to administrative subpoena issued by the department.

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

~~[ARC 1992C, IAB 5/13/15, effective 6/17/15; ARC 7028C, IAB 5/31/23, effective 7/5/23]~~

~~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)701—1003.17(123) Equipment, furnishings, fixtures.~~

~~16.40(1)1003.17(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(2)1003.17(2)~~ 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.

~~[ARC 1992C, IAB 5/13/15, effective 6/17/15; ARC 7028C, IAB 5/31/23, effective 7/5/23]~~

~~185—16.41(123) Interest in a retail establishment.~~ Rescinded ~~ARC 4791C, IAB 12/4/19, effective 1/8/20.~~

~~185—16.42(123)701—1003.18(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 sections 123.45 and 123.186.

~~[ARC 1992C, IAB 5/13/15, effective 6/17/15; ARC 7028C, IAB 5/31/23, effective 7/5/23]~~

~~185—16.43(123)701—1003.19(123) Extension of credit and prepaid accounts.~~

~~16.43(1)1003.19(1)~~ *Extension of credit.* An industry member is prohibited from extending credit on the sale of alcoholic liquor or beer 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.

~~16.43(2)1003.19(2)~~ *Prepaid accounts.*

*a.* An industry member may establish prepaid accounts in which retailers deposit a sum of money to pay for future purchases of alcoholic beverages products.

*b.* An industry member may not hold the money deposited in a prepaid account for future payment of a debt.

*c.* An industry member 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.* An industry member is responsible for accurately and honestly accounting for the funds 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 purchase any quota of alcoholic liquor, wine, or beer.

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; ARC 7028C, IAB 5/31/23, effective 7/5/23]~~

~~185—16.44(123)701—1003.20(123) Quota sales.~~ An industry member is prohibited from requiring a retailer to purchase and sell any quota of alcoholic liquor, wine or beer.

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 7028C, IAB 5/31/23, effective 7/5/23]~~

~~185—16.45(123)701—1003.21(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.

[~~ARC 7028C, IAB 5/31/23, effective 7/5/23~~]

~~185—16.46 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)701—1003.22(123)~~ **Contracts to purchase alcoholic liquor, wine, or beer.**

~~16.60(1)1003.22(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.”1003.22(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)1003.22(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 sections 123.45 and 123.186.

[~~ARC 1992C, IAB 5/13/15, effective 6/17/15; ARC 7028C, IAB 5/31/23, effective 7/5/23~~]

~~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 retailer and that are prohibited. The rule applies to transactions between industry members and employees, officers, or representatives of retailers.

~~185—16.75(123)701—1003.23(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 rules in this part specify sales arrangements that are prohibited. The rules apply to transactions between industry members and trade buyers.

~~185—16.90(123)701—1003.24(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.

This rule is intended to implement Iowa Code section 123.186.

~~[ARC 1992C, IAB 5/13/15, effective 6/17/15; ARC 7028C, IAB 5/31/23, effective 7/5/23]~~¶

~~185—16.91(123)701—1003.25(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)~~**1003.25(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,”~~ 1003.25(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)1003.25(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.

[~~ARC 7028C, IAB 5/31/23, effective 7/5/23~~]

~~185—16.92 to 16.104~~ Reserved.

#### PART VII

The rule in this part governs violations of rules within this chapter.

~~185—16.105(123)701—1003.26(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.

[~~ARC 1992C, IAB 5/13/15, effective 6/17/15; ARC 7028C, IAB 5/31/23, effective 7/5/23~~]

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Department of Revenue

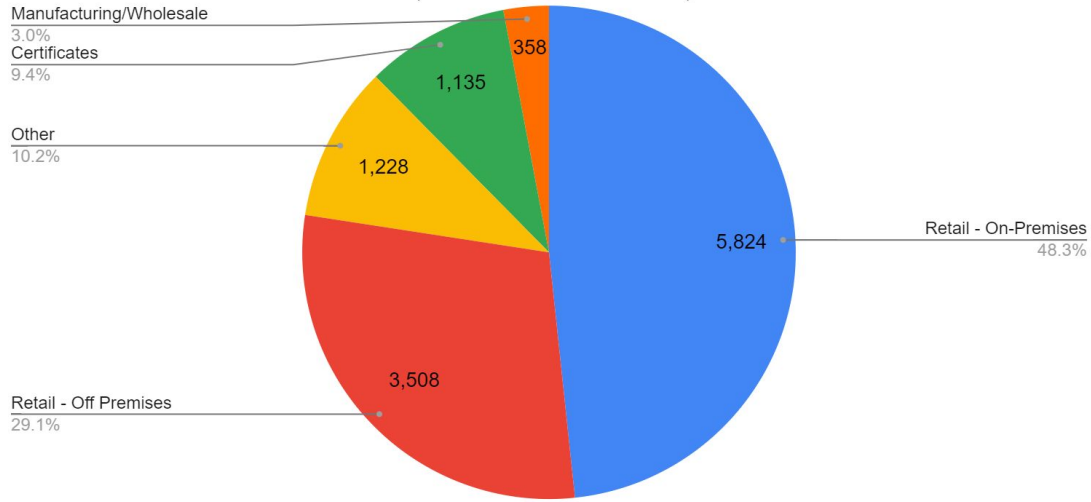
# ABC Commission Meeting

Alcohol Licensing Update

10/16/2024

## All Licenses, Permits, Certificates

(Active Licenses as of 10/4/24)

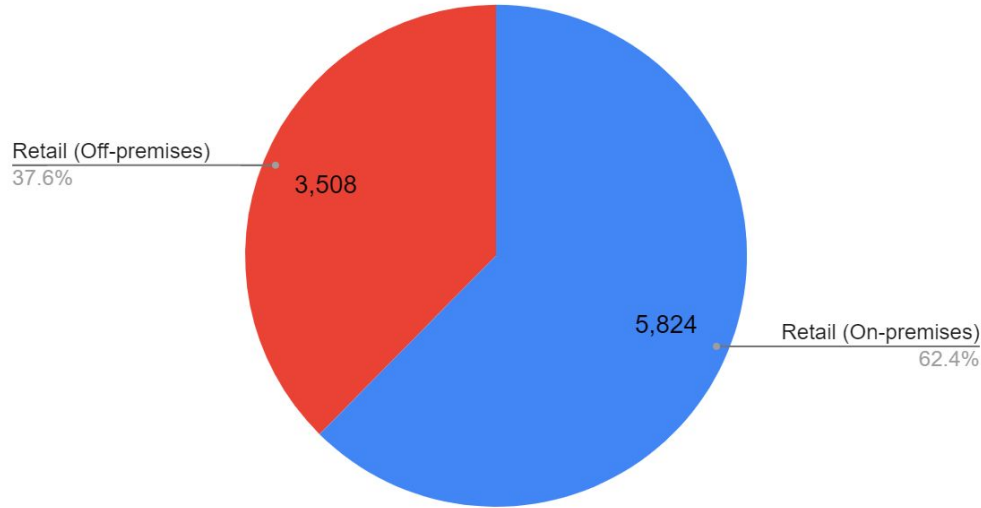


Total Licenses Active as of 10/4/24

	October, 2024
<b>Retail - On-Premises</b>	5,824
<b>Retail - Off Premises</b>	3,508
<b>Other</b>	1,228
<b>Certificates</b>	1,135
<b>Manufacturing/Wholesale</b>	358
<b>Total</b>	12,053

# On-premise vs. Off-premises Retail Alcohol Licenses

(Active Licenses as of 10/4/24)



On-premise vs. Off-premises Retail Alcohol Licenses  
(Active as of 10/4/24)

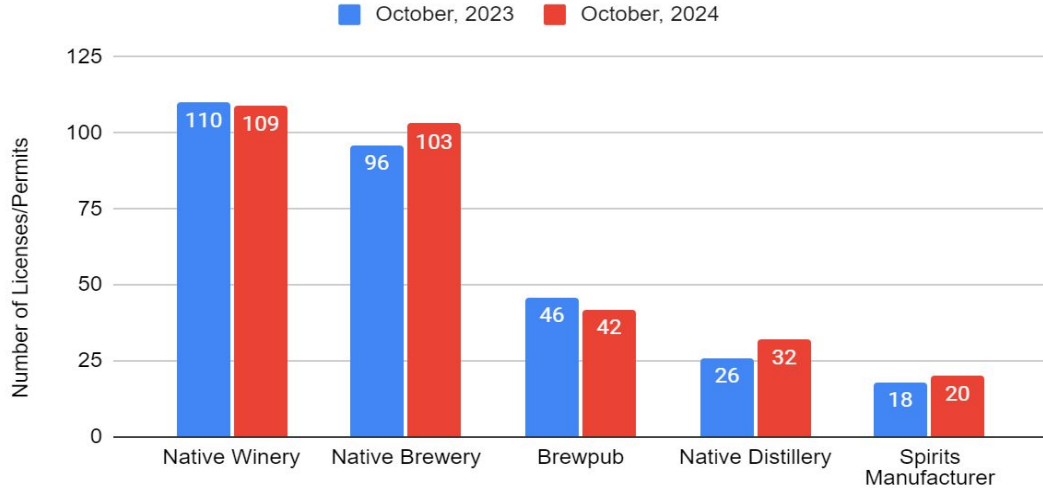
	October, 2024
<b>Retail (On-premises)</b>	5,824
<b>Retail (Off-premises)</b>	3,508
<b>Total</b>	<b>9,332</b>

**Retail (On-Premises):** allows sales of alcohol to be consumed on the premises, example bars/restaurants  
**Retail (Off-Premises):** allows the sales of alcohol to be consumed off the premises, example grocery/convenience stores



# Alcoholic Beverage Manufacturing in Iowa

(Active Licenses/Permits as of 10/4/24)



Alcoholic Beverage Manufacturing in Iowa (Active Licenses/permits)  
(As of 10/4/24)

	October, 2023	October, 2024	% Change
<b>Native Winery</b>	110	109	-0.9%
<b>Native Brewery</b>	96	103	7.3%
<b>Brewpub</b>	46	42	-8.7%
<b>Native Distillery</b>	26	32	23.1%
<b>Spirits Manufacturer</b>	18	20	11.1%
<b>Totals</b>	296	306	

## Native Manufacturing Licenses/Permits -

The most notable change from a year ago is the increase in class A native distilled spirits (ND) licenses (up 23.1%). This increase represents a net increase of 6 native distilleries in the last year. These include:

- A new Century Farms Distillery location
- 2 Judge Richard Distillery locations
- Pulpit Rock Brewery's and Santa Maria Winery's expansion into the distillery business
- Our first approved alternating proprietorship between Dehner Distilling and a new distillery, Tree House Distillery.

Native Manufacturer 5-day retail licenses (HF2648) (Issued as of 10/4/24)	
Native Brewery	9
Native Distillery	4
Native Winery	6
<b>Totals</b>	<b>19</b>

Special Events (36-hr, 5-day, and 14-day licenses issued in 2024 as of 10/4/24)			
	June, 2023	June, 2024	% Change
<b>36-hr</b>	71	62	-12.7%
<b>5-day</b>	1469	1681	14.4%
<b>14-day</b>	86	87	1.2%
<b>Totals</b>	<b>1626</b>	<b>1830</b>	

**Native Manufacturing 5-day Licenses** - We have had 19 native manufacturers take advantage of the new law that took effect on July 1, 2024 allowing them to get 5-day retail licenses off of their manufacturing premises. We anticipate the number of these 5-day licenses to increase significantly next year due to increased awareness.

**Special Events** - There was a significant increase in 5-day licenses this year compared to last year (+14.4%). That represents an increase of 212 5-day licenses. We also saw a significant increase in the number of 5-day licenses issued to the Lucky Wife franchisees. There were 417 approved 5-day licenses to Lucky Wife franchisees. This not only accounts for the 14.4% increase this year, but without these applications, the number of 5-day applications would have been down this year by 13.9%. It is important to note that the wine slushie legislation (that did not pass in 2024) was targeted at the business model exhibited by Lucky Wife franchisees.



Department of Revenue

# ABC Commission Meeting

Alcohol Operations Update

10/16/2024

# Operations

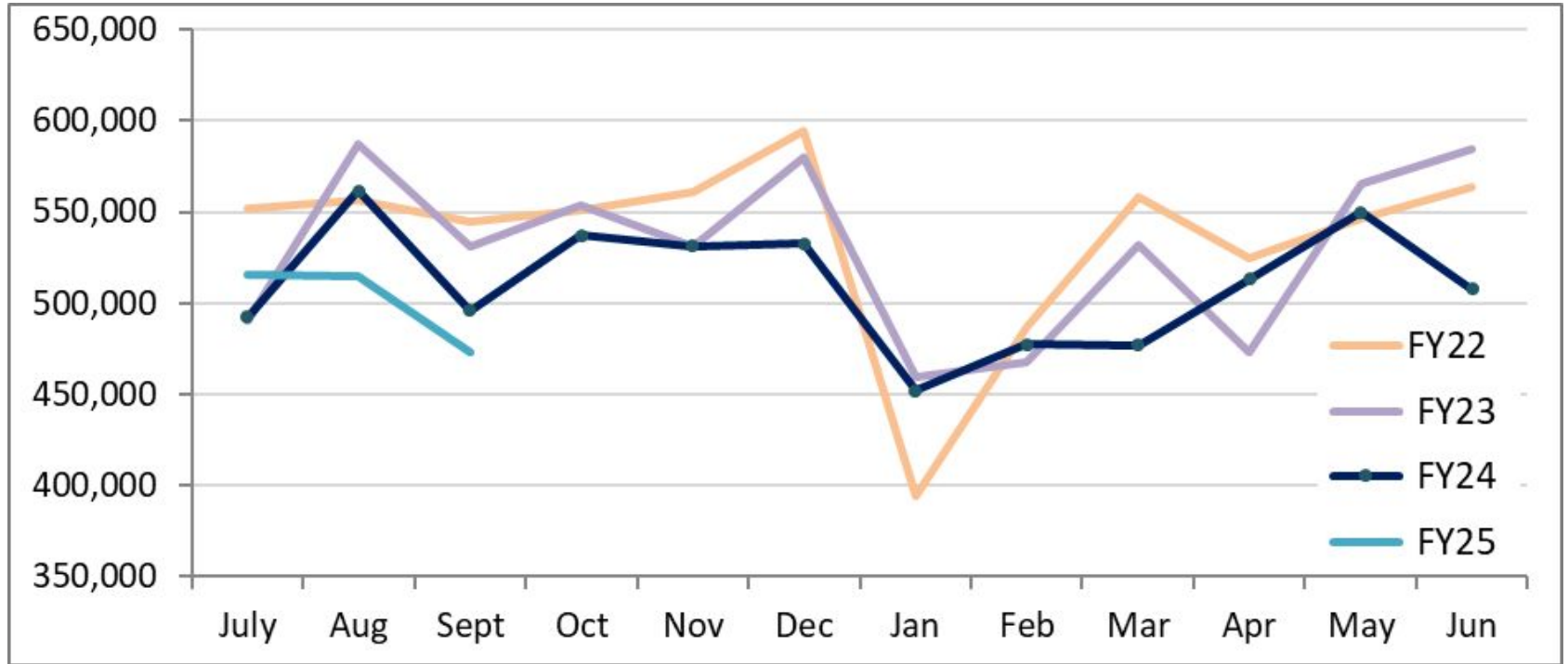
## Gallons Sold- Through September

- Monthly total (4.67%) or (23,000) less
- Year to date- 1.5 million gallons sold vs. 1.55 in FY24, (3%) decrease, 46,000 less
- Monthly sales and yearly sales per gallon trend

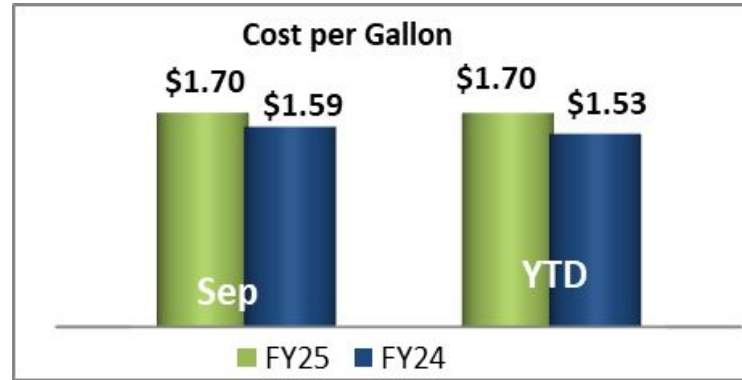
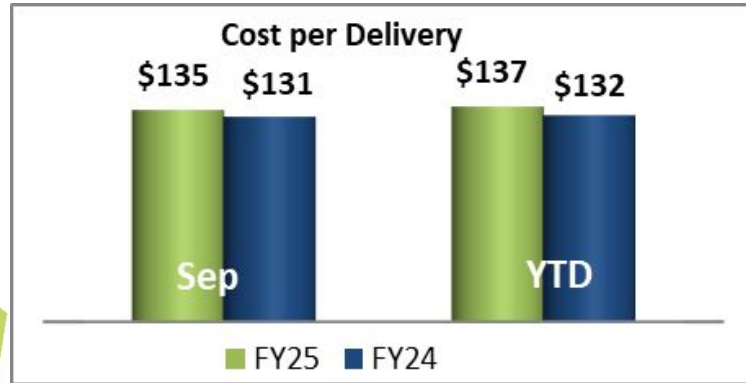
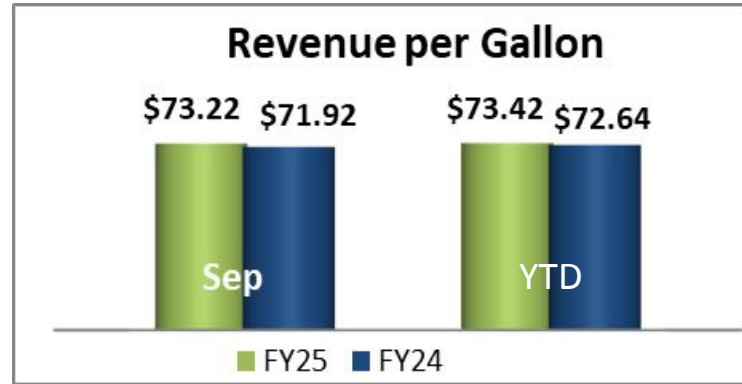
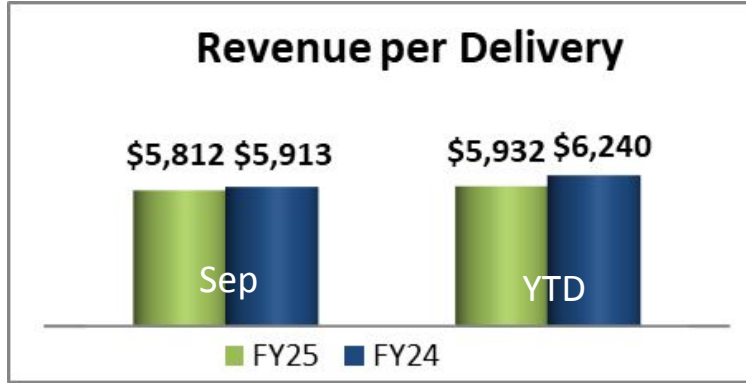
## Product Volume- Fiscal year to date

- Deliveries- 18,612, 3.17% increase, 572 more deliveries
- Cases- 659,524, (0.5%) decrease, 3,317 less cases sold
- Bottles- 7.6 million, (0.3%) decrease, 19,411 less bottles sold
- Picks- 1.3 million, (4.3%) decrease, 57,577 less picks by Ruan

# Operations- Gallons Sold by Month by FY



# Operations- Delivery and Gallon KPI's



# Operations- Other Activities

## FY24 Annual Report

- Alcohol content included in the full IDR report
- Prior reports can be found online,  
<https://revenue.iowa.gov/media/3841/download?inline>

## Native Distillery Visits

- Products team visiting all 35 Native Distillers and Manufacturers in Iowa
- Visited 6: Judge Richard Distillery, Legendary Rye, Lonely Oak Distilling, River Valley Orchard & Winery, Templeton Rye Spirits, Wildcat Distilling
- Provide information and Education, Listen for feedback and comments

# Operations- ND/CM Visits- Agenda

Introductions / Purpose - alignment updates

Alcohol & Tax Operations Division Update

- IDR Website, Vendor Portal, Warehouse Capacity Project, Scorecard

Product Management Update

- July 1, 2024 Listing Manual Updates, Inventory, Deliveries and Sales Information

Updates for Native Spirit Manufactures

- IDR and Alcohol & Tax Operations Contacts
- IDR Key Contacts on Policy and Legal Requests
- Iowa Mobile ID Program

Future Collaboration

- How can we strengthen our collaborative efforts?
- What can we do better?



# Operations- IDR Barrel Selections

## Tennessee Barrel Trip

- Visited Cascade Hollow and Jack Daniels
- Procured 3 barrels for sale by IDR

## Previous Barrels procured

- Distributing now: Maker's Mark- 2 Barrels, Make it Sweet, Make it Spicy
- Barrels on order, 9- Rabbit Hole Heigold and Cavehill, 1792 Small Batch, Knob Creek Bourbon, Knob Creek Rye, Eagle Rare, Whistle Pig 18 year, Koval Single Barrel Rye, Templeton Rye Single Barrel Selection
- Updated bottle signage- State of Iowa Barrel Selection

Maker's Mark  
finishing cellar,  
Loretto Kentucky





Department of Revenue

# ABC Commission Meeting

Alcohol Financial Update

10/16/2024

# Finance - FY24 and FY25

## FY24

- Liquor Sales revenue totaled \$444.9 million
- License and Wine Tax revenue totaled \$22.6 million
- Total Reversion to State General Fund equaled \$150.8 million

## FY25 (thru 9/30/24)

- Liquor Sales revenue equals \$108.4 million
- License and Wine Tax revenue equals \$4.6 million
- State General Fund reversion equals \$35.1 million