

**ALCOHOLIC BEVERAGES DIVISION[185]**

**Adopted and Filed**

**Rule making related to licensing**

The Alcoholic Beverages Division hereby amends Chapter 4, “Liquor Licenses—Beer Permits—Wine Permits” and Chapter 5, “License and Permit Division,” and rescinds Chapter 12, “Forms,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 123.10.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 123 as amended by 2017 Iowa Acts, House File 607, and 2016 Iowa Acts, House File 2359, section 51.

*Purpose and Summary*

This rule making implements changes to the Iowa Code enacted in 2017 Iowa Acts, House File 607, and 2016 Iowa Acts, House File 2359. The amendments to Chapters 4 and 5 clarify existing rules and add new rules where required by House File 607. The amendment in Item 4 rescinds rule 185—4.24(123) because the changes in House File 2359 make the rule unnecessary. For accessibility, the amendment to subrule 5.9(4) in Item 6 adds a description of the forms used to furnish a surety bond when a bond is required during the process of obtaining a license or permit. As a result, Chapter 12 of the Division’s rules is rescinded.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 6, 2018, as **ARC 3817C**. A public hearing was held on June 26, 2018, at 9 a.m. in the Division Board Room, 1918 S.E. Hulsizer Road, Ankeny, Iowa. The Division received oral and written comments from one respondent. A summary of the comments and the Division’s responses are as follows:

**Comment 1:** The respondent stated that the use of word “forfeiture” in subrule 5.9(2) is legally problematic in the law of surety and does not reflect the obligations for payment on a bond. As written, the subrule would require forfeiture of the full amount of the bond, even when liability owed to the state is below the bond limit, which does not reflect how surety companies operate and which impacts how surety companies underwrite risk in Iowa.

The respondent recommended striking the word “forfeiture” where it appears in subrule 5.9(2) and replacing it with the term “payment on bond.”

**Division response 1:** Subrule 5.9(2) describes the requirement for surety bonds issued to licensees and permittees in Iowa to include a provision for the principal and the surety company 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. The statutory basis for forfeiture of a surety bond is found in Iowa Code section 123.50, subsections 2 and 4. Before a bond can be forfeited to the Division, a licensee or permittee must first be convicted of a violation of Iowa Code section 123.49, subsection 2, paragraph “a,” “d,” or “e,” or of Iowa Code section 123.59, and the license or permit must be revoked.

As such, the Division has not made changes to subrule 5.9(2). Rather, reference to Iowa Code section 123.50 has been added to the implementation sentence for rule 185—5.9(123), found in Item 6, to provide further guidance for the reader.

**Comment 2:** The respondent stated that the language in the second paragraph in subrule 5.9(3), which explicitly prohibits a surety company from canceling a bond for any reason when an administrative hearing complaint has been filed and charges are currently pending against a licensee or permittee that could result in revocation of the license or permit, creates unintended but significant problems. Under Iowa law, a surety company is liable for the actions of the licensee or permittee throughout the term of the bond, including the 30-day cancellation period after notice is given to the licensee or permittee. The language in subrule 5.9(3) would bar a surety company from canceling a bond on a licensee or permittee for any reason, even if the reason is separate from those reasons that prompted the administrative action.

The respondent recommended striking the second paragraph in subrule 5.9(3). This change would not alter a surety company's legal obligations to the state under the bond, nor would it prohibit a licensee or permittee from obtaining a bond if the license or permit is not revoked in the event the administrative action is terminated.

**Division response 2:** The Division agrees with the respondent's comment and has stricken the second paragraph in subrule 5.9(3), found in Item 6.

Written comments were identical to those received at the public hearing.

#### *Adoption of Rule Making*

This rule making was adopted by the Alcoholic Beverages Commission on July 12, 2018.

#### *Fiscal Impact*

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

#### *Jobs Impact*

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

#### *Waivers*

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

#### *Review by Administrative Rules Review Committee*

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

#### *Effective Date*

This rule making will become effective on September 5, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 185—4.1(123) as follows:

#### **185—4.1(123) Definitions.**

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

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

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

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

~~4.1(5)~~ Reserved.

~~4.1(6)~~ “Administrator” means the chief administrative officer of the alcoholic beverages division or a designee.

~~4.1(7)~~ “Beverages” as used in Iowa Code section ~~423.129~~ 123.3(18) does not include alcoholic liquor, wine, or beer as defined in Iowa Code sections 123.3(4), 123.3(5), 123.3(7), 123.3(19), 123.3(28), 123.3(30), 123.3(43) and ~~423.3(37)~~ 123.3(47).

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

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

ITEM 2. Amend rule 185—4.4(123) as follows:

**185—4.4(123) Licensed premises.** The following criteria must be met before a “place” (as used in Iowa Code section ~~423.3(20)~~ 123.3(25)) may be licensed as a “place susceptible of precise description satisfactory to the administrator.”

**4.4(1)** The “place” must be owned by or under the control of the prospective licensee.

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

**4.4(3)** The “place” must be described by a sketch of the ~~“premise”~~ “premises” as defined in Iowa Code section ~~423.3(20)~~ 123.3(25) 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)** The “place” must satisfy the health, safety, fire and seating requirements of the division, local authorities and ~~Iowa department of agriculture and land stewardship~~ the Iowa department of inspections and appeals.

**4.4(5)** Any other criteria as required by the administrator.

This rule is intended to implement Iowa Code sections ~~423.3(20)~~ 123.3(25) and 123.4.

ITEM 3. Amend rule 185—4.6(123) as follows:

**185—4.6(123) Filling and selling of beer in a container other than the original container by class “C” beer permit holders.** ~~Class Liquor control license holders, class “B” and class “C” beer permit holders, and their employees may fill, refill and sell beer in a container other than the original container, otherwise known as a growler as defined in subrule 4.1(3), subject to the requirements and restrictions provided in Iowa Code section sections 123.131 and 123.132 and in this rule.~~

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

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

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

“Original container,” for the purpose 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)** No change.

**4.6(3) Filling and refilling requirements.**

a. No change.

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. No change.

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

*e.* and *f.* No change.

**4.6(4) Sealing requirements.** A filled or refilled growler shall 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 bear a ~~twist-type cap, screw-on cap, flip-top lid, swing-top lid,~~ stopper, or plug.

*b.* A plastic heat shrink wrap band, strip, or sleeve shall extend around the ~~twist-type cap, screw-on cap, flip-top lid, or swing-top lid~~ or over the stopper or plug to form a seal that must be broken upon the opening of the growler. A lid permanently affixed with a can seamer shall not require a plastic heat shrink wrap band, strip, or sleeve.

*c.* and *d.* No change.

**4.6(5) Restrictions.**

*a.* to *d.* No change.

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

*f.* and *g.* No change.

*h.* An original container shall only be opened on the ~~licensed~~ licensed premises of a class “C” beer permit holder 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).

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

This rule is intended to implement Iowa Code ~~section~~ sections 123.123, 123.131, and 123.132.

ITEM 4. Rescind and reserve rule **185—4.24(123)**.

ITEM 5. Adopt the following **new** rule 185—5.2(123):

**185—5.2(123) Annual production of a native distillery.** A native distillery is a business with an operating still which produces and manufactures native distilled spirits and holds a class “A” native distilled spirits license. The total number of proof gallons of native distilled spirits produced and manufactured by a native distillery on an annual basis shall be used to determine the amount of native distilled spirits that may be sold per person per day from the native distillery’s licensed premises for off-premises consumption and to determine eligibility to obtain a class “C” native distilled spirits liquor control license.

**5.2(1) Definitions.**

“*Annual basis,*” for the purpose of this rule, means a year as defined in Iowa Code section 4.1(40) beginning January 1 and ending December 31.

“*Native distilled spirits*” means an alcoholic beverage as defined in Iowa Code section 123.3(28).

“*Operating still,*” for the purpose of this rule, means a still that is registered with the Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 CFR 19.75(b) and is actively used to manufacture spirits.

“*Proof gallon,*” for the purpose of this rule, 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.

**5.2(2)** The total number of proof gallons of native distilled spirits produced and manufactured by a native distillery on an annual basis shall combine all production facilities of the business and shall be determined based on the 12-month sum of line 26 of Alcohol and Tobacco Tax and Trade Bureau Form 5110.28, Monthly Report of Processing Operations, filed monthly by the native distillery with the division, pursuant to Iowa Code section 123.43A(5).

**5.2(3)** The amount of native distilled spirits that may be sold per person per day from a native distillery’s licensed premises for off-premises consumption shall be determined based on the total number of proof gallons of native distilled spirits as determined in subrule 5.2(2) for the preceding calendar year beginning January 1 and ending December 31.

**5.2(4)** As a condition of obtaining a class “C” native distilled spirits liquor control license, a native distillery shall report to the division, at the time of application, the total number of proof gallons of native distilled spirits as determined in subrule 5.2(2) for the preceding calendar year beginning January 1 and ending December 31.

This rule is intended to implement Iowa Code sections 123.3(29), 123.30(3) “c”(3), 123.31(6) and 123.43A.

ITEM 6. Amend rule 185—5.9(123) as follows:

**185—5.9(123) Surety bond requirements.** A \$5,000 ~~penal surety bond must shall~~ be filed with the division with each application for a ~~Class class “A” wine permit, Class “A” beer permit, special Class “A” beer permit and manufacturer’s license~~ and with each application for a wine direct shipper license unless the applicant for the wine direct shipper license posted a surety bond as part of obtaining a class “A” wine permit. A \$10,000 surety bond shall be filed with the division for each application for a class “A” beer permit or special class “A” beer permit. A \$5,000, \$10,000 or \$15,000 ~~penal surety bond must in an amount of at least \$5,000 but not more than \$15,000 shall~~ be filed with the division with each application for a ~~Class class “E” liquor control license.~~ A Class “E” liquor control licensee may determine the amount of the bond to be posted with the division, and may increase or decrease the face amount of the bond in increments of \$5,000 on one occasion during the licensee’s first year of business. Thereafter, a licensee may increase or decrease the face amount of the bond in increments of \$5,000 only when the liquor control license is renewed. Each ~~penal surety bond must shall~~ meet the following requirements.

**5.9(1) Certificate of authority.** ~~It must~~ The surety bond 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) Forfeiture of bond.** ~~It must~~ 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) Cancellation.** A surety company or a principal may cancel a bond by giving a minimum of 30 days’ written notice to this division of the party’s intent to cancel the bond. The 30-day period shall commence on the date that this division receives the notice of cancellation. The party seeking to cancel a bond shall ~~mail submit~~ submit written notice of such cancellation to the division in Ankeny, Iowa, by ~~certified mail,~~ and further shall ~~mail submit~~ submit a copy of the notice of cancellation to the other party, ~~at that party’s post office address.~~ The notice of cancellation shall contain: the name of the party to whom the copy of the notice of cancellation was ~~mailed submitted,~~ mailed submitted, the address to which the copy of the notice of cancellation was sent, the date on which the notice of cancellation was ~~mailed submitted,~~ mailed submitted, the date the bond is being canceled, and the license or permit number of the licensee or permittee to be affected by such cancellation.

~~The cancellation or notice thereof shall have no force or effect in the event that the principal’s license or permit has been revoked during the period of the bond or when an administrative hearing complaint has been filed, and charges are currently pending against the licensee or permittee which could result in revocation of the license or permit after an administrative hearing on the complaint.~~

**5.9(4) Proof of bond.** A licensee or permittee shall be deemed to have furnished a surety bond when the licensee or permittee has filed with the division at its offices in Ankeny, Iowa, a form described by 185—subrule 12.2(7) a form prescribed by the division containing the following: the name of the bond provider; the city and state where the bond provider is located; the bond number, the names of the principal, and the city and state where the principal is located; the amount of the bond; the type of license or permit guaranteed by the bond; the effective date of the bond; signatures of the principal and the bond provider; and any other information the administrator of the division may require.

**5.9(5) to 5.9(7)** No change.

This rule is intended to implement Iowa Code sections ~~123.21, 123.30, 123.128 and 123.129~~ 123.50, 123.127, 123.175, and 123.187.

ITEM 7. Rescind and reserve **185—Chapter 12.**

[Filed 7/12/18, effective 9/5/18]

[Published 8/1/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/1/18.