

**ALCOHOLIC BEVERAGES DIVISION[185]**

**Adopted and Filed**

**Rule making related to the filling and sale of beer and wine “growlers”**

The Alcoholic Beverages Division hereby amends Chapter 4, “Liquor Licenses—Beer Permits—Wine Permits,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 123.10 and 2020 Iowa Acts, House File 2540.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 123.123, 123.131, 123.132, 123.172 and 123.178 to 123.178B and 2020 Iowa Acts, House File 2540.

*Purpose and Summary*

This rule making is required due to enactment of 2020 Iowa Acts, House File 2540. This rule making adopts a new rule establishing how a container other than the original container, otherwise known as a “growler,” shall be filled with wine or native wine, shall be properly sealed so as to not be considered an open container under Iowa Code sections 321.284 and 321.284A, and shall be sold by class “C” liquor licensees; class “B,” class “B” native, and class “C” native wine permittees; and the licensee’s or permittee’s employees.

This rule making also amends rule 185—4.6(123), which establishes the requirements for the filling and sale of beer growlers, to remove the restriction that beer growlers must be sold via an in-person sale by class “B,” class “C,” and special class “C” liquor control licensees; class “B” beer permittees; and the licensee’s or permittee’s employees. Other nonsubstantive changes to the rule are also adopted.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 29, 2020, as **ARC 5111C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Administrator, with the approval of the Alcoholic Beverages Commission, on September 2, 2020.

*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 October 28, 2020.

The following rule-making actions are adopted:

ITEM 1. 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.** ~~Liquor Class “B,” class “C,” and special class “C” liquor control license holders licensees, class “B” and class “C” beer permit holders permittees, and their the licensee’s or permittee’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 sections section 123.131 and as amended by 2020 Iowa Acts, House File 2540, section 14; Iowa Code section 123.132; and in this rule.~~

**4.6(1) Definitions.**

“Beer,” for the ~~purpose~~ 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(19)~~ 123.3(22).

“Growler,” for the ~~purpose~~ purposes 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~~ 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) Sales criteria and restrictions. All sales made pursuant to this rule shall be made in person. Beer packaged and sold pursuant to this rule shall not be delivered or direct shipped to consumers.~~

~~4.6(3)~~ **4.6(2) Filling and refilling requirements.**

- a. A growler shall have the capacity to hold no more than 72 ounces.
- b. A growler shall be filled or refilled only by the 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 ~~in-person~~ sale.
- d. A growler shall be filled or refilled only with beer from the original container procured from a ~~duly licensed wholesaler~~ 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.
- e. A retailer may exchange a growler to be filled or refilled, ~~provided the exchange occurs at the time of the in-person sale.~~
- f. The filling or refilling of a growler shall at all times be conducted in compliance with applicable state and federal food safety statutes and regulations.

~~4.6(4)~~ **4.6(3) 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. to d. No change.

~~4.6(5)~~ **4.6(4) Restrictions.**

~~a. Beer shall only be consumed on the premises of a class “C” beer permit holder for a tasting in accordance with rule 185—16.7(123).~~

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

~~e. b.~~ A growler filled pursuant to this rule shall not be delivered or direct-shipped to a consumer.  
~~d. c.~~ A growler filled pursuant to this rule shall not be sold or otherwise distributed to a retailer.  
~~e. d.~~ A licensee or permittee or a licensee's or permittee's employees shall not allow a consumer to fill or refill a growler.

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

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

~~h. g.~~ An original container shall only be opened on the premises of a class "C" beer permit holder permittee 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).

~~h.~~ A class "C" beer permittee shall only fill a growler at the time of an in-person sale.

~~4.6(6)~~ **4.6(5)** *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 sections 123.123, 123.131, and 123.132.

ITEM 2. Adopt the following **new** rule 185—4.11(123):

**185—4.11(123) Filling and selling of wine and native wine in a container other than the original container.** Class "C" liquor control licensees; class "B," class "B" native, and class "C" native wine permittees; and the licensee's or permittee'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 123.178, 123.178A, and 123.178B as amended by 2020 Iowa Acts, House File 2540, sections 4, 5, 6, 7, 8, and 9, and in this rule.

**4.11(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 wine manufactured in Iowa by fermentation of fruit, vegetables, dandelions, clover, honey, or any combination of these ingredients by a class "A" wine permittee.

"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(54).

**4.11(2) Filling and refilling requirements.**

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

b. A growler shall be filled or refilled only by the 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 wine or native wine from the original container procured from a class "A" wine permittee.

e. Class "B" native and class "C" native wine permittees shall fill a growler with only native wine.

f. A retailer may exchange a growler to be filled or refilled.

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

**4.11(3) 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 cap, lid, stopper, or plug.

b. A plastic heat shrink wrap band, strip, or sleeve shall 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 not require a plastic heat shrink wrap band, strip, or sleeve.

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

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

**4.11(4) Restrictions.**

*a.* A growler shall not be filled in advance of a sale.  
*b.* A growler filled pursuant to this rule shall not be delivered or direct-shipped to a consumer.  
*c.* A growler filled pursuant to this rule shall not be sold or otherwise distributed to a retailer.  
*d.* A licensee or permittee or a licensee's or permittee's employees shall not allow a consumer to fill or refill a growler.

*e.* The filling, refilling, and selling of a growler shall be limited to the hours in which alcoholic beverages may be legally sold.

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

*g.* An original container shall only be opened on the premises of a class "B" or class "B" native wine permittee 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).

**4.11(5) 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 sections 123.172, 123.178, 123.178A, and 123.178B.

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