

**ALCOHOLIC BEVERAGES DIVISION[185]**

**Adopted and Filed Emergency**

**Rule making related to filling and sale of mixed drinks or cocktails  
in a container other than the original**

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 2020 Iowa Acts, House File 2540.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 123.30, 123.43A and 123.49.

*Purpose and Summary*

This rule making adopts a new rule establishing how a container other than the original container shall be filled with a mixed drink or cocktail, 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” and class “C” native distilled spirits liquor control licensees.

The Department of Transportation and the Department of Public Safety were consulted in the writing of this rule. The two departments are responsible for cooperating to ensure the proper and adequate enforcement of Iowa Code chapter 321, “Motor Vehicles and Law of the Road,” which establishes Iowa’s open container laws. The Department of Public Safety is also the primary alcoholic beverage control law enforcement authority in Iowa, pursuant to Iowa Code section 123.14.

The Department of Transportation advised the Division on the types of allowable container-sealing methods that would demonstrate an effort to comply with state and federal open container laws. The Department recommended that the sealing methods be precisely described in the rule because vague or undefined sealing methods could jeopardize millions of dollars of federal highway funds allocated to the State of Iowa. According to a notice issued July 1, 2020, by the U.S. Department of Transportation Federal Highway Administration, over \$541 million was allocated to Iowa in federal FY 2020 under the Fixing America’s Surface Transportation (FAST) Act. Transfer or withholding penalties are applied to states that are found to be in noncompliance with federal open container requirements (23 U.S.C. §154). Iowa was not assessed any penalties for open container requirement noncompliance in federal FY 2020. The Division believes that the rule, as written, should not lead to any future findings of noncompliance.

The Department of Public Safety advised the Division on the types of containers that should not be allowed to be used in the sale of mixed drinks and cocktails to go. The Department recommended that paper, plastic, and Styrofoam cups be prohibited due to the ease of use or access the containers provide and the ability for consumers to conceal consumption while driving, which the Department felt would pose serious dangers to the motoring public and hamper the Department’s enforcement efforts. The rule prohibits all paper and Styrofoam cups from being used, and prohibits plastic cups that are intended for single use only. Plastic cups that are intended to be reused by a consumer are not prohibited.

Additionally, the Division requested from the Iowa Restaurant Association examples of the containers and sealing methods being used by licensees in the marketplace. Two examples were provided by the Association, and those examples were incorporated into the rule making in paragraphs 4.10(3)“b” and 4.10(3)“c.”

Finally, the Iowa Alliance of Coalitions for Change, a group of public health and substance misuse experts from across the state, submitted a letter and proposals to be considered for the rule. Some of the recommendations exceeded what the Division felt to be within its rule-making authority; however, a

recommendation to require labeling on the container clearly marking the contents as containing alcohol was accepted. The Department of Public Safety also supported a labeling requirement, indicating that the requirement would assist in its roadside enforcement efforts. As such, a labeling requirement was included in the rule making in subrule 4.10(4).

The Division crafted this rule based on the recommendations of key state agency partners. Stakeholder feedback was also incorporated into the rule. Overall, the Division feels that this rule is reasonable and balances the legal and social responsibilities of protecting the public with the business needs of licensees.

*Reason for Adoption of Rule Making Without  
Prior Notice and Opportunity for Public Participation*

Pursuant to Iowa Code section 17A.4(3), the Division finds that notice and public participation are unnecessary or impractical because statute so provides. 2020 Iowa Acts, House File 2540, allows the Division to adopt emergency rules under Iowa Code sections 17A.4(3) and 17A.5(2)“b” to implement the provisions of the Act related to mixed drinks and cocktails to go.

*Reason for Waiver of Normal Effective Date*

Pursuant to Iowa Code section 17A.5(2)“b”(1)(a), the Division also finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on October 1, 2020, because 2020 Iowa Acts, House File 2540, allows the Division to adopt emergency rules under Iowa Code sections 17A.4(3) and 17A.5(2)“b” to implement the provisions of the Act related to mixed drinks and cocktails to go.

*Adoption of Rule Making*

This rule making was adopted by the Administrator, with approval of the Alcoholic Beverages Commission, on September 11, 2020.

*Concurrent Publication of Notice of Intended Action*

In addition to its adoption on an emergency basis, this rule making has been initiated through the normal rule-making process and is published herein under Notice of Intended Action as **ARC 5220C** to allow for public comment.

*Fiscal Impact*

This rule making has a potential fiscal impact to the State of Iowa. According to the Iowa Department of Transportation, approximately \$12.2 million in federal funds appropriated to Iowa under the FAST Act could be jeopardized if Iowa is found to be noncompliant with the federal open container requirements found in 23 U.S.C. §154. This rule making, as written, precisely describes the sealing methods to be used when mixed drinks and cocktails are sold to go so that the sealed containers are not considered open containers. Vague or undefined sealing methods increase the potential for Iowa to be found noncompliant with 23 U.S.C. §154. The fiscal impact of this rule making to class “C” and class “C” native distilled spirits liquor control licensees is indeterminable.

*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 1, 2020.

The following rule-making action is adopted:

Adopt the following new rule 185—4.10(123):

**185—4.10(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 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, and this rule.

**4.10(1) Definitions.**

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

“*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.

“*Tamper-evident*,” for the purposes of this rule, means a lid, cap, or seal that visibly demonstrates when a container has been opened.

**4.10(2) Filling requirements.**

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

c. A sealed container shall 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 licensee.

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

**4.10(3) Sealing requirements.** A sealed container shall 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 container is opened.

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

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

**4.10(4) Labeling requirements.** A sealed container shall bear a label affixed to the container in a conspicuous place legibly indicating 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) Restrictions.**

- a. A sealed container shall not 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).
- c. A licensee or a licensee’s employees shall not allow a consumer to fill a sealed container.
- d. The filling and selling of a sealed container shall be limited to the hours in which alcoholic beverages may be legally sold.
- e. A sealed container shall not be sold to any consumer who is under legal age, intoxicated, or simulating intoxication.

**4.10(7) Record keeping requirements.**

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

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

**4.10(8) Violations.** Failure to comply with 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, 123.43A, and 123.49.

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