

ALCOHOLIC BEVERAGES DIVISION[185]

Notice of Intended Action

**Proposing rule making related to alcoholic liquor product management
and providing an opportunity for public comment**

The Alcoholic Beverages Division hereby proposes to rescind Chapter 7, “Representatives of Distillers, Rectifiers, Manufacturers, Brewers and Vintners,” and Chapter 8, “Transportation and Warehouse,” Iowa Administrative Code, and adopt a new Chapter 8 with the same title.

Legal Authority for Rule Making

This rule making is proposed 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 sections 123.10(2), 123.10(3), 123.10(6) and 123.10(10).

Purpose and Summary

The purpose of this proposed rule making is to update rules related to management of alcoholic liquor products available for sale by the Division. The proposed amendments rescind and reserve Chapter 7 and rescind and replace Chapter 8 with new rules.

The proposed rules do the following:

- Define new terms related to product management;
- Describe the various listing classifications under which an alcoholic liquor product may be classified when sold by the Division;
- Describe how suppliers of alcoholic liquor products can submit requests for their products to be listed for sale;
- Describe how alcoholic liquor products shall be shipped to the Division for sale;
- Describe how alcoholic liquor suppliers shall maintain appropriate inventory levels in the Division’s warehouse for alcoholic liquor products available for sale;
- Describe how often alcoholic liquor suppliers may make temporary or permanent price changes to alcoholic liquor products listed for sale;
- Describe the requirements for how an alcoholic liquor supplier shall remove products from the Division’s warehouse that are no longer listed for sale; and
- Describe the requirements for barrel programs offered by alcoholic liquor suppliers.

Overall, the proposed rules reflect the policies and procedures described in the Division’s current Listing Manual. The proposed rules will allow for continued responsible and efficient management of the Division’s product portfolio, give the Division the flexibility to respond to marketplace changes, and provide alcoholic liquor suppliers with stability, predictability, and transparency as to how their alcoholic liquor products can be sold in the state of Iowa.

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.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Division no later than 4:30 p.m. on July 20, 2021. Comments should be directed to:

Tyler Ackerson
Iowa Alcoholic Beverages Division
1918 SE Hulsizer Road
Ankeny, Iowa 50021
Email: rules@iowaabd.com

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

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).

The following rule-making actions are proposed:

ITEM 1. Rescind and reserve **185—Chapter 7**.

ITEM 2. Rescind 185—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8
TRANSPORTATION AND WAREHOUSE

185—8.1(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 product inventory.

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

“*Product*” means “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.

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

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

8.2(2) *Temporary.* Temporary listings shall have a duration determined by the administrator or the administrator's designee, and the duration may be extended at the discretion of the administrator or the administrator's designee.

8.2(3) *Size extension.* A supplier shall submit a listing request 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, in order for a size extension listing request to be approved as a permanent listing.

8.2(4) *Special order.* Products that are not currently listed for sale by the division 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 by a class "E" liquor control licensee. Special order requests shall be submitted electronically or in a manner prescribed by the administrator or the administrator's designee. The administrator, or the administrator's designee, 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) "a"(1) and 8.3(3) "a"(2).

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

c. All special order products shall be sold and distributed by the division to class "E" liquor control licensees by the case only.

d. Special order products are not eligible for return to the division by a class "E" liquor control licensee without approval from the administrator or the administrator's designee.

8.2(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.

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

8.2(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.

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

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

185—8.3(123) Listing requests. The supplier of a product to be sold by the division shall submit a listing request for consideration by the administrator or the administrator's designee.

8.3(1) *Submitting a listing request.* Listing requests shall be submitted electronically or in a manner prescribed by the administrator or the administrator's designee.

8.3(2) *Listing request requirements.*

a. A listing request shall contain 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 be divisible by the number of bottles in the case. The supplier shall determine the number of bottles that constitute 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 by the administrator or the administrator's designee.

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

8.3(3) Decisions.

a. The criteria used to determine whether a listing request shall be approved or denied shall 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, shall approve or deny a listing request not more than 20 business days from the date the listing request was submitted. Suppliers shall be notified of the decision in writing delivered electronically or in a manner prescribed by the administrator or the administrator's designee.

8.3(4) Appeals.

a. Appeal to administrator.

(1) A supplier may appeal the denial of a listing request by the administrator's designee to the administrator by filing a notice of appeal within 30 days of the date of denial.

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

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

b. Appeal to commission.

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

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

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

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

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

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

8.3(5) Resubmission of a listing request. 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.

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

185—8.4(123) Shipment of product to the division. Shipments of product intended for sale by the division shall be made in accordance with this rule.

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

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

8.4(3) *Pallet requirements.*

a. Products shipped to the division shall be on securely shrink-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.

8.4(4) *Case labeling requirements.*

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

b. The case code label shall 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 meet the minimum requirements established by the American National Standards Institute and the International Organization for Standardization.

(4) Any other information required by the administrator or the administrator's designee.

8.4(5) *Bottle deposit requirements.*

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

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

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

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

8.5(1) *Purchase orders.* Suppliers shall submit purchase orders to the division electronically, or in a manner prescribed by the administrator or the administrator's designee, as needed to maintain appropriate inventory levels.

8.5(2) *Maximum inventory level exception.* A supplier may request from the division an exception to the established maximum inventory level for a product. Requests for a maximum inventory level exception shall be submitted to the division electronically or in a manner prescribed by the administrator or the administrator's designee. 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 electronically or in a manner prescribed by the administrator or the administrator's designee.

185—8.6(123) *Pricing.*

8.6(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 be determined by the administrator or the administrator's designee.

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

8.6(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 not be eligible for temporary price reductions.

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

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

8.6(3) Price lists. The division shall publish a price list electronically on a monthly basis showing the price to be paid by class "E" liquor control licensees for each brand, variety, and category of product available for sale by the division. The price list shall be published on the division's website at shop.iowaabd.com and may be distributed to class "E" liquor control licensees as deemed necessary by the administrator or the administrator's designee.

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

8.7(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.

8.7(2) Appeals.

a. *Appeal to administrator.*

(1) A supplier may appeal the delisting of a product by the administrator's designee to the administrator by filing a notice of appeal within 30 days of the date of delisting notification.

(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 be considered filed at the time it is received by the administrator.

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

b. *Appeal to commission.*

(1) If the administrator delists a product, or if the administrator affirms a delisting by the administrator's designee, the supplier may appeal the administrator's decision by filing a notice of appeal with the commission within 30 days of the date of the administrator'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 be considered filed at the time it is received by the commission.

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

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

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

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

8.7(3) Removal of delisted products. Delisted products shall be removed from the division'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. A supplier may authorize the division to destroy a delisted product in lieu of removal of the product by the supplier from the division's warehouse. New

listing requests submitted by a supplier shall not be considered by the division until all of the supplier's delisted product has been removed from the division's warehouse.

8.7(4) *Resubmission of a delisted product for listing.* If a product in a permanent listing classification is delisted, a new listing request 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) Barrel programs. A supplier may offer a barrel program, allowing a class "E" liquor control licensee to purchase the bottled contents of a barrel-aged product along with the aging barrel.

8.8(1) Barrel programs shall be uniformly offered to all class "E" liquor control licensees.

8.8(2) Suppliers may sample barrel-aged products pursuant to rule 185—16.8(123).

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

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

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

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

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