

ALCOHOLIC BEVERAGES DIVISION[185]

Created within the Department of Commerce by 1986 Iowa Acts, Senate File 2175.
Formerly Beer and Liquor Control Department[150]

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CHAPTER 1
ORGANIZATION AND OPERATION

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

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

185—1.1(123,17A) Purpose. This chapter describes the organization and operation of the alcoholic beverages division, including the offices where and the means by which any interested person may obtain information and make submittals or requests.

185—1.2(123,17A) Scope and rules. Promulgated under Iowa Code chapters 17A and 123, these rules shall apply to all matters before the alcoholic beverages division. No rule shall in any way relieve a certificate of compliance holder, manufacturer, native distiller, vintner, brewer, wholesaler, alcohol carrier, wine direct shipper, retail alcohol licensee or wine permittee or beer permittee, or an agent or employee thereof from any duty under the laws of this state.

This rule is intended to implement Iowa Code section 123.4.
[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—1.3(123,17A) Duties of the division. The alcoholic beverages division administers the laws of this state concerning alcoholic liquor, wine, and beer. The division is vested with the sole and exclusive control within the state of Iowa both as purchaser and vendor of all alcoholic liquor sold by distilleries within the state or imported therein, except wine and beer, except as otherwise provided by law.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—1.4(123,17A) Organization.

1.4(1) Commission. The alcoholic beverages division consists of five commission members appointed by the governor and confirmed by the senate. The commission acts as a policy-making body and serves in an advisory capacity to the administrator. A quorum shall consist of at least three commission members.

1.4(2) Administrator. Subject to senate confirmation, the governor appoints an administrator who conducts the daily operations of the division as prescribed by Iowa Code chapter 123.

This rule is intended to implement Iowa Code sections 123.5, 123.6, 123.9, and 123.10.
[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—1.5(123,17A) Central offices. The central office is located at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021; telephone (515)281-7400 or 1-866-469-2223. The central office is responsible for the operational support of the division and is the principal custodian of all divisional orders, statements of law or policy issued by the division, and other public documents on file with the division.

This rule is intended to implement Iowa Code section 123.4.
[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—1.6(123,17A) Matters applicable to all proceedings.

1.6(1) Communications. All communications to the division shall be addressed to the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021, unless otherwise directed. Bids, complaints, pleadings, or other papers required to be filed with the division shall be filed in the office of the administrator within the time limit, if any, for such filing. Unless otherwise provided, all communications and documents are officially filed upon receipt at the office of the division.

1.6(2) Office hours. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday. Offices are closed on Saturdays, Sundays, and official state holidays designated in accordance with state laws.

1.6(3) Public information. Any interested person may examine all public records of the division including the decisions, orders, rules, opinions, and other statements of law or policy issued by the division in the discharge of its function. These documents may be examined in the offices of the division during regular business hours or on the website of the division located at www.IowaABD.com. Unless otherwise provided by law, all information contained therein shall be made available for public inspection.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

These rules are intended to implement Iowa Code sections 123.4, 123.5, 123.6, 123.9, 123.10, and 17A.3.

[Filed 12/14/72]

[Filed 10/20/75, Notice 9/8/75—published 11/3/75, effective 12/9/75]

[Filed 2/16/79, Notice 12/27/78—published 3/7/79, effective 4/16/79]

[Filed without Notice 7/6/79—published 7/25/79, effective 8/29/79]

[Filed emergency 5/19/82—published 6/9/82, effective 5/19/82]

[Filed emergency 10/10/85—published 11/6/85, effective 10/10/85]

[Filed emergency 7/1/86—published 7/30/86, effective 7/1/86][◇]

[Editorially transferred from [150] to [185], IAC Supp. 10/8/86; see IAB 7/30/86]

[Filed emergency 7/29/93—published 8/18/93, effective 7/29/93]

[Filed 10/20/93, Notice 8/18/93—published 11/10/93, effective 12/15/93]

[Filed 3/29/01, Notice 2/21/01—published 4/18/01, effective 5/23/01]

[Filed ARC 0273C (Notice ARC 0142C, IAB 5/30/12), IAB 8/8/12, effective 9/12/12]

[Filed ARC 7073C (Notice ARC 7049C, IAB 7/26/23), IAB 9/20/23, effective 10/25/23]

[◇] Two or more ARCs

CHAPTER 2

AGENCY PROCEDURE FOR RULE MAKING

[Ch 2, IAC 7/1/75 rescinded 3/7/79; see Ch 4]
[Prior to 10/8/86, Beer and Liquor Control Department[150]]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

185—2.1(17A) Applicability. Except to the extent otherwise provided by statute, all rules adopted by the agency are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—2.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the agency may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)“a,” solicit comments from the public on a subject matter of possible rule making by the agency by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

185—2.3(17A) Public rule-making docket.

2.3(1) *Docket maintained.* The agency shall maintain a current public rule-making docket.

2.3(2) *Anticipated rule making.* The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the agency. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the administrator for subsequent proposal under the provisions of Iowa Code section 17A.4(1)“a,” the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the agency of that possible rule. The agency may also include in the docket other subjects upon which public comment is desired.

2.3(3) *Pending rule-making proceedings.* The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)“a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any agency determinations with respect thereto;
- h. Any known timetable for agency decisions or other action in the proceeding;
- i. The date of the rule’s adoption;
- j. The date of the rule’s filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

185—2.4(17A) Notice of proposed rule making.

2.4(1) *Contents.* At least 35 days before the adoption of a rule the agency shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the agency shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the agency for the resolution of each of those issues.

2.4(2) *Incorporation by reference.* A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 2.12(2) of this chapter.

2.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription shall file with the agency a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the agency for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price, which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—2.5(17A) Public participation.

2.5(1) *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to Administrator, Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021, or the person designated in the Notice of Intended Action.

2.5(2) *Oral proceedings.* The agency may, at any time, schedule an oral proceeding on a proposed rule. The agency shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the agency by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request shall also contain the following additional information:

- a. A request by one or more individual persons shall be signed by each of them and include the address and telephone number of each of them.
- b. A request by an association shall be signed by an officer or designee of the association and shall contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.
- c. A request by an agency or governmental subdivision shall be signed by an official having authority to act on behalf of the entity and shall contain the address and telephone number of the person signing that request.

2.5(3) *Conduct of oral proceedings.*

a. *Applicability.* This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)“b” or this chapter.

b. *Scheduling and notice.* An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. *Presiding officer.* The agency, a member of the agency, or another person designated by the agency who is familiar with the substance of the proposed rule shall preside at the oral proceeding on a proposed rule. If the agency does not preside, the presiding officer shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding unless the agency determines that such a memorandum is unnecessary because the agency will personally listen to or read the entire transcript of the oral proceeding.

d. *Conduct of proceeding.* At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the agency at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) *Procedure.* At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the agency decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) *Oral presentation.* Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) *Discussion.* To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) *Authority of presiding officer.* The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) *Submissions.* Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the agency.

(6) *Continuance.* The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) *Questions.* Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) *Rebuttal statements.* The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

2.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the agency may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

2.5(5) *Accessibility.* The agency shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the alcoholic beverages division at (515)281-7400 or 1-866-469-2223 in advance to arrange access or other needed services.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—2.6(17A) Regulatory analysis.

2.6(1) *Definition of small business.* A “small business” is defined in Iowa Code section 17A.4A(8) “a.”

2.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the agency’s small business impact list by making a written application addressed to Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021. The application for registration shall state:

- a. The name of the small business or organization of small businesses;
- b. Its address;
- c. The name of a person authorized to transact business for the applicant;
- d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.
- e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The agency may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The agency may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

2.6(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the agency shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

2.6(4) *Qualified requesters for regulatory analysis—economic impact.* The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2) "a" after a proper request from:

- a. The administrative rules coordinator;
- b. The administrative rules review committee.

2.6(5) *Qualified requesters for regulatory analysis—business impact.* The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2) "b" after a proper request from:

- a. The administrative rules review committee;
- b. The administrative rules coordinator;
- c. At least 25 or more persons who sign the request provided that each represents a different small business;

- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

2.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the agency shall adhere to the time lines described in Iowa Code section 17A.4A(4).

2.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the agency. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

2.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A(4), (5), and (6).

2.6(9) *Publication of a concise summary.* The agency shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(6).

2.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) "a" unless a written request expressly waives one or more of the items listed in the section.

2.6(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) "b."

185—2.7(17A,25B) Fiscal impact statement.

2.7(1) *Fiscal impact statement.* A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services shall be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement shall satisfy the requirements of Iowa Code section 25B.6.

2.7(2) *Corrected fiscal impact statement.* If the agency determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the agency shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—2.8(17A) Time and manner of rule adoption.

2.8(1) *Time of adoption.* The agency shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the agency shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

2.8(2) *Consideration of public comment.* Before the adoption of a rule, the agency shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

2.8(3) *Reliance on agency expertise.* Except as otherwise provided by law, the agency may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

185—2.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

2.9(1) *Rule different from proposed Notice of Intended Action.* The agency shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

- a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and
- c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

2.9(2) *Determining fair warning.* In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the agency shall consider the following factors:

- a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
- b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and
- c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

2.9(3) *Commencement of rule-making proceeding.* The agency shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the agency finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

2.9(4) *Concurrent rule-making proceedings.* Nothing in this rule disturbs the discretion of the agency to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

185—2.10(17A) Exemptions from public rule-making procedures.

2.10(1) *Omission of notice and comment.* To the extent the agency for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the agency may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

2.10(2) *Public proceedings on rules adopted without them.* The agency may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 2.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the agency shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 2.10(1). Such a petition shall be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule shall be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the agency may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 2.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—2.11(17A) Concise statement of reasons.

2.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the agency shall issue a concise statement of reasons for the rule. Requests for such a statement shall be in writing and be delivered to the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

2.11(2) *Contents.* The concise statement of reasons shall contain:

- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the agency's reasons for overruling the arguments made against the rule.

2.11(3) *Time of issuance.* After a proper request, the agency shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—2.12(17A) Contents, style, and form of rule.

2.12(1) *Contents.* Each rule adopted by the agency shall contain the text of the rule and, in addition:

- a. The date the agency adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4A(1) "b" or the agency in its discretion decides to include such reasons;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4(2) or the agency in its discretion decides to include such reasons; and
- g. The effective date of the rule.

2.12(2) *Incorporation by reference.* The agency may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the agency finds that the incorporation of its text in the agency proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the agency proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The agency may incorporate such matter by reference in a proposed or adopted rule only if the agency makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this agency, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The agency shall retain permanently a copy of any materials incorporated by reference in a rule of the agency.

If the agency adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

2.12(3) *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the agency shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the agency. The agency will provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the agency shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

2.12(4) *Style and form.* In preparing its rules, the agency shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—2.13(17A) Agency rule-making record.

2.13(1) *Requirement.* The agency shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference shall be available for public inspection.

2.13(2) *Contents.* The agency rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of agency submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the agency, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the agency and considered by the administrator, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the agency is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the agency shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for amendment or repeal or suspension of the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(4) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(6) "a," and any agency response to that objection;

j. A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

k. A copy of any executive order concerning the rule.

2.13(3) *Effect of record.* Except as otherwise required by a provision of law, the agency rule-making record required by this rule need not constitute the exclusive basis for agency action on that rule.

2.13(4) *Maintenance of record.* The agency shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in paragraph 2.13(2) "g," "h," "i," or "j."

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—2.14(17A) Filing of rules. The agency shall file each rule it adopts in the office of the administrative rules coordinator. The filing shall be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule shall have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement shall be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the agency shall use the standard form prescribed by the administrative rules coordinator.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—2.15(17A) Effectiveness of rules prior to publication.

2.15(1) *Grounds.* The agency may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

2.15(2) *Special notice.* When the agency makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) "b"(3), the agency shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the agency to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the agency of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 2.15(2).

185—2.16(17A) General statements of policy.

2.16(1) *Compilation, indexing, public inspection.* The agency shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(11)“a,” “c,” “f,” “g,” “h,” “k.” Each addition to, change in, or deletion from the official compilation shall also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(11)“f,” or otherwise authorized by law to be kept confidential, the compilation shall be made available for public inspection and copying.

2.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the agency to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 2.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—2.17(17A) Review by agency of rules.

2.17(1) *Written request for review.* Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the agency to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the agency shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The agency may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

2.17(2) *Formal review process.* In conducting the formal review, the agency shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report shall include a concise statement of the agency’s findings regarding the rule’s effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the agency or granted by the agency. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the agency’s report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report shall also be available for public inspection.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

These rules are intended to implement Iowa Code chapter 17A.

[Filed 2/16/79, Notice 12/27/78—published 3/7/79, effective 4/16/79]

[Filed without Notice 7/6/79—published 7/25/79, effective 8/29/79]

[Filed emergency 5/19/82—published 6/9/82, effective 5/19/82]

[Filed emergency 7/1/86—published 7/30/86, effective 7/1/86]¹

[Editorially transferred from [150] to [185], IAC Supp. 10/8/86; see IAB 7/30/86]

[Filed 4/28/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

[Filed ARC 0273C (Notice ARC 0142C, IAB 5/30/12), IAB 8/8/12, effective 9/12/12]

¹ See Alcoholic Beverages Division, IAB 7/30/86

CHAPTER 3 DECLARATORY ORDERS

[Ch 3, IAC 7/1/75 rescinded 3/7/79; see Ch 4]
[Prior to 10/8/86, Beer and Liquor Control Department[150]]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

185—3.1(17A) Petition for declaratory order. Any person may file a petition with the alcoholic beverages division for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the division, at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021. A petition is deemed filed when it is received by the division. The division shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition shall be typewritten or legibly handwritten in ink and shall substantially conform to the following form:

ALCOHOLIC BEVERAGES DIVISION		
Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).		PETITION FOR DECLARATORY ORDER

The petition shall provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by rule 185—3.7(17A).

The petition shall be dated and signed by the petitioner or the petitioner's representative. It shall also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—3.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the alcoholic beverages division shall give notice of the petition to all persons not served by the petitioner pursuant to rule 3.6(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons.

185—3.3(17A) Intervention.

3.3(1) Qualified persons. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 days of the filing of a petition for declaratory order (after time for notice under rule 3.2(17A) and before 30-day time for agency action under 3.8(17A)) shall be allowed to intervene in a proceeding for a declaratory order.

3.3(2) Agency discretion. Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the division.

3.3(3) Filing of petition. A petition for intervention shall be filed at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021. Such a petition is deemed filed when it is received by that office. The division will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention shall be typewritten or legibly handwritten in ink and shall substantially conform to the following form:

ALCOHOLIC BEVERAGES DIVISION		
Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION

The petition for intervention shall provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition shall be dated and signed by the intervenor or the intervenor's representative. It shall also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—3.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The division may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

185—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Administrator, Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—3.6(17A) Service and filing of petitions and other papers.

3.6(1) When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

3.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the division.

3.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by contested case rule 185—10.13(17A).

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—3.7(17A) Consideration. Upon request by petitioner, the alcoholic beverages division must schedule a brief and informal meeting between the original petitioner, all intervenors, and the division, a member of the division, or a member of the staff of the division, to discuss the questions raised. The division may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the division by any person.

185—3.8(17A) Action on petition.

3.8(1) *Agency action.* Within the time allowed by Iowa Code section 17A.9(5) after receipt of a petition for a declaratory order, the administrator or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

3.8(2) *Issuance of order.* The date of issuance of an order or of a refusal to issue an order is as defined in contested case rule 185—10.2(17A).

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—3.9(17A) Refusal to issue order.

3.9(1) *Refusal to issue order.* The division shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1)“a” and “b” and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the division to issue an order.
3. The division does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the division to determine whether a statute is unconstitutional on its face.

3.9(2) *Grounds for refusal.* A refusal to issue a declaratory order shall indicate the specific grounds for the refusal and constitutes final agency action on the petition.

3.9(3) *Filing of new petition.* Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—3.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order shall contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—3.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

185—3.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the division, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the division. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapter 17A.

[Filed 2/16/79, Notice 12/27/79—published 3/7/79, effective 4/16/79]

[Filed without Notice 7/6/79—published 7/25/79, effective 8/29/79]

[Filed emergency 10/10/85—published 11/6/85, effective 10/10/85]

[Filed emergency 7/1/86—published 7/30/86, effective 7/1/86]¹

[Editorially transferred from [150] to [185], IAC Supp. 10/8/86; see IAB 7/30/86]

[Filed 4/28/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

[Filed ARC 0273C (Notice ARC 0142C, IAB 5/30/12), IAB 8/8/12, effective 9/12/12]

¹ See Alcoholic Beverages Division, IAB 7/30/86

CHAPTER 4
RETAIL ALCOHOL LICENSES—BEER PERMITS—WINE PERMITS

[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]]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

185—4.1(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 Iowa Code section 123.3(4).

“*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.

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—4.2(123) General requirements. All applicants for licenses, permits, or certificates of compliance shall comply with the following requirements, where applicable, prior to receiving a license, permit, or certificate of compliance.

4.2(1) *Cleanliness of premises.* The interior and exterior of the licensed premises shall be kept clean, free of litter or rubbish, painted and in good repair. Licensees and permittees shall at all times keep and maintain their respective premises in compliance with the laws, orders, ordinances and rules of the state, county and city health and fire departments, and the Iowa department of inspections and appeals.

4.2(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 and appeals’ 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 and appeals and the local approving authority where the licensed premises is located.

4.2(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) *Financial standing and reputation.* A local authority or the administrator 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 an application for a license, permit, or certificate of compliance 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 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.

b. In evaluating an applicant's "good reputation," the local authority or the administrator 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, 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).

This rule is intended to implement Iowa Code sections 123.3(40) and 123.10(11).

[ARC 5392C, IAB 1/13/21, effective 2/17/21; ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—4.3(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) Licensed premises. 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."

4.4(1) The "place" must be owned by or under the control of the prospective licensee or permittee.

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 "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) The "place" must satisfy the health, safety, fire and seating requirements of the division, local authorities and 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 123.3(29) and 123.4.

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—4.5(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) 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 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) Container: A mixed drink or cocktail which is not for immediate consumption shall at all times be in a container compliant with applicable state and federal food safety statutes and regulations.

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

b. The mixed drink or cocktail shall 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 for the mixed drink or cocktail.

(2) For transfer into a pourable container. The pourable container shall have affixed a label compliant with subrule 4.5(5) displaying label information identical to that on the container from which the contents were poured. 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) The container and process are 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.

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

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

b. The label shall be subject to the following 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) The label shall 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), or destroyed and disposed of in accordance with applicable law.

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

(11) A new label, subject to the requirements and restrictions of paragraph 4.5(5) “b,” shall 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 located at www.IowaABD.com.

4.5(6) Contents. Contents include alcoholic beverages, nonalcoholic ingredients, or combination thereof, which are not for immediate consumption.

a. A licensee is limited to utilizing alcoholic beverages in the mixed drink or cocktail which are authorized by the license.

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.

4.5(7) Disposal.

a. Any mixed drink or cocktail, or portion thereof, not consumed within 72 hours of the contents' being placed into the empty container is expired and shall 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) Records. A licensee shall maintain accurate and legible records for each prepared batch of mixed drinks or cocktails which is not for immediate consumption.

a. Records shall contain:

- (1) The month, day, and year the contents are 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) Each alcoholic beverage, including 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) The recipe title and directions for preparing the contents of the container.
- (6) The size of the batch.
- (7) The identity of the person who prepared the contents of the container.
- (8) The month, day, and year the contents of the container are 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).
- (10) The method of destruction and disposal or shall specify that the entire contents were consumed.
- (11) 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 located at www.IowaABD.com, 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 be maintained on the licensed premises for a period of three years and shall be open to inspection pursuant to Iowa Code section 123.33.

4.5(9) 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) 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 all applicable state and federal food safety statutes and regulations.

4.5(11) 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 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) Violations. Failure to comply with the requirements and restrictions of this rule shall subject the licensee to the penalty provisions of Iowa Code section 123.39.

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

185—4.6(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) 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) 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 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.
- e. A retailer may exchange a growler to be filled or refilled.
- 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(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.

4.6(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 “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).

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 section 123.31A.

[ARC 7073C, IAB 9/20/23, effective 10/25/23; Editorial change: IAC Supplement 11/15/23]

185—4.7(123) Improper conduct.

4.7(1) *Illegality on premises.* No retail alcohol licensee, or the licensee's agent or employee, shall engage in any illegal occupation or illegal act on the licensed premises.

4.7(2) *Cooperation with law enforcement officers.* No retail alcohol licensee, or the licensee's agent or employee, shall 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) *Open containers of alcoholic beverages.* No retail alcohol licensee, or the licensee's agent or employee, shall allow any filled, partially filled, or empty liquor glasses or liquor bottles 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) *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 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 section 123.49(2).

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—4.8(123) Violation by agent, servant or employee. Any violation of the Act or the rules of the division by any employee, agent or servant of a licensee shall be deemed to be the act of the licensee and shall subject the license of said licensee to suspension or revocation.

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

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

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.

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

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.

[ARC 5338C, IAB 12/16/20, effective 1/20/21]

185—4.11(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) 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 the same 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 the same as defined in Iowa Code section 123.3(53).

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 the licensee’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. Special class “B” and special class “C” retail native wine licensees 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 the licensee’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 a licensee’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” and 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).

4.11(5) 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, 123.31A, and 123.31B and section 123.31C as enacted by 2023 Iowa Acts, House File 677, section 5.

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—4.12(123) Display of license, permit, or signs. All licenses, permits or signs issued by the division shall 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) 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, the licensee may serve and sell alcoholic beverages in both the licensee's indoor licensed establishment and in the licensee's outdoor area at the same time because an outdoor area is merely an extension of the licensee's licensed premises and is not a transfer of their license. A licensee, prior to serving in the outdoor area, must file with the division:

1. A new diagram showing the discernible outdoor area.
2. Local authority approval of the outdoor area.
3. Insurance company acknowledgment that the outdoor area is covered by the dramshop insurance policy.

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

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—4.14(123) Revocation or suspension by local authority. When the local authority revokes or suspends a retail alcohol license, the local authority shall notify the division in written form 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.

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—4.15(123) Suspension of retail alcohol license, wine permit, or beer permit. At the time of the suspension of any retail alcohol license, wine permit, or beer permit by the division, there shall be placed, in a conspicuous place in the front door or window of the licensed establishment, a placard furnished by the division showing that the license or permit of that establishment has been suspended by the division and such placard shall also show the number of days and reason for the suspension. No licensee or permittee shall remove, alter, obscure or destroy said placard without the express written approval of the division.

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

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—4.16(123) Cancellation of beer permits—refunds. Rescinded ARC 7073C, IAB 9/20/23, effective 10/25/23.

185—4.17(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 any premises other than those licensed. However, under special circumstances, the administrator may authorize the storage of alcoholic beverages on premises other than those covered by the license. The administrator may allow class "D" retail alcohol licensees to store alcoholic liquor and wine 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).

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—4.18(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. A retail alcohol

license, wine permit, or a beer permit may only be transferred within the boundaries of the local authority which approved the license or permit.

4.18(1) *Permanent transfers.* A person may apply for a permanent transfer. The application must be approved by the local authority and the division prior to the transfer. The insurance company holding the dramshop policy listing the new address must endorse the application prior to the transfer. When the above requirements are met, the division shall issue an amended license or permit showing the new permanent 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 person may apply for a temporary transfer. The application must be approved by the local authority and the division. 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.

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—4.19(123) Execution and levy on alcoholic liquor, wine, and beer. 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) 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 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. However, if the debtor is a class “E” retail alcohol licensee, the secured party may not purchase alcoholic liquor from the division 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 by sale only to persons authorized under Iowa Code chapter 123 to purchase alcoholic liquor, wine, and beer from the debtor. When a secured party takes possession of a retail alcohol licensee’s or permittee’s alcoholic liquor, wine, and beer, the secured party shall notify the division in writing of such action. A secured party shall further inform the division of the manner in which it intends to dispose of the alcoholic liquor, wine, and beer 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 notify the division in writing when the disposition of its collateral has been completed, and the secured party shall cease operating under the retail alcohol license or permit of its debtor.

4.19(2) 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 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 only to those persons authorized by Iowa Code chapter 123 to purchase alcoholic liquor, wine, and beer from the retail alcohol licensee or permittee whose inventory is subject to the execution and levy. The sheriff or other officer shall notify the division 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 and shall further notify the division 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.

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

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 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.

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—4.21(123) Where retailers must purchase wine. Rescinded ARC 7073C, IAB 9/20/23, effective 10/25/23.

185—4.22(123) Liquor on licensed premises. Rescinded ARC 7073C, IAB 9/20/23, effective 10/25/23.

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) 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.

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—4.26(123) Timely filed status.

4.26(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 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 as required by applicable law.

b. A current dramshop liability certificate has been endorsed by the insurance company if proof of dramshop liability is required as a condition precedent to the issuance of the license.

c. The applicant pays the appropriate license fee in full to the local authority or the division 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) Timely filed status allows the holder of the license to continue to operate under a license after its expiration and until the local authority and the division 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 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 123.32, 123.35 and 17A.18.

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

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.

185—4.28(123) Use of 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 can be used as a restaurant or any other lawful purpose during hours which alcoholic beverages cannot be sold as long as alcoholic beverages are not consumed during these hours.

This rule is intended to implement Iowa Code section 123.49.

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—4.29 Reserved.

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 ARC 7073C, IAB 9/20/23, effective 10/25/23.

185—4.32(123) Delivery of alcoholic liquor. Individuals who do not work for the division may operate a delivery service in which they will charge licensees a fee for picking up their alcoholic liquor orders at the division's liquor stores and delivering it to their establishments.

This rule is intended to implement Iowa Code sections 123.4 and 123.21(10).

185—4.33(123) Delivery of beer and wine. Rescinded ARC 7073C, IAB 9/20/23, effective 10/25/23.

185—4.34(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 section 123.10(11).

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—4.35(123) Minors in licensed establishments. Because Iowa law does not prohibit minors from being in licensed establishments, a minor can be in a licensed establishment if local authority does not have a local ordinance prohibiting minors from being in licensed establishments in its jurisdiction.

This rule is intended to implement Iowa Code section 123.21(5).

185—4.36(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 section 123.10.

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—4.37(123) Business as usual on election days. Rescinded ARC 7073C, IAB 9/20/23, effective 10/25/23.

185—4.38(123) Sunday sale of wine. Rescinded ARC 7073C, IAB 9/20/23, effective 10/25/23.

185—4.39(123) Intoxication notice. Reserved.

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.

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—4.41(123) Vending machines to dispense alcoholic beverages prohibited. A retail alcohol licensee shall not 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 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.

This rule is intended to implement Iowa Code section 123.49.

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

[Filed December 14, 1972]

[Filed 5/19/78, Notice 4/5/78—published 6/14/78, effective 7/20/78]

[Filed 2/16/79, Notice 12/27/78—published 3/7/79, effective 4/16/79]

[Filed without Notice 7/6/79—published 7/25/79, effective 8/29/79]

[Filed 8/15/80, Notice 5/28/80—published 9/3/80, effective 10/8/80]

[Filed 1/4/82, Notice 9/2/81—published 1/20/82, effective 2/25/82]

[Filed 5/18/82, Notice 3/3/82—published 6/9/82, effective 7/14/82]

[Filed 6/17/83, Notice 3/30/83—published 7/6/83, effective 8/10/83]¹

[Filed 9/17/84, Notice 6/20/84—published 10/10/84, effective 11/14/84]

[Filed 5/3/85, Notice 2/13/85—published 5/22/85, effective 6/26/85]

[Filed emergency 6/14/85—published 7/3/85, effective 7/1/85]

[Filed emergency 7/1/85—published 7/31/85, effective 7/1/85]

[Filed emergency 10/10/85—published 11/6/85, effective 10/10/85]

[Filed emergency 6/11/86—published 7/2/86, effective 7/1/86]

[Filed emergency 7/1/86—published 7/30/86, effective 7/1/86][◇]
 [Filed emergency 8/22/86—published 9/10/86, effective 9/30/86][◇]
 [Editorially transferred from [150] to [185], IAC Supp. 10/8/86; see IAB 7/30/86]
 [Filed emergency 11/12/86—published 12/3/86, effective 11/12/86]
 [Filed emergency 3/6/87—published 3/25/87, effective 3/6/87]
 [Filed 4/17/87, Notice 12/31/86—published 5/6/87, effective 6/10/87]
 [Filed 7/24/87, Notice 3/25/87—published 8/12/87, effective 9/16/87]
 [Filed 4/26/91, Notice 3/20/91—published 5/15/91, effective 6/19/91]
 [Filed 1/27/92, Notice 8/7/91—published 2/19/92, effective 3/25/92]
 [Filed emergency 7/29/93—published 8/18/93, effective 7/29/93]
 [Filed 10/20/93, Notice 8/18/93—published 11/10/93, effective 12/15/93]
 [Filed 9/26/94, Notice 6/22/94—published 10/26/94, effective 11/30/94]
 [Filed 10/12/01, Notice 8/8/01—published 10/31/01, effective 12/5/01]
 [Filed Emergency ARC 0204C, IAB 7/11/12, effective 7/1/12]
 [Filed ARC 0406C (Notice ARC 0205C, IAB 7/11/12), IAB 10/17/12, effective 11/21/12]
 [Filed ARC 2382C (Notice ARC 2255C, IAB 11/25/15), IAB 2/3/16, effective 3/9/16]
 [Filed ARC 2777C (Notice ARC 2679C, IAB 8/17/16), IAB 10/12/16, effective 11/16/16]
 [Filed ARC 3928C (Notice ARC 3817C, IAB 6/6/18), IAB 8/1/18, effective 9/5/18]
 [Filed ARC 5191C (Notice ARC 5111C, IAB 7/29/20), IAB 9/23/20, effective 10/28/20]
 [Filed Emergency ARC 5221C, IAB 10/7/20, effective 10/1/20]
 [Filed ARC 5338C (Notice ARC 5220C, IAB 10/7/20), IAB 12/16/20, effective 1/20/21]
 [Filed ARC 5392C (Notice ARC 5242C, IAB 11/4/20), IAB 1/13/21, effective 2/17/21]
 [Filed ARC 7073C (Notice ARC 7049C, IAB 7/26/23), IAB 9/20/23, effective 10/25/23]
 [Editorial change: IAC Supplement 11/15/23]

◇ Two or more ARCs

¹ Effective date of 4.32 delayed seventy days by the Administrative Rules Review Committee on 8/2/83.

CHAPTER 5
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]]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

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

5.1(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.

5.1(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. Report forms shall be furnished by the division. A manufacturer of native wine shall submit a report along with any wine gallonage tax payment in the division’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 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, 123.49, 123.176, and 123.183.

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—5.2(123) Production of a native distillery.

5.2(1) *Native distillery.* 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) 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.

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

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—5.3(123) Licensed manufacturers and wholesalers. Rescinded ARC 7073C, IAB 9/20/23, effective 10/25/23.

185—5.4(123) Investigation before issuing license or permit. Rescinded ARC 7073C, IAB 9/20/23, effective 10/25/23.

185—5.5 Reserved.

185—5.6(123) Living quarters permit. Rescinded ARC 7073C, IAB 9/20/23, effective 10/25/23.

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

5.7(1) A new license or permit and a new bond and a new dramshop policy must 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 license or permit.
- f. When a receiver takes over the operation of an establishment.

5.7(2) A new license or permit is not required:

- 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 new owner or owners and the amount of stock held by each is required.
- c. When a name of a licensee or permittee is changed by marriage, divorce, or other legal proceeding. A letter requesting the name change is required.
- 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.

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—5.8(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) *Current certificate required.* The dramshop liability certificate of insurance shall 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 be provided each time the division issues a new license. The dramshop liability certificate of insurance shall contain the following: the name of the insurance provider; the policy number; the name and address of the insured; 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.

5.8(2) *Minimum coverage required.* The dramshop liability insurance policy shall 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) *Permitted policies.* All dramshop policies issued under this rule shall 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) *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) *Civil tort liability.* Subject to the ordinary or customary exclusions usually found in a policy of dramshop liability insurance, the policy shall 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) *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) *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) *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) *Assault and battery policy requirement.* Any dramshop insurance policy issued under this rule shall 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.

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

[ARC 7073C, IAB 9/20/23, effective 10/25/23; Editorial change: IAC Supplement 11/15/23]

185—5.9(123) Surety bond requirements. Each surety bond shall meet the following requirements.

5.9(1) *Certificate of authority.* 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.* 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 the division of the party's intent to cancel the bond. The 30-day period shall commence on the date that the division receives the notice of cancellation. The party seeking to cancel a bond shall submit written notice of such cancellation to the division in Ankeny, Iowa, and further shall submit a copy of the notice of cancellation to the other party. The notice of cancellation shall contain the following: the name of the party to whom the copy of the notice of cancellation was submitted, the date on which the notice of cancellation was 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.

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:

a. Filed with the division 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, or

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

5.9(5) to 5.9(7) Reserved.

This rule is intended to implement Iowa Code sections 123.30, 123.50, 123.127, and 123.175.

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—5.10 to 185—5.19 Reserved.

[Filed 12/14/72]

[Filed emergency 5/11/76—published 5/31/76, effective 5/11/76]

[Filed 5/19/78, Notice 4/5/78—published 6/14/78, effective 7/20/78]

[Filed 2/16/79, Notice 12/27/78—published 3/7/79, effective 4/16/79]
 [Filed without Notice 7/6/79—published 7/25/79, effective 8/29/79]
 [Filed 8/15/80, Notice 5/28/80—published 9/3/80, effective 10/8/80]
 [Filed emergency 5/19/82—published 6/9/82, effective 5/19/82]
 [Filed 11/1/84, Notice 8/1/84—published 11/21/84, effective 12/26/84]
 [Filed 5/3/85, Notice 2/13/85—published 5/22/85, effective 6/26/85]¹
 [Filed without Notice 5/3/85—published 5/22/85, effective 7/1/85]
 [Filed emergency 6/14/85—published 7/3/85, effective 7/1/85][◇]
 [Filed emergency 7/1/85—published 7/31/85, effective 7/1/85]
 [Filed emergency 10/10/85—published 11/6/85, effective 10/10/85]
 [Filed emergency 6/11/86—published 7/2/86, effective 7/1/86]
 [Filed emergency 7/1/86—published 7/30/86, effective 7/1/86]^{◇2}
 [Filed 7/1/86, Notice 5/21/86—published 7/30/86, effective 9/3/86]²
 [Filed emergency 8/22/86—published 9/10/86, effective 9/30/86]²
 [Editorially transferred from [150] to [185], IAC Supp. 10/8/86; see IAC 7/30/86]
 [Filed 2/16/88, Notice 10/7/87—published 3/9/88, effective 4/13/88]
 [Filed 4/26/91, Notice 3/20/91—published 5/15/91, effective 6/19/91]
 [Filed emergency 7/29/93—published 8/18/93, effective 7/29/93]
 [Filed 10/20/93, Notice 8/18/93—published 11/10/93, effective 12/15/93]
 [Filed 4/28/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]
 [Filed 10/12/01, Notice 8/8/01—published 10/31/01, effective 12/5/01]
 [Filed 3/14/03, Notice 8/8/01—published 4/2/03, effective 5/8/03]
 [Filed ARC 0274C (Notice ARC 0157C, IAB 6/13/12), IAB 8/8/12, effective 9/12/12]
 [Filed ARC 3928C (Notice ARC 3817C, IAB 6/6/18), IAB 8/1/18, effective 9/5/18]
 [Filed ARC 7073C (Notice ARC 7049C, IAB 7/26/23), IAB 9/20/23, effective 10/25/23]
 [Editorial change: IAC Supplement 11/15/23]

◇ Two or more ARCs

¹ Effective date of 5.1(2), 5.1(7) and 5.7(1) delayed 70 days by the Administrative Rules Review Committee on 6/11/85.

² See Alcoholic Beverages Division in IAB.

CHAPTER 6
ADVERTISING

Rescinded IAB 5/15/91, effective 6/19/91

CHAPTER 7
REPRESENTATIVES OF DISTILLERS, RECTIFIERS,
MANUFACTURERS, BREWERS AND VINTNERS

[Ch 7, IAC 7/1/75 renumbered Ch 8, IAC 3/7/79]
[Prior to 10/8/86, Beer and Liquor Control Department[150]]

Rescinded **ARC 5910C**, IAB 9/22/21, effective 10/27/21

CHAPTER 8
TRANSPORTATION AND WAREHOUSE

[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]]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

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.

[ARC 5910C, IAB 9/22/21, effective 10/27/21]

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” retail alcohol 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” retail alcohol licensees by the case only.

d. Special order products are not eligible for return to the division by a class “E” retail alcohol 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" retail alcohol licensees may be limited at the administrator's, or the administrator's designee's, discretion.

[ARC 5910C, IAB 9/22/21, effective 10/27/21; ARC 7073C, IAB 9/20/23, effective 10/25/23]

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 evenly 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.

[ARC 5910C, IAB 9/22/21, effective 10/27/21]

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 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.

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.

[ARC 5910C, IAB 9/22/21, effective 10/27/21]

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 either electronically or in a manner prescribed by the administrator or the administrator's designee.

[ARC 5910C, IAB 9/22/21, effective 10/27/21]

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" retail alcohol 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" retail alcohol licensees as deemed necessary by the administrator or the administrator's designee.

[ARC 5910C, IAB 9/22/21, effective 10/27/21; ARC 7073C, IAB 9/20/23, effective 10/25/23]

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.

[ARC 5910C, IAB 9/22/21, effective 10/27/21]

185—8.8(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) Barrel programs shall be uniformly offered to all class "E" retail alcohol 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" retail alcohol licensee that placed the special order. Barrel program special orders and products shall not be split between two or more class "E" retail alcohol 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.

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

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

[Filed 12/14/72]

[Filed 2/16/79, Notice 12/27/78—published 3/7/79, effective 4/16/79]

[Filed 8/15/80, Notice 5/28/80—published 9/3/80, effective 10/8/80]

[Filed emergency 5/19/82—published 6/9/82, effective 5/19/82]

[Filed 3/9/84, Notice 1/4/84—published 3/28/84, effective 5/2/84]

[Filed emergency 10/10/85—published 11/6/85, effective 10/10/85]

[Filed emergency 6/11/86—published 7/2/86, effective 7/1/86]

[Editorially transferred from [150] to [185], IAC Supp. 10/8/86; see IAB 7/30/86]

[Filed ARC 5910C (Notice ARC 5734C, IAB 6/30/21), IAB 9/22/21, effective 10/27/21]

[Filed ARC 7073C (Notice ARC 7049C, IAB 7/26/23), IAB 9/20/23, effective 10/25/23]

CHAPTER 9
PERSONAL IMPORTATION OF ALCOHOLIC LIQUOR, WINE, AND BEER

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

185—9.1(123) Tax liability. 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.

[ARC 3994C, IAB 9/12/18, effective 10/17/18; ARC 5192C, IAB 9/23/20, effective 10/28/20]

185—9.2(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.

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 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) 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).

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) Additional information. Prior to granting or denying a request for a waiver, the division may request additional information from the requester relative to the request and surrounding circumstances.

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) Ruling. A letter granting or denying a request 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 in writing and shall contain a description of the precise scope and duration of the waiver if one is issued.

9.2(10) *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) *Public availability.* The division 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. Waivers containing information that the division is authorized or required to keep confidential shall be edited prior to public inspection.

9.2(12) *Cancellation.* A waiver issued by the division pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice, the division 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) *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) *Defense.* After the division 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) *Appeals.* Granting or denying a request for a waiver is final agency action under Iowa Code chapter 17A.

[ARC 3994C, IAB 9/12/18, effective 10/17/18; ARC 5192C, IAB 9/23/20, effective 10/28/20]

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

[Filed ARC 3994C (Notice ARC 3891C, IAB 7/18/18), IAB 9/12/18, effective 10/17/18]

[Filed ARC 5192C (Notice ARC 5078C, IAB 7/15/20), IAB 9/23/20, effective 10/28/20]

CHAPTER 10 CONTESTED CASES

[Ch 10, IAC 11/3/75 rescinded see Ch 11]
[Prior to 10/8/86, Beer and Liquor Control Department[150]]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

185—10.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the alcoholic beverages division.

185—10.2(17A) Definitions. Except where otherwise specifically defined by law:

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

“Contested case” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case pursuant to Iowa Code section 17A.10A.

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

“Hearing complaint” means a statement in writing filed by, or on behalf of, the division, a local authority having jurisdiction, or the department of public safety that sets forth the acts or omissions with which the respondent is charged, including the statute(s) and rule(s) which are alleged to have been violated. The hearing complaint shall be in sufficient detail to enable the preparation of the respondent’s defense.

“Issuance” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

“Local authority” means “local authority” as defined in Iowa Code section 123.3(30).

“Party” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“Presiding officer” means the administrator, the administrator’s designee, or an administrative law judge from the department of inspections and appeals.

“Proposed decision” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the administrator did not preside.

[ARC 5392C, IAB 1/13/21, effective 2/17/21]

185—10.3(17A) Time requirements.

10.3(1) Computation. Time shall be computed as provided in Iowa Code section 4.1(34).

10.3(2) Time extended or shortened. For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

185—10.4(123,17A) Statute of limitations. Requests for a contested case proceeding alleging a violation of Iowa Code chapter 123 must be filed with the division or the local authority within three years from the date of the alleged violation or the date of conviction for the violation, whichever is later.

[ARC 5392C, IAB 1/13/21, effective 2/17/21]

185—10.5(17A) Requests for a contested case proceeding.

10.5(1) Any person claiming an entitlement to a contested case proceeding shall file a written request within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question.

10.5(2) The request for a contested case proceeding should state the name and address of the requester, identify the specific agency action which is disputed and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

[ARC 5392C, IAB 1/13/21, effective 2/17/21]

185—10.6(17A) Notice of hearing.

10.6(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. Publication, as provided in the Iowa Rules of Civil Procedure.

10.6(2) *Contents.* The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the agency or the state and of parties' counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding.

[ARC 5392C, IAB 1/13/21, effective 2/17/21]

185—10.7(17A) Presiding officer.

10.7(1) *Administrative law judge.* The administrator may appoint an administrative law judge as presiding officer in all contested case hearings pursuant to Iowa Code sections 123.32 and 123.39.

10.7(2) *Appeal.* Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the administrator. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

10.7(3) *Administrator's review.* Unless otherwise provided by law, the administrator, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

[ARC 5392C, IAB 1/13/21, effective 2/17/21]

185—10.8(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

185—10.9(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

185—10.10(17A) Disqualification.

10.10(1) *Withdrawal.* A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

10.10(2) *Personally investigated.* The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 and subrules 10.10(3) and 10.23(9).

10.10(3) *Statement of reasons for nonwithdrawal.* In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

10.10(4) *Motion asserting disqualification.*

a. If a party asserts disqualification on any appropriate ground, including those listed in subrule 10.10(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

b. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

c. If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 185—10.25(17A) and seek a stay under rule 185—10.29(17A).

[ARC 5392C, IAB 1/13/21, effective 2/17/21]

185—10.11(17A) Consolidation—severance.

10.11(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

10.11(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

185—10.12(17A) Pleadings.

10.12(1) *Pleadings.* Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

10.12(2) *Hearing complaint.*

a. The division, a local authority having jurisdiction, or the department of public safety may give written notice of the cause for action in the form of a hearing complaint and an opportunity for a hearing to a licensee, permittee, or holder of a certificate of compliance for any of the following:

- (1) A violation of Iowa Code chapter 123.
- (2) A violation of the division’s administrative rules.
- (3) Failure to comply with an order issued by the division.

(4) Failure to fully cooperate during an investigation, audit, or inspection of the licensee, permittee, or certificate holder, including failure to respond to an inquiry within ten business days of the date of mailing by certified mail, return receipt requested, of a written request for information or records directed to the licensee's, permittee's, or certificate holder's last address on file with the agency.

b. A hearing complaint shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the hearing complaint is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address, and telephone number of the petitioner and the petitioner's attorney, if any.

10.12(3) *Answer.*

a. An answer shall be filed within 20 days of service of the hearing complaint unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

b. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

c. An answer shall state the name, address, and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

d. Any allegation in the hearing complaint not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

10.12(4) *Amendment.* Any notice of hearing, hearing complaint, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

[ARC 5392C, IAB 1/13/21, effective 2/17/21]

185—10.13(17A) Service and filing of pleadings and other papers.

10.13(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

10.13(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order, so long as there is proof of mailing.

10.13(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the division.

10.13(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the division, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing. Parties may file documents with the division by electronic transmission. Filing by electronic transmission is complete upon transmission unless the party making the filing learns that the attempted filing did not reach the division.

10.13(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

10.13(6) *Facsimile.* In appropriate cases, a facsimile copy may be filed with approval of the division with subsequent mailing of the original.

[ARC 5392C, IAB 1/13/21, effective 2/17/21]

185—10.14(17A) Discovery.

10.14(1) *Discovery procedures.* Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

10.14(2) *Discovery motions.* Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 10.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

10.14(3) *Evidence.* Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

185—10.15(17A) Subpoenas.

10.15(1) *Issuance.*

a. Agency subpoenas. An agency subpoena shall be issued to a party on request. Subpoenas may compel the attendance of witnesses at deposition or hearing and the production of books, papers, records, and other real evidence unless they are otherwise expressly exempt from disclosure by Constitution or statute. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or each command may be issued separately. Subpoenas shall be issued by the presiding officer upon a written request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Service of subpoenas. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

10.15(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

[ARC 5392C, IAB 1/13/21, effective 2/17/21]

185—10.16(17A) Motions.

10.16(1) *Rehearing motions.* No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

10.16(2) *Written responses.* Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the division or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

10.16(3) *Oral argument.* The presiding officer may schedule oral argument on any motion.

10.16(4) *Service.* Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the division or an order of the presiding officer.

10.16(5) Motions for summary judgment.

a. Motions for summary judgment shall comply with the requirements of Iowa Rules of Civil Procedure 1.981, 1.982, and 1.983 and shall be subject to disposition according to the requirements of those rules to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

b. Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer.

c. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 185—10.28(17A) and appeal pursuant to rule 185—10.27(17A).

[ARC 5392C, IAB 1/13/21, effective 2/17/21]

185—10.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

10.17(1) Application for continuance. A written application for a continuance shall:

a. Be made at the earliest possible time and no less than three days before the hearing except for a good cause showing;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The agency may waive notice of such requests for a particular case or an entire class of cases.

10.17(2) Issuing of continuance. In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance. Notwithstanding the foregoing, each party shall be entitled to one continuance without the need of a good cause showing.

185—10.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing without prejudice.

185—10.19(17A) Intervention.

10.19(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, as well as the position and interest of the proposed intervenor. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

10.19(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days

before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

10.19(3) *Grounds for intervention.* The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

10.19(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

185—10.20(17A) Hearing procedures.

10.20(1) *Role of presiding officer.* The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

10.20(2) *Objections.* All objections shall be timely made and stated on the record.

10.20(3) *Representative of parties.* Parties have the right to participate or to be represented in all hearings related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

10.20(4) *Role of parties.* Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

10.20(5) *Decorum of hearing.* The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

10.20(6) *Sequestering of witnesses.* Witnesses may be sequestered during the hearing.

10.20(7) *Conduct of hearing.* The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

185—10.21(17A) Evidence.

10.21(1) *Admissibility.* The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

10.21(2) *Stipulation of facts.* Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

10.21(3) *Scope of evidence.* Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

10.21(4) Admission and examination. The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

10.21(5) Objection. Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

10.21(6) Offer of service. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

[ARC 5392C, IAB 1/13/21, effective 2/17/21]

185—10.22(17A) Default.

10.22(1) Default. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

10.22(2) Motion for default. Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

10.22(3) Motion to vacate. Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 185—10.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

10.22(4) Appeal. The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

10.22(5) Good cause showing. Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

10.22(6) Good cause defined. "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.971.

10.22(7) Interlocutory appeal. A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 185—10.25(17A).

10.22(8) Resumption of hearing. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

10.22(9) Relief. A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

10.22(10) Effect of decision. A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 185—10.29(17A).

[ARC 5392C, IAB 1/13/21, effective 2/17/21]

185—10.23(17A) Ex parte communication.

10.23(1) *Prohibited communications.* Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the division or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 10.10(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

10.23(2) *Length of prohibitions.* Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

10.23(3) *Forms of ex parte communication.* Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

10.23(4) *Notice.* To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 185—10.13(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

10.23(5) *Communication between presiding officers.* Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

10.23(6) *Deliberations.* The administrator or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 10.23(1).

10.23(7) *Scheduling or procedural matters.* Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 185—10.17(17A).

10.23(8) *Disqualification of presiding officer.* A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

10.23(9) *Disclosure of prohibited communications.* Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not

be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

10.23(10) Sanctions. The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the division. Violation of ex parte communication prohibitions by division personnel shall be reported to the administrator or the administrator's designee for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

185—10.24(17A) Recording costs. Upon request, the division shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

185—10.25(17A) Interlocutory appeals. Upon written request of a party or on the administrator's own motion, the administrator may review an interlocutory order of the presiding officer. In determining whether to do so, the administrator shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

185—10.26(17A) Final decision.

10.26(1) Administrator's final decision. When the administrator presides over the reception of evidence at the hearing, the administrator's decision is a final decision.

10.26(2) Proposed decision. When the administrator does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the administrator within the time provided in rule 185—10.27(17A).

185—10.27(17A) Appeals and review.

10.27(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the administrator within 30 days after issuance of the proposed decision.

10.27(2) Review. The administrator may initiate review of a proposed decision on the administrator's own motion at any time within 30 days following the issuance of such a decision.

10.27(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the division. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

10.27(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The administrator may remand a case to the presiding officer for further hearing or the administrator may preside at the taking of additional evidence.

10.27(5) Scheduling. The administrator shall issue a schedule for consideration of the appeal.

10.27(6) Briefs and arguments. Unless otherwise ordered, within 30 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 30 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The administrator may resolve the appeal on the briefs or provide an opportunity for oral argument. The administrator may shorten or extend the briefing period as appropriate.

185—10.28(17A) Applications for rehearing.

10.28(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

10.28(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 10.27(4), the applicant requests an opportunity to submit additional evidence.

10.28(3) Time of filing. The application shall be filed with the division within 20 days after issuance of the final decision.

10.28(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the division shall serve copies on all parties.

10.28(5) Disposition. Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

185—10.29(17A) Stays of agency actions.

10.29(1) When available.

a. Agency appeal. Any party to a contested case proceeding may petition the division for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the division. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The administrator may rule on the stay or authorize the presiding officer to do so.

b. Stay or temporary remedy. Any party to a contested case proceeding may petition the division for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

10.29(2) When granted. In determining whether to grant a stay, the administrator shall consider the following factors:

- a.* The extent to which the applicant is likely to prevail when the court finally disposes of the matter.
- b.* The extent to which the applicant will suffer irreparable injury if relief is not granted.
- c.* The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings.
- d.* The extent to which the public interest relied on by the agency is sufficient to justify the agency's action in the circumstances.

10.29(3) Vacation. A stay may be vacated by the issuing authority upon application of the division or any other party.

[ARC 5392C, IAB 1/13/21, effective 2/17/21]

185—10.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity of an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

185—10.31(17A) Emergency adjudicative proceedings.

10.31(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the agency may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency by emergency adjudicative order. Before issuing an emergency adjudicative order the agency shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e. Whether the specific action contemplated by the division is necessary to avoid the immediate danger.

10.31(2) *Issuance of order.*

- a. *Contents.* An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the division's decision to take immediate action.
- b. *Service.* The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:
 - (1) Personal delivery;
 - (2) Certified mail, return receipt requested, to the last address on file with the agency; or
 - (3) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.
- c. *Delivery.* To the degree practicable, the agency shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

10.31(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

10.31(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

[ARC 5392C, IAB 1/13/21, effective 2/17/21]

185—10.32(17A) Informal settlement. A party to a controversy that may culminate or has culminated in contested case proceedings may attempt informal settlement by complying with the procedures set forth in this rule. No party shall be required to settle the controversy or contested case by submitting to informal settlement procedures.

10.32(1) Parties desiring informal settlement shall set forth in writing the various points of a proposed settlement, including findings of facts.

10.32(2) When signed by the parties and approved by the administrator or the administrator's designee, a settlement shall represent final disposition of the matter.

10.32(3) A proposed settlement which is not accepted or signed by the parties and the administrator or the administrator's designee shall not be admitted as evidence in the record of a contested case proceeding. Evidence of conduct or statements made in settlement negotiations likewise are not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

This rule is intended to implement Iowa Code section 17A.10.

[ARC 5392C, IAB 1/13/21, effective 2/17/21]

These rules are intended to implement Iowa Code chapter 17A.

[Filed 10/20/75, Notice 9/8/75—published 11/3/75, effective 12/9/75]

[Filed 2/16/79, Notice 12/27/79—published 3/7/79, effective 4/16/79]

[Filed without Notice 7/6/79—published 7/25/79, effective 8/29/79]

[Filed 8/15/80, Notice 5/28/80—published 9/3/80, effective 10/8/80]

[Filed emergency 5/19/82—published 6/9/82, effective 5/19/82]

[Filed 5/3/85, Notice 2/13/85—published 5/22/85, effective 6/26/85]

[Filed emergency 10/10/85—published 11/6/85, effective 10/10/85]

[Filed 10/10/85, Notice 7/31/85—published 11/6/85, effective 12/11/85]

[Editorially transferred from [150] to [185], IAC Supp. 10/8/86; see IAB 7/30/86]

[Filed emergency 7/29/93—published 8/18/93, effective 7/29/93]

[Filed 10/20/93, Notice 8/18/93—published 11/10/93, effective 12/15/93]

[Filed 9/26/94, Notice 6/22/94—published 10/26/94, effective 11/30/94]

[Filed 4/28/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

[Filed ARC 5392C (Notice ARC 5242C, IAB 11/4/20), IAB 1/13/21, effective 2/17/21]

CHAPTER 11
PROCEDURE—HEARING BOARD

185—Chapter 11 rescinded IAB 8/18/93, effective 7/29/93.

CHAPTER 12
FORMS

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

Rescinded **ARC 3928C**, IAB 8/1/18, effective 9/5/18

CHAPTER 13
OPERATION OF STATE LIQUOR STORES

Rescinded IAB 5/19/99, effective 6/23/99

CHAPTER 14
PRIVATE WINE SALES

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

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

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.

[Filed emergency 8/2/85—published 8/28/85, effective 8/2/85]

[Filed emergency 9/4/85—published 9/25/85, effective 9/4/85]
[Filed emergency 10/28/85—published 11/20/85, effective 10/28/85]
[Filed emergency 11/5/85—published 12/4/85, effective 11/16/85]
[Filed emergency 12/17/85—published 1/15/86, effective 12/18/85]
[Filed emergency 6/11/86—published 7/2/86, effective 7/1/86]
[Editorially transferred from [150] to [185], IAC Supp. 10/8/86; see IAB 7/30/86]
[Filed 4/26/91, Notice 3/20/91—published 5/15/91, effective 6/19/91]

CHAPTER 15
AGENCY STORES

Rescinded IAB 5/15/91, effective 6/19/91

CHAPTER 16 TRADE PRACTICES

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

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) Definitions.

“Alcoholic liquor” means “alcoholic liquor” as defined in Iowa Code section 123.3(5). 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). For the purposes of this chapter, “beer” includes “canned cocktail” as defined in Iowa Code section 123.3(11) 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 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).)

“Furnishings, fixtures and equipment” does not include the items identified in rule 185—16.2(123), subrules 16.3(1) and 16.3(2), rule 185—16.5(123), rule 185—16.6(123), rule 185—16.7(123), or paragraph 16.13(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) Product displays.

16.2(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) 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) 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) 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) An industry member shall keep and maintain records in accordance with rule 185—16.18(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) Retailer advertising utensils, consumer advertising specialties, retailer wearing apparel.

16.3(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) *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) *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) *Record keeping.* An industry member shall keep and maintain records in accordance with rule 185—16.18(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) Glassware.

16.5(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) *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) *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) *Record keeping.* An industry member shall keep and maintain records in accordance with rule 185—16.18(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) Tapping accessories and coil cleaning service.

16.6(1) *Tapping accessories.*

a. An industry member may sell tapping accessories, identified in rule 185—16.1(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) *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) Tasting.

16.7(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) *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) *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) *Record keeping.* An industry member shall keep and maintain records in accordance with rule 185—16.18(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) Sampling.

16.8(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) *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) *Procurement.* An industry member shall obtain alcoholic liquor, wine, or beer used for sampling from the respective wholesaler.

16.8(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) *Record keeping.* An industry member shall keep and maintain records in accordance with rule 185—16.18(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) Trade spending. An industry member may engage in the practice of trade spending.

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

16.9(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) 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) Record keeping. An industry member shall keep and maintain records in accordance with rule 185—16.18(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) 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) 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) Combination packages shall not have secondary value to the retailer other than having the potential of attracting purchasers and promoting sales.

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

16.11(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) Consumer promotions.

16.12(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) 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) Advertising, display or distribution service.

16.13(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) 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) Stocking and product rotation.

16.14(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) 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) Sponsorships and special events.

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

16.15(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) An industry member shall keep and maintain records in accordance with rule 185—16.18(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) Participation in educational seminars and retail association activities.

16.16(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) 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) Record keeping.

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

16.18(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) 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) 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) Equipment, furnishings, fixtures.

16.40(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) 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) 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) Extension of credit and prepaid accounts.

16.43(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) 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) 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) 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) Contracts to purchase alcoholic liquor, wine, or beer.**16.60(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.” 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) *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) 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) 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) 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) *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," 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) *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) 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]

[Filed emergency 8/2/85—published 8/28/85, effective 8/2/85]

[Filed emergency 10/10/85—published 11/6/85, effective 10/10/85]

[Filed emergency 7/1/86—published 7/30/86, effective 7/1/86][◇]

[Editorially transferred [150] to [185], IAC Supp. 10/8/86; see IAB 7/30/86]

[Filed 4/26/91, Notice 3/20/91—published 5/15/91, effective 6/19/91]

[Filed 4/28/92, Notice 12/11/91—published 5/27/92, effective 7/1/92]

[Filed emergency 6/19/92—published 7/8/92, effective 6/19/92]

[Filed 10/10/00, Notice 8/9/00—published 11/1/00, effective 12/6/00]

[Filed 1/27/05, Notice 12/22/04—published 2/16/05, effective 3/23/05]

[Filed ARC 1992C (Notice ARC 1915C, IAB 3/18/15), IAB 5/13/15, effective 6/17/15]

[Filed ARC 2254C (Notice ARC 2106C, IAB 8/19/15), IAB 11/25/15, effective 12/30/15]

[Filed ARC 4791C (Notice ARC 4688C, IAB 10/9/19), IAB 12/4/19, effective 1/8/20]

[Filed ARC 7028C (Notice ARC 6667C, IAB 11/16/22), IAB 5/31/23, effective 7/5/23]

[◇] Two or more ARCs

CHAPTER 17
CLASS “E” LIQUOR CONTROL LICENSES
Rescinded **ARC 7073C**, IAB 9/20/23, effective 10/25/23

CHAPTER 18
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

The alcoholic beverages division hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules on Agency Procedure relating to public records and fair information practices, which are published at www.legis.iowa.gov/docs/Rules/Current/UniformRules.pdf on the general assembly's website.

185—18.1(123,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "alcoholic beverages division".

185—18.3(123,22) Requests for access to records.

18.3(1) Location of record. In lieu of the words "(insert agency head)" insert "Chief, Licensing Bureau, Alcoholic Beverages Division, 1918 S.E. Hulsizer, Ankeny, Iowa 50021"; and in lieu of the words "(insert agency name and address)", insert "alcoholic beverages division at the above-stated address".

18.3(2) Office hours. In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays".

18.3(7) Fees.

c. Supervisory fee. In lieu of the words "(specify time period)", insert "thirty minutes".

185—18.9(123,22) Disclosures without the consent of the subject.

18.9(1) Open records are routinely disclosed without the consent of the subject.

18.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 185—18.10(123,22) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided, that, the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

185—18.10(123,22) Routine use.

18.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

18.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

g. The following records are routinely disseminated to members of the public:

(1) Information collected and maintained concerning ownership and location of establishments licensed under Iowa Code chapter 123.

(2) Information collected and maintained on licensees' dramshop liability insurance.

(3) Information collected and maintained concerning the status of contested case matters in which disciplinary action has been taken against a licensee or permittee.

(4) Information collected and maintained identifying the names of distillers, vintners, and brewers, their employees, agents, representatives, and designated wholesalers.

(5) Information identifying the name and address of a licensee's, permittee's, wholesaler's, or certificate of compliance holder's registered agent for service of process.

(6) Information provided to the agency which identifies the names, addresses and telephone numbers of board members of organizations of interest to licensees and permittees.

(7) Information identifying the names and addresses of nonliquor related vendors (i.e., landlords) and the names and addresses of the agency's sublessees.

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—18.11(123,22) Consensual disclosure of confidential records.

18.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 185—18.7(123,22).

18.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

185—18.12(123,22) Release to subject.

18.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 185—18.6(123,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5))

d. As otherwise authorized by law.

18.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

185—18.13(123,22) Availability of records.

18.13(1) General. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

18.13(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

- a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)
- b. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)
- c. Records which are exempt from disclosure under Iowa Code section 22.7.
- d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))
- e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) “d.”
- f. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:
 - (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3)
- g. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.
- h. Any other records made confidential by law.

18.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law.

Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 185—18.4(123,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 18.4(3).

185—18.14(123,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 185—18.1(123,22). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the agency are:

18.14(1) Licensing records. Licensing records include, but are not limited to, information identifying ownership, location, form of business entity and statements concerning eligibility of applicants to hold retail alcohol licenses and permits. These records are collected and maintained pursuant to Iowa Code sections 123.23, 123.29, 123.30, 123.33, 123.42, 123.49, 123.124, 123.125, 123.127, 123.135, 123.173, 123.175, 123.176, and 123.180. Licensing records are stored on microfiche, in an automated data processing system, and in extant form. The information stored in the automated data system does not match, collate or permit comparison with other data processing systems. The information contained in licensing records is public information.

18.14(2) Contested case matters. These records are collected and maintained pursuant to Iowa Code sections 17A.12, 17A.3(1) “d,” 17A.3(2), 123.24, 123.39, 123.49, and 123.50. Contested case matters are stored on microfiche, and in extant form. The information stored does not match, collate or permit comparison with other data processing systems. The information contained in contested case matters is

public information. Contested case matters include all pleadings, motions, briefs, orders, transcripts, exhibits, and physical evidence utilized in the resolution of the matter.

18.14(3) *Waivers of rule and declaratory rulings.* Waivers of rule and declaratory rulings may contain information which identifies individuals. These records are maintained pursuant to Iowa Code section 17A.9 and rule 185—1.3(123,17A). Waivers of rule and declaratory rulings are stored on microfiche and in extant form. The method of storage does not match, collate or permit comparison with other data processing systems. The information contained in waivers of rule and declaratory rulings is public information.

18.14(4) *Purchase orders, invoices, account numbers and personal identification numbers.* Purchase orders and invoices include, but are not limited to, records of purchases of alcoholic liquor made by class “E” retail alcohol licensees from the agency and related shipping and transmittal documents. Account numbers and personal identification numbers identify individual class “E” retail alcohol licensees and provide the agency with a method of filling orders, shipping and obtaining payment for liquor from telephone orders by class “E” retail alcohol licensees. These records are collected and maintained pursuant to Iowa Code sections 123.16, 123.24 and 123.30. Purchase orders are stored in extant form and in automated data processing systems. The automated data processing systems used to store these records do not match, collate, or permit comparison with other data processing systems except to the extent that such records may be used by warehouse personnel for inventory control, movement of alcoholic liquor within the warehouse, and filling and shipping orders to class “E” retail alcohol licensees. The information contained in these records which identifies purchases made by individual class “E” retail alcohol licensees is confidential pursuant to Iowa Code section 22.7.

18.14(5) *Bailment shipments.* Records of bailment shipments include, but are not limited to, information derived from suppliers concerning shipments of alcoholic liquor into the state warehouse facility, information generated internally concerning alcoholic liquor received from suppliers, information generated by the agency for accounting purposes concerning liquor purchases from suppliers, and information generated by the agency for purposes of inventory control. Records of bailment shipments may contain personally identifiable information on class “E” retail alcohol licensees, and to the extent that such record contains information on purchases of liquor by individual class “E” retail alcohol licensees, the record is confidential. These records are collected and maintained pursuant to Iowa Code section 123.30. Records of bailment shipments are stored in extant form and in automated data processing systems. The method of storage does not match, collate, or permit comparison with other data processing systems, except that comparisons may be made for purposes of agency tracking or auditing liquor inventory.

18.14(6) *Nonliquor related vendors.* Nonliquor related vendors include, but are not limited to, records of purchases of office supplies, warehouse supplies, trucks, trucking equipment and repairs, used in the internal operation of the agency. These records may contain personally identifiable information, and are collected and maintained pursuant to Iowa Code section 123.20. The information contained in these records is public information. These records are stored in extant form, and do not match, collate or permit comparison with automated data processing systems.

18.14(7) *Leases.* Leases include records related to agency subleasing of former state liquor stores, the names and addresses of sublessees and landlords, and information concerning the buildings. This information is collected and maintained pursuant to Iowa Code section 123.20, and is public information. The records are stored in extant form and do not match, collate or permit comparison with automated data processing systems.

18.14(8) *Inspections and audits of licensees’ books and records.* Inspections and audits of licensees’ books and records contain personally identifiable information relating to the operation of licensed establishments and beer and wine wholesalers’ operations. These records are collected and maintained pursuant to Iowa Code sections 123.33 and 123.138. These records are stored in extant form, and the manner of storage does not permit comparison with automated data processing systems. The information is public information, except to the extent that the records concerning purchases of liquor made by class “E” retail alcohol licensees from the agency are confidential. To the extent that these records may be used in anticipation of formal administrative proceedings, criminal or civil proceedings against a licensee or permittee, this chapter does not apply to these records.

18.14(9) *Litigation files.* These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorneys' notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

18.14(10) *Personnel files.* The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

[ARC 7073C, IAB 9/20/23, effective 10/25/23]

185—18.15(123,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 185—18.1(123,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 185—18.13(123,22). The records listed may contain information about individuals.

18.15(1) *Rule making.* Rule-making records may contain information about individuals making written or oral comments or proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

18.15(2) *Commission records.* Agendas, minutes, and materials presented to the alcoholic beverages commission are available at the central offices of the alcoholic beverages division, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). Council and commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored in an automated data processing system.

18.15(3) *Publications.* News releases, annual reports, project reports, agency newsletters, etc., are available at the central offices of the alcoholic beverages division. Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees. This information is not stored in an automated data processing system.

18.15(4) *Statistical reports and compilations.* Periodic reports of alcoholic liquor sales, statistics concerning statewide and regional consumption of liquor, wine, and beer, and lists of active and inactive licensees and permittees are available at the central offices of alcoholic beverages division.

18.15(5) *Policy manuals.* The agency employees' manual, containing the policies and procedures for programs administered by the agency, is available in every office of the agency. Subscriptions to all or part of the employees' manual are available at the cost of production and handling. Requests for subscription information should be addressed to Chief, Licensing Bureau, Alcoholic Beverages Division, 1918 S.E. Hulsizer, Ankeny, Iowa 50021. Policy manuals do not contain information about individuals.

18.15(6) *Other records.* All other records that are not exempted from disclosure by law.

185—18.16(123,22) Other records. The agency maintains a variety of records which do not generally contain information pertaining to named individuals. The agency maintains the following records, not heretofore listed, which do not generally contain personally identifiable information: inventory control reports, records of purchases by the agency from vendors, auditing data, budgetary information, reports of total licensing fees generated by class of licensee or permittee, reports of total number of licenses and permits issued, reports of total number of bottles sold or purchased, reports of gallons of alcoholic liquor sold or purchased, bills of lading, and manifests.

185—18.17(123,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the rules of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code section 22.11.

[Filed 5/2/88, Notice 3/23/88—published 5/18/88, effective 6/22/88]

[Filed ARC 7073C (Notice ARC 7049C, IAB 7/26/23), IAB 9/20/23, effective 10/25/23]

CHAPTER 19 WAIVERS FROM RULES

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

185—19.1(17A) Scope. This chapter outlines a uniform process for the granting of waivers from rules adopted by the division. The intent of this chapter is to allow persons to seek exception to the application of rules adopted by the division.

19.1(1) Definition. For purposes of this chapter, a “waiver” means an action by the division that suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

19.1(2) Authority.

a. A waiver from rules adopted by the division may be granted in accordance with this chapter if:

(1) The division has the authority to promulgate the rule from which the waiver is requested or has final decision-making authority over a contested case in which a waiver is requested; and

(2) No statute or rule otherwise controls the granting of a waiver from the rule from which the waiver is requested.

b. No waiver may be granted from a requirement that is imposed by statute. All waivers must be consistent with statute.

[ARC 5393C, IAB 1/13/21, effective 2/17/21]

185—19.2(17A) Division discretion. The decision on whether the circumstances justify the granting of a waiver shall be made at the discretion of the division upon consideration of all relevant factors. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

19.2(1) Criteria. The division may, in response to a completed petition, grant a waiver from a rule, in whole or in part, as applied to the circumstances of a specific situation if the division finds each of the following:

a. Application of the rule would result in hardship or injustice to the person for whom the waiver is requested;

b. Waiver from the rule on the basis of the particular circumstances would not prejudice the substantial legal rights of any person;

c. Provisions of the rule subject to the request for a waiver are not specifically mandated by statute or another provision of law; and

d. Where applicable, substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

19.2(2) Determination. In determining whether a waiver should be granted, the division shall consider whether the underlying intent of the rule is substantially equivalent to full compliance with the rule. When the rule from which a waiver is sought establishes administrative deadlines, the division shall balance the special individual circumstances of the requester with the overall goal of uniform treatment of all licensees and other petitioners.

185—19.3(17A) Requester’s responsibilities.

19.3(1) Application. All petitions for a waiver must be submitted in writing to the Alcoholic Beverages Division, 1918 SE Hulsizer Road, Ankeny, Iowa 50021. If the petition relates to a pending case, a copy of the petition shall also be filed in the contested case proceeding.

19.3(2) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

a. Name, address, and telephone number of the entity or person for whom a waiver is being requested, and the case number of any related contested case.

b. Description and citation of the specific rule from which a waiver is requested.

c. Specific waiver requested, including the precise scope and duration.

d. Relevant facts that the petitioner believes would justify a waiver. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.

e. History of any prior contacts between the division and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.

f. Information known to the requester regarding the division's treatment of similar cases.

g. Name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver.

h. Name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

i. Name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the division with information relevant to the waiver.

19.3(3) *Burden of persuasion.* When a petition is filed for a waiver from a division rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the division should exercise its discretion in the granting of the waiver.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

185—19.4(17A) Notice. The division shall acknowledge a petition upon receipt. The division shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the division may give notice to other persons. To accomplish this notice provision, the division may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the division attesting that notice has been provided.

185—19.5(17A) Division's responsibilities.

19.5(1) *Additional information.* Prior to issuing an order granting or denying a waiver, the division may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the division may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the division.

19.5(2) *Hearing procedures.* The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in the following situations:

- a. To any petition for a waiver filed within a contested case;
- b. When the division so provides by rule or order; or
- c. When a statute so requires.

19.5(3) *Ruling.* An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

19.5(4) *Conditions.* The division shall condition the granting of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

19.5(5) *Duration of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the division, a waiver may be renewed if the division finds that grounds for a waiver continue to exist.

19.5(6) *Time for ruling.* The division shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the division shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

19.5(7) *When deemed denied.* Failure of the division to grant or deny a petition within the required time period shall be deemed a denial of that petition by the division.

19.5(8) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

185—19.6(17A) Public availability. Subject to the provisions of Iowa Code section 17A.3, the division shall maintain a record of all orders granting or denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and available to members of the public at the Alcoholic Beverages Division, 1918 SE Hulsizer Road, Ankeny, Iowa 50021. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Orders containing information that the division is authorized or required to keep confidential shall be edited prior to public inspection.

185—19.7(17A) Cancellation. A waiver issued by the division pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the division issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver request withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety, and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

185—19.8(17A) Violations. Violation of a condition in a waiver order is equivalent to a violation of the rule for which the waiver is granted. The recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

185—19.9(17A) Defense. After the division issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

185—19.10(17A) Appeals. Granting or denying a request for waiver is final agency action under Iowa Code chapter 17A.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

These rules are intended to implement Iowa Code sections 17A.9A and 17A.10 and
Executive Order Number 11

[Filed 3/29/01, Notice 2/21/01—published 4/18/01, effective 5/23/01]

[Filed ARC 0273C (Notice ARC 0142C, IAB 5/30/12), IAB 8/8/12, effective 9/12/12]

[Filed ARC 5393C (Notice ARC 5241C, IAB 11/4/20), IAB 1/13/21, effective 2/17/21]