

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Alcoholic Beverage Control Commission intends to amend the rule cited as 04 NCAC 02S .0228.

Agency obtained G.S. 150B-19.1 certification:

- OSBM certified on: October 19, 2012
- RRC certified on:
- Not Required

Link to agency website pursuant to G.S. 150B-19.1(c): http://abc.nc.gov/legal/statutes_regulations.aspx

Proposed Effective Date: April 1, 2013

Public Hearing:

Date: January 16, 2013

Time: 10:00 a.m.

Location: NC ABC Commission's Office, 400 East Tryon Road, Raleigh, NC 27610

Reason for Proposed Action: The proposed rule changes would amend the rule to add to the acceptable types of containers that malt beverage, wine and mixed beverages can be served in. The proposed rule changes would also define and add requirements for multi-use containers. Permittees have previously used the additional containers without administrative action by the Commission. The changes were necessary to alleviate the questions regarding the serving of alcoholic beverage containers that are not within the guidelines of G.S. 130A-248(a) and the FDA Food Code 2009.

Procedure by which a person can object to the agency on a proposed rule: Interested persons may present oral or written comments at the Rule-Making Hearing. In addition, the record will be open for receipt of written comments from December 3, 2012 to February 1, 2013. Written comments not presented at the hearing should be directed to Robert Hamilton. The proposed rules are available for public inspection and copies may be obtained at the Commission's office at: 400 East Tryon Road, Raleigh, NC 27610

Comments may be submitted to: Robert A. Hamilton, 4307 Mail Service Center, Raleigh, NC 27699-4307, phone (919)779-0700 x 436, fax (919)661-5927, email robert.hamilton@abc.nc.gov

Comment period ends: February 1, 2013

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Date submitted to OSBM:
- Substantial economic impact (≥\$500,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

CHAPTER 02 – ALCOHOLIC BEVERAGE CONTROL COMMISSION

SUBCHAPTER 02S - RETAIL BEER: WINE: MIXED BEVERAGES: BROWNBAGGING: ADVERTISING: SPECIAL PERMITS

SECTION .0200 - GENERAL RULES AFFECTING RETAILERS AND BROWNBAGGING PERMITTEES

04 NCAC 02S .0228 DISPENSING ALCOHOLIC BEVERAGES: PRODUCT IDENTIFICATION

(a) Malt Beverages; On-Premises. Malt beverages may be sold by persons holding on-premise permits in the original containers, by the glass, ~~or~~ by the pitcher, mug, by the pitcher or a single-service and single-use container. The brand name of draught malt beverages dispensed in retail outlets shall be shown on the knobs of draught faucets. Covers for these faucets bearing a brand name

may be used if the brand name appearing on the cover corresponds with the brand name on the knob of the faucets that are to be used for that brand.

(b) Malt Beverages; Off-Premises. Malt beverages may be sold by persons holding a retail off-premise permit only in the unopened original container that was filled by the product manufacturer.

(c) Wine; On-premise. A person holding an on-premises wine permit may sell wine in the unopened original container, by the carafe, by the ~~glass, or mixed with non-alcoholic beverages.~~glass or a single-service and single-use container. A person holding an on-premises wine permit may sell wine mixed with non-alcoholic beverages by the carafe, by the glass or a single-service and single-use container. Wine served in ~~carafes or carafes,~~ by the glass or single-service and single-use containers may be dispensed under pressure from nitrogen from sealed bulk containers provided the containers and dispensing systems have been approved by the Commission and the State Commissioner of Health Services.

The vintner, brand and type of wine dispensed by the ~~carafe or carafe, glass,~~ glass or single-service and single-use container except for the house wine, shall appear on the wine list; and where the wine is dispensed from bulk containers, the vintner, brand and type shall be shown on the knobs of draught faucets.

(d) Use of Siphons. The use of siphons or other types of dispensers is allowed if the malt beverage or wine contents are dispensed directly from the original containers.

(e) Mixed Beverages. A person holding a mixed beverages permit may sell mixed beverages in a glass, in a pitcher or in a single-service and single-use container.

(f) Multi-Use Containers. All multi-use containers used by permittees to serve any alcoholic beverages shall meet the requirements as referenced by FDA Food Code 2009, 3-304.11(a). Multi-use containers include glassware, mugs, pitchers and carafes.

Authority G.S. 18B-100; 18B-206; 18B-207; 130A-248(a); FDA Food Code 2009, 3-304.11(a).