

## SUBCHAPTER 2R - ORGANIZATIONAL RULES: POLICIES AND PROCEDURES

### SECTION .0100 - GENERAL PROVISIONS

#### 04 NCAC 02R .0101 PURPOSE

The purpose of the Alcoholic Beverage Control System is to provide regulation and control of the manufacture, distribution, advertisement, sale, possession and consumption of alcoholic beverages to serve the public welfare. It is the objective of the North Carolina Alcoholic Beverage Control Commission at all times to conform to that purpose.

*History Note: Authority G.S. 18B-100; 18B-105; 18B-207;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984.*

#### 04 NCAC 02R .0102 LOCATION AND ADDRESS

The principal office of the North Carolina Alcoholic Beverage Control Commission is located at 400 East Tryon Road, Raleigh, North Carolina 27610. The mailing address is 4307 Mail Service Center, Raleigh, North Carolina 27699-4307. The telephone number is (919) 779-0700. The Commission's email address is [contactus@abc.nc.gov](mailto:contactus@abc.nc.gov). The Commission's web site address is [www.ncabc.com](http://www.ncabc.com). This office is open to the public during regular business hours, from 8:00 a.m. to 5:00 p.m., Monday through Friday.

*History Note: Authority G.S. 18B-207;  
Eff. January 1, 1982;  
Amended Eff. January 1, 2011; August 1, 2010; May 1, 1984.*

#### 04 NCAC 02R .0103 DEFINITIONS

(a) As used throughout this Chapter:

- (1) "Administrator" means the principal administrative officer of the Commission;
- (2) "Agent," "alcohol law enforcement agent," or "ALE agent" means an enforcement agent of the Alcohol Law Enforcement Division, North Carolina Department of Crime Control and Public Safety;
- (3) "Applicant" means any person who requests the issuance of a permit from the Commission;
- (4) "Chairman" means the chairman of the Commission;
- (5) "Contract carrier" means the carriers operated by the contractor on behalf of the state for the purpose of distributing spirituous liquors;
- (6) "Distressed liquor" means liquor which is not saleable due to adulteration or damage to the bottle, label or tax seal;
- (7) "Industry Member" means any manufacturer, bottler, importer, vendor, representative or wholesaler of alcoholic beverages;
- (8) "Operator" or "Contractor" means the person or persons responsible for carrying out the storage and distribution of spirituous liquors at the state ABC warehouse;
- (9) "Permit" means a written or printed authorization to engage in some phase of the alcoholic beverage industry that is issued by the Commission;
- (10) "Permittee" means a person to whom a permit has been issued by the Commission; and
- (11) "State ABC warehouse" means the contractor-operated facility or facilities storing spirituous liquors on behalf of the Commission pursuant to G.S. 18B-204, or, in cases of emergency, the facility or facilities operated by the state for the purpose of storing spirituous liquors.

(b) The definitions in Chapter 18B apply to the rules in this Chapter.

*History Note: Authority G.S. 18B-207; 150B-4;  
Eff. January 1, 1982;  
Amended Eff. November 1, 2010; May 1, 1984.*

## SECTION .0200 - STRUCTURE

### **04 NCAC 02R .0201 COMMISSION**

The North Carolina Alcoholic Beverage Control Commission shall be composed of a chairman and two associate members. The chairman shall have the powers and perform the duties prescribed by the Commission including the authority to appoint, promote, demote, and discharge all subordinate officers and employees of the Commission. The Commission shall have all the authority and duties given it by the provisions of the North Carolina General Statutes.

*History Note: Authority G.S. 18B-200; 18B-207;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984.*

### **04 NCAC 02R .0202 COMMISSION MEETINGS**

The Commission shall meet in monthly sessions open to the public in order to make final decisions on hearing cases, to adopt, amend or repeal alcoholic beverage control rules, and to consider and act upon any other business pending before the Commission. The Commission may call special meetings in addition to the monthly meetings to consider and act upon any unfinished business pending before the Commission.

The press shall be notified of the time and place of both monthly and special meetings.

The Commission may hold executive sessions with regard to personnel matters. These sessions are not open to the public nor is the press notified of these sessions.

Minutes of all Commission meetings shall be kept on file.

*History Note: Authority G.S. 18B-200; 18B-207;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984.*

### **04 NCAC 02R .0203 DIVISIONS**

*History Note: Authority G.S. 18B-207;  
Eff. January 1, 1982;  
Repealed Eff. May 1, 1984.*

### **04 NCAC 02R .0204 ADMINISTRATIVE FUNCTIONS**

The principal administrative officer shall be the administrator who executes rules, policies and procedures governing the sale of alcoholic beverages and coordinates the functions of the Commission with local boards and industry.

*History Note: Authority G.S. 18B-200(d); 18B-203; 18B-207;  
Eff. January 1, 1982;  
Amended Eff. July 1, 1992; May 1, 1984.*

### **04 NCAC 02R .0205 LEGAL FUNCTIONS**

The Legal Division processes cases involving permittees charged with violations of the ABC laws, and represents the Commission in contested cases before the Office of Administrative Hearings. Legal staff may also serve as hearing officers in cases filed under Article 12 of Chapter 18B.

*History Note: Authority G.S. 18B-104; 18B-200(d);  
Eff. January 1, 1982;  
Amended Eff. July 1, 1992; May 1, 1984.*

### **04 NCAC 02R .0206 AUDIT DIVISION**

*History Note: Authority G.S. 18B-104;  
Eff. January 1, 1982;  
Repealed Eff. May 1, 1984.*

## SECTION .0300 - PUBLICATIONS: RECORDS: COPIES

### **04 NCAC 02R .0301      DISTRIBUTION OF RULES** **04 NCAC 02R .0302      PUBLIC INSPECTION OF RULES AND RECORDS**

*History Note:*    Authority G.S. 12-3.1(c); 18B-207; 150B-11; 150B-62;  
                          Eff. January 1, 1982;  
                          Amended Eff. May 1, 1984;  
                          Repealed Eff. July 1, 1992.

### **04 NCAC 02R .0303      DISTRIBUTION, INSPECTION AND COPIES OF ABC LAWS**

(a) Distribution of Rules and Statutes. The Commission shall distribute at no charge a copy of Chapter 18B of the General Statutes and the Commission's Rules to each local ABC board, each ALE agent, ABC officer and local law enforcement officer employed by a contracting agency pursuant to G.S. 18B-501(f), and to each employee of the Commission.

(b) Purchasing Copies of Documents. Copies of the following documents are available from the Commission:

- (1) Chapter 18B of the General Statutes and the Commission's Rules;
- (2) Individual sections of Chapter 18B of the General Statutes;
- (3) Individual Commission Rules;
- (4) ABC Retail Guide; and
- (5) Public records retained by the Commission.

Copies of the above documents are available at the "actual cost" as defined in G.S. 132-6.2(b) for making the copies and the mailing cost if applicable. The Commission shall provide its "actual cost" on the Commission's website. Persons requesting copies of the above documents shall make payment by certified check, cashier's check or money order to the Commission prior to receiving any copies of the above documents.

*History Note:*    Authority G.S. 12-3.1; 18B-207; 132-1; 132-1.1; 132-1.2; 132-1.3; 132-6;  
                          Eff. July 1, 1992;  
                          Amended Eff. November 1, 2010.

### **04 NCAC 02R .0304      FEE FOR COMPUTER SERVICES**

Upon request, the Commission shall provide data processing services related to the public information maintained by the Commission, if feasible. Fees for such services are based on the actual cost to the Commission and shall be paid in advance by certified check, cashier's check or money order. The requester shall request and receive a quote from the Commission prior to payment of requested services.

*History Note:*    Authority 18B-207; 150B-19(5)(e);  
                          Eff. July 1, 1992;  
                          Amended Eff. November 1, 2010.

## SECTION .0400 - RULE-MAKING

### **04 NCAC 02R .0401      GENERAL PROVISIONS**

*History Note:*    Authority G.S. 18B-207; 150B-16;  
                          Eff. January 1, 1982;  
                          Repealed Eff. May 1, 1984.

#### **04 NCAC 02R .0402      PETITION FOR ADOPTION OF RULES**

(a) Any person wishing to submit a petition requesting the adoption, amendment or repeal of a rule by the Commission shall address the petition to the North Carolina Alcoholic Beverage Control Commission, 4307 Mail Service Center, Raleigh, North Carolina 27699-4307.

(b) Contents. The petition shall contain the following information:

- (1) Drafts of proposed rule or amendment, or summary of its contents;
- (2) reasons for the adoption, amendment or repeal of rule;
- (3) citation of authorities showing the legality of the proposed adoption, amendment or repeal of the rule;
- (4) effect of existing rules or orders;
- (5) any data supporting proposal;
- (6) effect of existing rules on existing practices in the area involved, including case factors;
- (7) names and addresses of persons most likely to be affected by the proposal; and
- (8) name and address of each petitioner.

*History Note:*      *Authority G.S. 18B-207; 150B-20(a);  
Filed November 24, 1981;  
Legislative Delay Eff. December 31, 1981;  
Eff. January 12, 1982;  
Amended Eff. August 1, 2010; May 1, 1984.*

#### **04 NCAC 02R .0403      ADMINISTRATIVE ACTION**

Based on a study of the petition and other relevant supporting material, the Commission shall deny the petition or initiate rule-making proceedings within a reasonable time following submission of the petition.

- (1) If the Commission determines that the adoption, amendment or repeal of a rule will serve no public interest, it may deny the petition; the Commission shall notify the petitioner in writing of its decision to deny the petition, stating the reasons for the denial.
- (2) If the Commission determines that the proposed adoption, amendment or repeal of a rule will serve the public interest, it shall initiate rule-making proceedings by issuing a rule-making notice, as provided in this Section.

*History Note:*      *Authority G.S. 18B-207; 150B-11; 150B-16;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984.*

#### **04 NCAC 02R .0404      NOTICE OF RULE-MAKING HEARINGS; MAILING LIST**

(a) Upon a determination to hold a rule-making proceeding, either in response to a petition or otherwise, the Commission shall give notice to all interested parties of the proceedings in accordance with the requirements of Chapter 150B of the General Statutes.

(b) Mailing List. Any person desiring to be placed on the mailing list for the rule-making notices may file a request in writing, furnishing his name and mailing address to the Commission. The request shall state the subject areas within the authority of the Commission for which notice is requested.

(c) Fee Charged. The cost to be on the mailing list for rule-making notices shall be fifteen dollars (\$15.00) per year. A notice and invoice will be mailed in February of each year to persons on the mailing list. Persons who do not renew their request to remain on the mailing list by remitting the fee by March 1 of each year will be deleted from the list.

*History Note:*      *Authority G.S. 18B-207; 150B-21.2;  
Eff. January 1, 1982;  
Amended Eff. July 1, 1992; August 1, 1988; May 1, 1984.*

**04 NCAC 02R .0405      RULE-MAKING HEARING**

(a) Location. Unless otherwise stated in a particular rule-making notice, rule-making hearings shall be held in the administrative hearing room of the Commission's Raleigh office.

(b) Oral Presentations. Any person desiring to present oral data, views or arguments on the proposed rule is encouraged to file a written notice of that desire with the Chairman. The notice of the oral presentation should contain a brief summary of the individual's or organization's views with respect to the proposed adoption, amendment or repeal of a rule, and a statement of the length of time the speaker intends to speak.

(c) The Chairman shall preside at the rule-making hearing, and shall ensure that each person participating is given a fair opportunity to present oral arguments, comments and data supporting his position.

*History Note:*      Authority G.S. 18B-207; 150B-21.2(e);  
                            Eff. January 1, 1982;  
                            Amended Eff. July 1, 1992; May 1, 1984.

**SECTION .0500 - EMERGENCY RULES**

**04 NCAC 02R .0501      ADOPTION OF PERMANENT REGULATION**

*History Note:*      Authority G.S. 18B-207; 150A-13;  
                            Eff. January 1, 1982;  
                            Repealed Eff. May 1, 1984.

**04 NCAC 02R .0502      REVOCATION OR SUSPENSION OF PERMIT**

When the sale of alcoholic beverages is suspended in any area of the state pursuant to a state of emergency as declared by the Governor in accordance with Article 36A of Chapter 14 of the General Statutes, the Commission may revoke or suspend the permit of any person violating any order or rule issued pursuant to that action.

*History Note:*      Authority G.S. 18B-110; 18B-207; 14-288.1 through 14-288.20;  
                            Eff. January 1, 1982;  
                            Amended Eff. May 1, 1984.

**SECTION .0600 - DECLARATORY RULINGS**

**04 NCAC 02R .0601      DEFINITION**

*History Note:*      Authority G.S. 18B-207; 150B-11; 150B-17;  
                            Eff. January 1, 1982;  
                            Amended Eff. May 1, 1984;  
                            Repealed Eff. November 1, 2010.

**04 NCAC 02R .0602      ISSUANCE: GROUNDS**

Upon request of an aggrieved party, except where the Commission for good cause finds issuance of a ruling undesirable, the Commission shall issue a declaratory ruling if the request for such a ruling will:

- (1) determine the validity of a rule previously adopted by the Commission; or
- (2) determine the applicability of a particular statute or rule administered or adopted by the Commission to a given specific fact situation.

*History Note:*      Authority G.S. 18B-207; 150B-11; 150B-17;  
                            Eff. January 1, 1982;  
                            Amended Eff. May 1, 1984.

#### **04 NCAC 02R .0603      REQUEST FOR DECLARATORY RULING**

(a) All requests for a declaratory ruling to contest the validity of a rule adopted by the Commission shall supply the following information:

- (1) name and address of person aggrieved;
- (2) statute or rule to which the request relates;
- (3) a brief statement of the manner in which the person aggrieved is affected or may be affected by the statute or rule;
- (4) names and addresses of additional third persons known to the person aggrieved who may possibly be affected by the requested ruling;
- (5) statement of all material facts;
- (6) statement whether or not the person aggrieved is aware of any pending Commission action or court action that may bear on the applicability of the statute or rule to the person's particular situation;
- (7) statement of the arguments and legal authority supporting the person's position on the applicability of this statute or rule; and
- (8) statement of whether or not a conference is desired and reasons for requesting conference.

The person aggrieved shall sign and verify the request before an officer qualified to administer oaths that the information supplied in the request form is true and accurate.

(b) The request and any supporting materials relevant to the request shall be sent to the North Carolina Alcoholic Beverage Control Commission, 4307 Mail Service Center, Raleigh, North Carolina 27699-4307.

(c) The Commission shall either deny the request, stating the reasons therefore, or issue a declaratory ruling. The Commission shall deny a request for a declaratory ruling when the Commission determines that:

- (1) the request does not comply with the procedural guidelines within Paragraphs (a) and (b) of this Rule;
- (2) the Commission has previously issued a declaratory ruling on substantially similar facts;
- (3) the Commission has previously issued a final agency decision in a contested case on substantially similar facts;
- (4) the facts underlying the request for a declaratory ruling were considered at the time of the adoption of the rule in question;
- (5) the subject matter is one concerning which the Commission is without authority to make a decision binding the Commission or the petitioner;
- (6) the petitioner is not aggrieved by the rule or statute in question or otherwise has no interest in the subject matter of the request;
- (7) there is reason to believe that the petitioner or some other person or entity materially connected to the subject matter of the request is acting in violation of the G.S. 18B or the rules adopted by the Commission; or
- (8) the subject matter of the request is involved in pending litigation, legislation, or rulemaking.

(d) The Commission shall not issue a declaratory ruling when the petitioner or his or her request is the subject of, or materially related to, an investigation by the Commission or contested case before the Commission.

*History Note:*      *Authority G.S. 18B-207; 150B-4;*  
*Eff. January 1, 1982;*  
*Amended Eff. November 1, 2010; May 1, 1984.*

#### **04 NCAC 02R .0604      GROUNDS FOR DENIAL OF RULING ON VALIDITY**

A request for a declaratory ruling to determine the validity of a rule may be denied unless:

- (1) It is shown that since the adoption of the rule by the Commission, circumstances have so changed that a declaratory ruling is warranted; or
- (2) It is shown that in the records of the rule-making hearing that was held upon the rule in question, the Commission failed to consider specified relevant matters.

*History Note:*      *Authority G.S. 18B-207; 150B-11; 150B-17;*  
*Eff. January 1, 1982;*  
*Amended Eff. May 1, 1984.*

**04 NCAC 02R .0605      REQUEST FOR DECLARATORY RULING: SPECIFIC FACT SITUATIONS**

*History Note:*    Authority G.S. 18B-207; 150A-11(1); 150A-17;  
                          Eff. January 1, 1982;  
                          Repealed Eff. May 1, 1984.

**04 NCAC 02R .0606      GROUNDS FOR DENIAL: PENDING CONTROVERSY**

The Commission will not issue a declaratory ruling when the issue or issues presented by the aggrieved party are the subject of a matter pending before the Commission or in a court of law.

*History Note:*    Authority G.S. 18B-207; 150B-11; 150B-17;  
                          Eff. January 1, 1982.

**04 NCAC 02R .0607      WITHDRAWAL OF REQUEST FOR DECLARATORY RULING**

At any time prior to issuance, the Commission in its discretion may permit an aggrieved party to withdraw the request for a declaratory ruling, any such request for withdrawal to be in writing.

*History Note:*    Authority G.S. 18B-207; 150B-11; 150B-17;  
                          Eff. January 1, 1982.

**04 NCAC 02R .0608      NOTICE OF DENIAL OF REQUEST  
04 NCAC 02R .0609      ISSUANCE OF RULING**

*History Note:*    Authority G.S. 18B-207; 150A-11(1); 150A-17;  
                          Eff. January 1, 1982;  
                          Repealed Eff. May 1, 1984.

**04 NCAC 02R .0610      EFFECT OF DECLARATORY RULING**

A declaratory ruling shall be binding upon the Commission in its dealings with the party requesting the ruling unless the Commission finds a misstatement of material fact or the failure to state a material fact, the omission of which makes the request misleading. The Commission, however, shall not be bound by that declaratory ruling in dealing with third parties where the Commission, for good cause, believes that a different course of action is justified and that a ruling should be changed with respect to different persons or fact situations.

*History Note:*    Authority G.S. 18B-207; 150B-11; 150B-17;  
                          Eff. January 1, 1982;  
                          Amended Eff. May 1, 1984.

**04 NCAC 02R .0611      ALTERATION OF DECLARATORY RULING**

The Commission, on its own motion, or upon the motion of any interested person, may change or modify a declaratory ruling previously issued by the adoption of a new or different ruling. Such a subsequent ruling shall apply prospectively only.

*History Note:*    Authority G.S. 18B-207; 150B-11; 150B-17;  
                          Eff. January 1, 1982;  
                          Amended Eff. May 1, 1984.

**04 NCAC 02R .0612      JUDICIAL REVIEW OF DECLARATORY RULINGS**

For purposes of judicial review, the Commission shall preserve any and all requests for rulings, written comments by interested parties, any manuscripts or summaries of oral proceedings, any matter considered by the Commission in making the decision, and the decision, together with the reasons therefor.

*History Note:*    Authority G.S. 18B-207; 150B-11; 150B-17;  
                          Eff. January 1, 1982;  
                          Amended Eff. May 1, 1984.

## **SECTION .0700 - PERSONNEL POLICIES: COMMISSION**

### **04 NCAC 02R .0701 STANDARDS FOR COMMISSION AND EMPLOYEES**

*History Note:* Authority G.S. 18B-201; 18B-207;  
Eff. January 1, 1982;  
Amended Eff. July 1, 1992; May 1, 1984;  
Repealed Eff. December 1, 2010.

### **04 NCAC 02R .0702 DISCIPLINARY ACTION OF EMPLOYEE**

All employees of the Commission shall be subject to the policies established by the Office of State Personnel pertaining to disciplinary action, suspension and dismissal.

In addition to the grounds for disciplinary action provided by the Office of State Personnel, the following shall be additional grounds for disciplinary action:

- (1) willful disregard of the published policies of the North Carolina Alcoholic Beverage Control Commission, or
- (2) violation of any law pertaining to alcoholic beverages.

*History Note:* Authority G.S. 18B-201; 18B-202; 18B-207;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984;  
RRC Objection due to lack of authority and lack of necessity Eff. May 21, 1992;  
Amended Eff. July 6, 1992.

## **SECTION .0800 - ADJUDICATION: CONTESTED CASES**

### **04 NCAC 02R .0801 DEFINITIONS**

*History Note:* Authority G.S. 18B-207; 150B-11; 150B-23;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984;  
Repealed Eff. July 1, 1992.

### **04 NCAC 02R .0802 NOTICE OF ALLEGED VIOLATION**

If facts reported by a law enforcement officer indicate a violation of the ABC laws, the Commission shall send a Notice of Alleged Violation to the permittee. The permittee is deemed notified if the notice is delivered to the permittee's address as stated on the permit.

*History Note:* Authority G.S. 1A-1, Rule 4(j); 18B-100; 18B-104; 18B-203(a)(12); 18B-207; 150B-22; 150B-23;  
Eff. January 1, 1982;  
Amended Eff. February 1, 2012; July 1, 1992; May 1, 1984.

### **04 NCAC 02R .0803 DENIAL OF APPLICATION FOR PERMIT: HEARING**

*History Note:* Authority G.S. 18B-207; 150B-11; 150B-23;  
Eff. January 1, 1982;  
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

### **04 NCAC 02R .0804 SUSPENSION OR REVOCATION: OFFICIAL NOTICE OF HEARING**

*History Note:* Authority G.S. 18B-207; 150B-11; 150B-23;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984;

*Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).*

**04 NCAC 02R .0805 SERVICE OF NOTICE**

*History Note: Authority G.S. 18B-207; 150B-11; 150B-23;  
Filed November 24, 1981;  
Legislative Delay Eff. December 31, 1981;  
Eff. January 12, 1982;  
Repealed Eff. July 1, 1992.*

**04 NCAC 02R .0806 SUBPOENAS**  
**04 NCAC 02R .0807 CHALLENGE OF SUBPOENA: PROCEDURE**  
**04 NCAC 02R .0808 CHALLENGE OF SUBPOENA: RULING**

*History Note: Authority G.S. 18B-207; 150B-11; 150B-27;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984;  
Repealed Eff. July 1, 1992.*

**04 NCAC 02R .0809 VENUE OF HEARINGS**

*History Note: Authority G.S. 18B-207; 18B-906(b); 150A-24;  
Eff. January 1, 1982;  
Repealed Eff. May 1, 1984.*

**04 NCAC 02R .0810 PRE-HEARING CONFERENCE**  
**04 NCAC 02R .0811 INTERVENTION**  
**04 NCAC 02R .0812 DISCOVERY**

*History Note: Authority G.S. 18B-207; 150B-11; 150B-23; 150B-28; 150B-33;  
Eff. January 1, 1982;  
Amended Eff. January 1, 1986; May 1, 1984;  
Repealed Eff. July 1, 1992.*

**04 NCAC 02R .0813 DEPOSITIONS**

*History Note: Authority G.S. 18B-207; 150B-11(1); 150B-28;  
Eff. January 1, 1982;  
Repealed Eff. January 1, 1986.*

**04 NCAC 02R .0814 FILING AND FORM OF BRIEFS: MOTIONS: DOCUMENTS**  
**04 NCAC 02R .0815 CONTINUANCES**  
**04 NCAC 02R .0816 DISQUALIFICATION OF HEARING OFFICER**  
**04 NCAC 02R .0817 UNAVAILABILITY OF HEARING OFFICER**  
**04 NCAC 02R .0818 HEARING PROCEDURE**

#### **04 NCAC 02R .0819 FINDINGS: CONCLUSIONS: RECOMMENDATIONS OF HEARING OFFICER**

*History Note:* Authority G.S. 18B-207; 150B-11; 150B-25; 150B-28; 150B-32; 150B-34;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984;  
Repealed Eff. July 1, 1992.

#### **04 NCAC 02R .0820 FINAL ADMINISTRATIVE DECISION: HEARING**

- (a) Right to be Present at Final Administrative Decision; Notice. Each party to a contested case and his attorney of record shall receive reasonable notice of the location, hour and date when the findings of fact and recommendation of the administrative law judge will be reviewed by the Commission for a final disposition of the case.
- (b) Continuances. The chairman may grant continuances for just cause upon two working days oral or written notice.
- (c) Service of Notice. Service of notice of final administrative action shall be by certified mail. If notice is accomplished by certified mail, the delivery date on the return receipt shall be the date of notice. If service cannot be made by certified mail, then the notice will be served personally or in accordance with G.S. 1A-1, Rule 4 (j1).

*History Note:* Authority G.S. 18B-207; 150B-36;  
Eff. January 1, 1982;  
Amended Eff. July 1, 1992; September 1, 1988; May 1, 1984.

#### **04 NCAC 02R .0821 ARTICLE 12 HEARINGS; PETITION AND NOTICE**

- (a) Initiation of Hearing. A hearing under Article 12 of Chapter 18B of the General Statutes (Wine Distribution Agreements Act) shall be commenced by the filing of a petition with the Commission. The petition shall state the party's contentions in detail, and set forth chronologically the events surrounding the winery's termination of the agreement.
- (b) Requests for Relief. In any case in which a wholesaler requests that the Commission provide relief in a dispute with a winery under Article 12, the Commission may deem that request to be in the nature of a request for a hearing, and may conduct a hearing to determine if the winery has good cause to terminate an agreement with the wholesaler, or to determine if the wholesaler has rectified the reasons given by the winery for the termination.
- (c) Notice of Hearing. A Notice of Hearing shall be mailed to the parties in a dispute under Article 12 at least 15 days prior to the hearing. The notice will be served by certified mail or in accordance with G.S. 1A-1, Rule 4 (j1). In the event service is made by certified mail, the delivery date on the return receipt shall be the date of notice. The notice will contain a short and plain statement of the issues to be resolved by the Commission, the date, time, and place of the hearing, and the name of the hearing officer who will conduct the hearing, if the Commission determines that it will not preside at the initial hearing.
- (d) Rules of Procedure. Hearings conducted under Article 12 of Chapter 18B of the General Statutes will be conducted in accordance with the Rules of Civil Procedure as contained in G.S. 1A-1, and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes.

*History Note:* Authority G.S. 1A-1, Rule 4(j1); 7A-750; 18B-203(a)(1),(2); 18B-207; 18B-1205;  
Eff. July 1, 1992.

#### **04 NCAC 02R .0822 ARTICLE 12 HEARINGS; EVIDENCE**

The provisions of G.S. 150B-29 relating to evidence shall apply to hearings conducted under Article 12 of Chapter 18B of the General Statutes.

*History Note:* Authority G.S. 18B-203(a)(1),(2); 18B-207; 18B-1204; 18B-1205;  
Eff. July 1, 1992.

#### **04 NCAC 02R .0823 FINAL ADMINISTRATIVE DECISION; ORDER**

- (a) Right to Submit Proposed Findings. The parties in a hearing conducted under Article 12 shall have an opportunity to file proposed findings of fact and conclusions of law within 30 days of the conclusion of the initial hearing.
- (b) Recommended Decision. If a hearing conducted under Article 12 is presided over by a hearing officer, the hearing officer shall issue a recommended decision that contains proposed findings of fact and conclusions of law. The hearing officer shall

serve a copy of the recommended decision upon all parties and the members of the Commission who will make the final administrative decision. Service shall be in the manner prescribed in Rule .0821(c) of this Section.

(c) Exceptions. The parties to a case heard under Article 12 shall have the right to file written exceptions to a recommended decision by the hearing officer. Exceptions shall be filed with the Commission within 30 days of receipt of the recommended decision.

(d) Hearing Conducted by Commission. In lieu of assigning a hearing officer to preside over the initial hearing, the Commission may conduct the initial hearing. After the time for the filing of proposed findings of fact and conclusions of law by the parties has expired, the Commission will issue a final administrative decision and order that determines the issues set forth in any prior pre-hearing order.

(e) Petition to Office of Administrative Hearings. In any case heard by the Commission under Article 12 of Chapter 18B of the General Statutes, if the Commission finds evidence of violations of Article 12 of Chapter 18B, or any other ABC law, it may commence proceedings in accordance with the provisions of Rule .0802 of this Section.

*History Note:* Authority G.S. 18B-203(a)(1),(2); 18B-207; 18B-1205; 18B-1207(c); 150B-23;  
Eff. July 1, 1992.

## **SECTION .0900 - FISCAL RULES FOR LOCAL BOARDS**

### **04 NCAC 02R .0901 BORROWING MONEY**

Before a local board borrows money, it shall consider the following factors:

- (1) the number of stores in a service area;
- (2) the estimated population in a service area;
- (3) the location of stores in a service area;
- (4) the nature and amount of the outstanding debt of the local board;
- (5) whether the borrowing is for the purchase of fixed assets, inventory or both;
- (6) the adequacy of the accounting system used or proposed to be used by the local board;
- (7) its compliance with rules of the Commission;
- (8) history of operating profits; and
- (9) projected profits and ability to retire the debt.

*History Note:* Authority G.S. 18B-702(b),(e);  
Eff. January 1, 1982;  
Amended Eff. July 1, 1992; May 1, 1984.

### **04 NCAC 02R .0902 MAINTENANCE OF WORKING CAPITAL**

(a) As used in this Rule, "working capital" means the total of cash, investments and inventory less all unsecured liabilities.

(b) A local board shall set its working capital requirements at not less than two weeks' average gross sales of the latest fiscal year nor greater than:

- (1) four months of the latest fiscal year for boards with gross sales less than one million five hundred thousand dollars (\$1,500,000);
- (2) three months of the latest fiscal year for boards with gross sales greater than or equal to one million five hundred thousand dollars (\$1,500,000) and less than fifty million dollars (\$50,000,000); and
- (3) two months of the latest fiscal year for boards with gross sales equal to or greater than fifty million dollars (\$50,000,000).

Gross sales means gross receipts from the sale of alcoholic beverages less distributions as defined in G.S. 18B-805(b)(2),(3), and (4).

(c) A local board is considered insolvent if all of the following conditions apply:

- (1) the local board does not adhere to the working capital requirements as stated in Paragraph (b) of this Rule;
- (2) the local board's current assets are less than the local board's current liabilities and the current portion of long term debt;
- (3) the local board is unable to pay its debts as they fall due; and
- (4) the Commission believes that continued operation of the local board will not lead to profits in the next fiscal year.

(d) As used in this Rule, "long term debt" means the loans and financial obligations lasting over one year.

*History Note:* Authority G.S. 18B-100; 18B-203(a)(20); 18B-702(u); 18B-805(d);  
Eff. January 1, 1982;  
Amended Eff. November 1, 2011; July 1, 1992; June 1, 1988; May 1, 1984.

#### **04 NCAC 02R .0903 DEPOSITS**

(a) Each local board shall designate as its official depositories one or more banks, savings and loan associations or trust companies in this State.

(b) The amount of funds on deposit in an official depository or deposited at interest shall be secured as provided in the Rules of the Local Government Commission at 20 NCAC 7.

*History Note:* Authority G.S. 18B-702(e);  
Eff. May 1, 1984.

#### **04 NCAC 02R .0904 INVESTMENTS**

(a) Each local board shall adopt an investment program suitable to its own needs and situation. The investment program shall be designed so that investments and deposits at interest can be converted into cash when needed.

(b) The finance officer shall manage the investment program subject to the directives and restrictions imposed by the local board and within the restrictions of applicable statutes.

*History Note:* Authority G.S. 18B-702(e);  
Eff. May 1, 1984.

#### **04 NCAC 02R .0905 DAILY DEPOSITS**

(a) Each officer whose duty it is to collect or receive moneys of the local board shall deposit into an official depository the collections and receipts daily. If the local board gives its approval, deposits shall be required only when the moneys on hand are equal to or are greater than two hundred fifty dollars (\$250.00), but in any event a deposit shall be made on the last

business day of the month. All deposits shall be made in an official depository. Deposits in an official depository shall be reported to the finance officer by means of a duplicate deposit ticket.

(b) A change fund necessary for daily operation of an ABC store shall be established by each local board and maintained in a secure place on the store's premises and shall not be subject to the daily deposit rule. Each change fund shall be maintained in the amount and place established by the local board.

(c) The finance officer may at any time audit the records maintained by any employee collecting sales revenue and may prescribe the form and detail of these records.

(d) The Commission shall waive or alter the daily deposit requirement for any local board where adequate security for the funds involved is demonstrated.

*History Note: Authority G.S. 18B-702(d),(e);  
Eff. May 1, 1984;  
Amended Eff. November 1, 2010.*

#### **04 NCAC 02R .0906 FINANCE OFFICER: DUTIES**

(a) The general manager of each local board shall serve as finance officer. The local board may designate deputy finance officers to aid the officer in the performance of his duties and perform other duties delegated to them by the finance officer or the local board.

(b) The finance officer shall:

- (1) keep the accounts of the local board in accordance with generally accepted principles of governmental accounting and the rules of the Commission;
- (2) disburse all moneys of the board in strict compliance with these Rules;
- (3) prepare statements of financial condition as often as the governing board requires information;
- (4) receive and deposit all moneys received or supervise the receipt and deposit of money by other authorized employees;
- (5) supervise the investment of idle funds of the local board;
- (6) ensure that all internal controls established by the local board are followed; and
- (7) perform other duties as may be assigned to him by law, by the local board or by the rules of the Commission.

*History Note: Authority G.S. 18B-702(e);  
Eff. May 1, 1984;  
Amended Eff. July 1, 1992.*

#### **04 NCAC 02R .0907 ANNUAL INDEPENDENT FINANCIAL AUDIT**

(a) Each local board shall have its accounts audited after the close of each fiscal year by an independent certified public accountant. The auditor shall be selected by and report to the local board. The audit contract shall be on a form provided by

the Commission. The audit report is due to the Commission ninety days after the end of the fiscal year. The financial officer shall file one unbound copy of the audit report and management letter with the Commission.

(b) Each officer and employee of the local board having custody of public money or responsibility for keeping records of financial or fiscal affairs shall produce books and records requested by the auditor or the Commission and shall divulge any information relating to fiscal affairs that they request. If any member of the local board or any employee conceals, falsifies or refuses to deliver or divulge any books, records, or information with intent to mislead the auditor or impede or interfere with the audit, he is subject to removal for cause pursuant to G.S. 18B-203(a)(8).

(c) Disclosure of the distribution of profits shall include every element that is applicable under G.S. 18B-805 in a schedule prepared for inclusion with the annual audited financial statements. In addition the schedule shall be supported by a listing of each person who receives moneys from the local board, the date of payment and, if applicable, the purpose for which the payment was made and restrictions on use of the payment. The listing shall be so designated to provide the same totals as were used in the schedule for each type of distribution.

*History Note:* Authority G.S. 18B-702(c),(e);  
Eff. May 1, 1984;  
Amended Eff. November 1, 2010.

#### **04 NCAC 02R .0908 ACCOUNTING SYSTEM**

(a) Each local board shall establish and maintain an accounting system designed to show in detail its assets, liabilities, equities, revenues and expenses. Conformity to the Uniform Accounting Procedures for all local boards shall be indicative of the adequacy of the system.

(b) The fiscal year for local boards shall begin July 1 and end June 30.

(c) All checks shall be signed by the finance officer or properly approved deputy finance officer or by another official or member of the local board as designated by the local board.

*History Note:* Authority G.S. 18B-702(e);  
Eff. May 1, 1984.

#### **04 NCAC 02R .0909 TRAVEL POLICIES**

(a) Travel Policy Required. Each local board shall adopt and adhere to rules establishing travel policies to govern the following activities:

- (1) responsibility of board members and employees in incurring expenses while travelling on board business;
- (2) modes of transportation authorized for travel on official business;
- (3) reimbursement allowances for travel, including mileage reimbursements;
- (4) reimbursement allowances for lodging and meals;
- (5) reimbursement allowances for conference or convention registration fees;
- (6) travel advances;
- (7) authorization for travel;
- (8) incidental travel expenses including tips, tolls, parking fees, taxi fares, and rental vehicles;
- (9) telephone calls made while travelling; and
- (10) reimbursement procedures and documentation of expenses.

The travel policy rules and subsequent amendments shall be made available to each employee and board member.

(b) Rules to Conform to Local or State Policies. Travel policy rules adopted by a local board shall conform, at a minimum, to travel policies adhered to by either the local appointing authority or the Office of State Budget and Management of the State of North Carolina.

(c) Rules to be Filed with Commission. Each local board shall file a certified copy of its travel policies and procedures, and any amendments thereto, with the Commission within 10 days of the adoption, or amendment, of the policies by the local board.

*History Note:* Authority G.S. 18B-702(e);  
Eff. July 1, 1992.

### **SECTION .1000 - LOCAL ABC BOARD: PERSONNEL POLICIES**

#### **04 NCAC 02R .1001 STANDARDS FOR LOCAL ABC BOARD MEMBERS AND EMPLOYEES**

*History Note:* Authority G.S. 18B-207; 18B-700;  
Eff. January 1, 1982;  
Repealed Eff. May 1, 1984.

**04 NCAC 02R .1002 USE OF ABC PROPERTY**

Local board members and employees shall not engage in or allow the conduct of any business other than official business on property controlled by the ABC system, including stores, board facilities and warehouses.

*History Note:* Authority G.S. 18B-207; 18B-807;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984.

**04 NCAC 02R .1003 CONSUMPTION OF ALCOHOLIC BEVERAGES**

(a) No employee of any local board, while on duty during the hours prescribed by the supervisor, shall consume any alcoholic beverages except when that employee is engaged in undercover activities.

(b) No employee of a local board shall consume or permit the consumption of any alcoholic beverages on the premises of an ABC store or warehouse.

(c) No employee of a local board shall be or become intoxicated while on duty or on the premises of an ABC store or warehouse.

*History Note:* Authority G.S. 18B-207; 18B-301(f); 18B-807;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984.

**04 NCAC 02R .1004 EMPLOYMENT AGE REQUIREMENT**

A person employed by a local board shall be at least 18 years of age unless waived by the commission.

*History Note:* Authority G.S. 18B-207; 18B-807;  
Eff. January 1, 1982;  
Amended Eff. February 1, 1986.

**04 NCAC 02R .1005 WAREHOUSE: PRESENCE OF UNAUTHORIZED PERSON PROHIBITED**

Only personnel employed by a local board may enter a local board's warehouse, except for:

- (1) truck drivers who need to enter in order to verify the amount of merchandise delivered;
- (2) members of the Commission and its representatives;
- (3) local board members; and
- (4) persons with approval from the local board or general manager; provided, they are accompanied by a board member or employee of the local board.

*History Note:* Authority G.S. 18B-207; 18B-807;  
Eff. January 1, 1982;  
Amended Eff. November 1, 2010.

**04 NCAC 02R .1006 EMPLOYMENT: REMOVAL: OF LOCAL BOARD MEMBER OR EMPLOYEE**

(a) Improper Influence. Neither the Commission nor its individual members shall attempt to coerce any appointing authority to appoint a particular person as a member of a local board or attempt to coerce a local board to employ any particular applicant.

(b) Power of Removal. After consulting with a local board, the Commission may remove any member of a local board who is unfit to serve thereon and may remove any board member or discharge any employee of a local board for cause.

(c) Cause for Removal. Disqualification of a local board member or employee under the law or violation of the terms or spirit of the ABC laws is cause for the Commission to remove the member or employee. The employment or retention of any employee who is known to be disqualified under the law to hold a position with a local board is cause for the Commission to remove the board members involved.

(d) Hearing. Any local board member or employee removed from office or discharged by the Commission may request a hearing before the Commission. Such a request operates to stay the action of the Commission with regard to the matter until after the hearing, unless the Commission finds that the public interest requires immediate action. At the hearing, the employee or his counsel may examine all evidence used against him and present evidence in his own behalf.

*History Note:* Authority G.S. 18B-203(a)(8); 18B-207;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984.

#### **04 NCAC 02R .1007 EMPLOYMENT AND DISCHARGE OF PERSONNEL**

*History Note:* Authority G.S. 18B-203(8); 18B-207;  
Eff. January 1, 1982;  
Repealed Eff. May 1, 1984.

#### **04 NCAC 02R .1008 CONFLICTS OF INTEREST**

*History Note:* Authority G.S. 18B-201; 18B-207; 18B-700(g);  
Eff. January 1, 1982;  
Amended Eff. July 1, 1992; May 1, 1984;  
Repealed Eff. December 1, 2010.

#### **04 NCAC 02R .1009 PERSONNEL MANUAL**

(a) Each local board shall establish policies and rules governing each of the following:

- (1) Initial employment of employees, including qualifications and requirements for new employees;
- (2) Compensation and benefits;
- (3) Hours and days of work, holidays, vacation, sick leave and other matters pertaining to the conditions of employment;
- (4) Promotion, transfer, demotion and suspension of employees;
- (5) Separation or termination of employees;
- (6) Granting of salary increases;
- (7) Employee grievance procedures; and
- (8) Any other programs or procedures as may be necessary to promote efficiency and to provide for a fair and reasonable system of personnel administration.

(b) A local board is encouraged to model its personnel policies and procedures after those adopted by the county or municipality in which it operates.

(c) A local board shall not adopt a rule or policy that conflicts with the provisions of Chapter 18B or these Rules.

*History Note:* Authority G.S. 18B-203(a)(10); 18B-701(2); 18B-807;  
Eff. July 1, 1992.

### **SECTION .1100 - LOCAL ABC BOARDS: RELATIONSHIP WITH STATE COMMISSION**

**04 NCAC 02R .1101 COMMON INTEREST**

It shall be the policy of the Commission to advise and consult with the local boards regarding matters of common interest to the alcoholic beverage control system.

*History Note: Authority G.S. 18B-207; 18B-807;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984.*

**04 NCAC 02R .1102 LOCAL RULES**

(a) Submitted to Commission. A copy of all rules or amendments thereto that may be adopted by a local board to govern the operation of ABC stores or the enforcement of the ABC laws shall be submitted to the Commission at least 15 days prior to the date on which it is proposed that those rules or amendments are to become effective.

(b) Power to Approve. In the absence of notice from the Commission to the contrary, those rules or amendments thereto shall stand approved.

*History Note: Authority G.S. 18B-203(a)(10); 18B-207;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984.*

**04 NCAC 02R .1103 AUDITS TO BE FORWARDED TO COMMISSION**

*History Note: Authority G.S. 18B-205; 18B-207; 18B-702(c);  
Eff. January 1, 1982;  
Repealed Eff. November 1, 2010.*

**04 NCAC 02R .1104 COST OF AUDIT**

The cost of any audit or examination of records conducted under authority of G.S. 18B-203(4) may be assessed to local boards being audited or examined, at the discretion of the Commission.

*History Note: Authority G.S. 18B-205; 18B-207; 18B-702(e);  
Eff. January 1, 1982.*

**SECTION .1200 - OPENING AND DISCONTINUANCE OF STORES**

**04 NCAC 02R .1201 COMMISSION PROHIBITED FROM ENTERTAINING COMPLAINT**

The Commission shall not entertain any complaint or petition protesting the action of any local board in discontinuing the operation of any existing ABC store or in refusing to establish an additional store or stores at any particular location.

*History Note: Authority G.S. 18B-207; 18B-801;  
Eff. January 1, 1982.*

**04 NCAC 02R .1202 COMMISSION TO CONSIDER OBJECTIONS**

The Commission will consider objections to the opening of new ABC stores or the continuance of existing stores, but only upon showing that the local board concerned has either considered and overruled or ignored such objections.

*History Note: Authority G.S. 18B-207; 18B-801;  
Eff. January 1, 1982.*

**04 NCAC 02R .1203 APPROVAL OF NEW STORES**

(a) Notice to Commission. The opening of any new ABC stores shall not be approved by the Commission unless at least a 30 day notice is given to the Chairman as to the intended location of the store and until a public notice of the intention to open such ABC store has been posted for 30 days at such location.

(b) Sign Requirements. In order to meet the public notice requirements of Paragraph (a) of this Rule, the local board shall post at least one sign at the proposed new store site in accordance with all the following requirements:

- (1) Dimensions of the sign shall total at least nine square feet;
- (2) The board shall state on the sign its intention to open an ABC store on the site and shall state the entity and its phone number to provide public comments;
- (3) Lettering shall be at least four inches in height and background colors shall be of sufficient contrast so that the notice shall be legible to passersby; and
- (4) The sign shall be posted within 10 feet of the property line that is parallel to the public road or sidewalk that will be in front of the proposed store, or if the proposed store will be in an existing shopping center, the sign shall be posted on the front exterior of the existing storefront or building. Lettering on the sign shall face the public road or sidewalk, or if within an existing shopping center, the lettering shall face the exterior of the existing storefront or building.

*History Note:* Authority G.S. 18B-207; 18B-801;  
Eff. January 1, 1982;  
Amended Eff. November 1, 2010; July 1, 1992.

#### **04 NCAC 02R .1204 NEW STORES PROHIBITED IN CERTAIN AREAS**

New stores should not be opened in any area which is principally residential, in unreasonable proximity to any church, school or similar institution, in any slum district or other similarly undesirable area or at any location where sufficient parking facilities cannot be made available to avoid traffic congestion.

*History Note:* Authority G.S. 18B-207; 18B-801;  
Eff. January 1, 1982.

#### **04 NCAC 02R .1205 CLOSING OF STORE**

*History Note:* Authority G.S. 18B-207; 18B-801;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984;  
Repealed Eff. July 1, 1992.

### **SECTION .1300 - STORAGE AND DISTRIBUTION OF SPIRITUOUS LIQUORS: COMMERCIAL TRANSPORTATION**

#### **04 NCAC 02R .1301 DEFINITIONS**

*History Note:* Authority G.S. 18B-101; 18B-207;  
Eff. January 1, 1982;  
Repealed Eff. November 1, 2010.

#### **04 NCAC 02R .1302 STORAGE: DELIVERIES: SECURITY**

- (a) Storage. Private warehouse contractors performing the receipt, storage and distribution functions shall:
- (1) Allocate space in the Commission's warehouse for each item listed on the price list adopted by the Commission. Space allocated shall be based on sales volume;
  - (2) Develop and publish a delivery schedule of spirituous liquors to all local boards, which are subject to approval of the Commission which are based on sales volume. Orders and shipments over the quantity on the approved schedule may be made as agreed between the local boards and the contractor. All orders over the quantity on the schedule shall be accepted when deemed economically feasible by the contractor.
  - (3) Develop and publish standard operating procedures not covered by these Rules for use by the contractor and local boards. All procedures published shall be submitted to the Commission.
- (b) Deliveries and Shipments. The processing of shipments upon receipt by the local boards shall be as follows:
- (1) The driver shall provide the local board representative an Off-Loading Check Sheet, an Invoice Bill(s) of Lading and a Transmittal Sheet with the shipment. The Off-Loading Check Sheet shall reflect the items and quantities being delivered in numerical order, and the quantities shall agree with those on the Invoice Bill(s) of Lading and the Transmittal Sheet;
  - (2) The system used for off-loading shall be such that an accurate count of the merchandise is made and all overages or shortages can be verified by the driver before any exceptions entries are made on the Transmittal Sheet;
  - (3) If there are no overages, shortages or breakage, remittance shall be made as referenced in Subparagraph (10) of this Paragraph;
  - (4) If there is an overage which is accepted by the local board representative, the local board representative shall line through the number of cases invoiced and shall write the correct number of cases on the Transmittal Sheet. The local board representative shall enter the quantity over, the stock code number and an explanation in the "comments" block on the Transmittal Sheet. Upon return of the Transmittal Sheet to the Commission's warehouse, the contractor shall issue a debit adjustment. The debit adjustment shall have the original invoice number in the purchase order reference box as a cross reference. Remittance shall be made as referenced in Subparagraph (10) of this Paragraph;
  - (5) If there is an overage that is not accepted by a local board representative, the local board representative shall enter the quantity, the stock code number and an explanation in the "comments" box on the Transmittal Sheet. The driver shall return the merchandise to the Commission's warehouse;
  - (6) If there is a shortage, the local board representative shall line through the number of cases invoiced and shall write the correct number of cases on the Transmittal Sheet. The local board representative shall enter the quantity under, the stock code number and an explanation in the "comments" box on the Transmittal Sheet. Upon return of the Transmittal Sheet to the Commission's warehouse, the contractor shall issue a credit adjustment. Remittance shall be made as referenced in Subparagraph (10) of this Paragraph;
  - (7) The local board representative shall handle breakage discovered during the unloading process as a shortage in shipment [see Subparagraph (6) of this Paragraph] with the note in the "comments" block of the Transmittal Sheet indicating that the case was returned due to breakage. If the breakage involves a case that is an overage not accepted by the local board representative, the procedures in Subparagraph (5) of this Paragraph shall be followed. Remittance shall be made as referenced in Subparagraph (10) of this Paragraph;
  - (8) If a local board's shipment includes a shrink-wrapped pallet(s), the local board shall break down the pallet(s) and any overage, shortage, or breakage shall be reported to the warehouse as follows:
    - (A) The procedures for marking the Transmittal Sheet in Subparagraphs (4), (5), (6) and (7) of this Paragraph shall be followed; and
    - (B) The updated Transmittal Sheet shall be emailed, faxed or postmarked to the Commission's warehouse within three days of delivery of the pallet(s);Remittance shall be made as referenced in Subparagraph (10) of this Paragraph;
  - (9) The local board representative and the driver shall sign the Transmittal Sheet(s) and the driver shall return the Transmittal Sheet(s) to the Commission's warehouse. The local board representative shall receipt date stamp or sign the distiller's Invoice Bills of Lading copies and the driver shall return them to the Commission's warehouse; and
  - (10) The local board shall remit payment to the party listed in the "Remit to" information listed on the Invoice Bill(s) of Lading which includes any Bailment Invoices or Surcharge Invoices. The local board shall enter the Invoice Bill of Lading number on each check or each check stub.
- (c) Security Measures. Security of the merchandise during the delivery process shall be as follows:

- (1) The conveyances (trucks and trailers) shall be secured with a lock and serially numbered metal or plastic seal by the contractor. Each local board shall be issued a key that will unlock all the locks used by the contractor;
- (2) The seal numbers will be entered on the "Seal Nos." line of the invoice transmittal sheet. Extra seals shall be included in sealed envelopes for resealing the unit when shipments are destined for more than one local board and for the return trip after final delivery;
- (3) The local board general manager or his designated representative shall check the seal number on the unit with the number on the invoice transmittal sheet upon arrival of a shipment. If the numbers correspond the unit shall be unlocked by the local board's representative. If the numbers do not correspond the contractor shall be contacted for further instructions; and
- (4) The local boards' general manager shall limit the accessibility of the key to three personnel and shall not allow the contractor's driver or his assistant to remove the seal or have the key in his possession at any time.

(d) Local boards shall not pick up merchandise from the Commission's warehouse without prior approval from the Commission's Administrator or his designee.

(e) Local boards may purchase, exchange, or otherwise obtain spirituous liquor from another local board and transport such beverages as necessary for the operation of its ABC stores. Payment for such transactions shall be satisfied as provided by 04 NCAC 02R .1407.

*History Note:* Authority G.S. 18B-100; 18B-203; 18B-207; 18B-701(1);  
Eff. January 1, 1982;  
Amended Eff. January 1, 2011; May 1, 1984.

#### **04 NCAC 02R .1303 COMMERCIAL TRANSPORTATION: PERMIT AND BOND REQUIRED**

(a) Any person transporting spirituous liquors into and through the State of North Carolina shall first give a bond of one thousand dollars (\$1,000) as required by G.S. 18B-1115(e) and secure a blanket fleet permit for the transportation of spirituous liquors signed by the chairman or administrator of the Commission. That permit shall designate the spirituous liquors to be shipped.

(b) Driver to Possess Permit. Any person applying for and receiving this permit shall require the driver or operator of any truck, tractor, or trailer to have in his possession a copy of the permit together with the bills of lading of the spirituous liquors being transported disclosing the consignor and consignee of the spirituous liquors being transported.

(c) Commission to Provide Forms. Blank forms for the bond will be supplied by the Commission upon request.

(d) A local board owning and operating trucks for the purpose of transporting spirituous liquors from a local warehouse to the various local stores within an ABC system shall not be required to give bond and shall be permitted to operate its trucks without a common carrier permit.

*History Note:* Authority G.S. 18B-207; 18B-1115;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984.

#### **04 NCAC 02R .1304 TRANSPORTATION FROM STATE ABC WAREHOUSE**

Except as specifically authorized by the Commission, no spirituous liquors shall be transported within, into, or through this State for delivery to a local ABC store or board except from the state ABC warehouse.

*History Note:* Authority G.S. 18B-204(a); 18B-207; 18B-701(1);  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984.

**04 NCAC 02R .1305 DIRECT SHIPMENTS**

(a) A direct shipment is a shipment of a distiller's spirituous liquors from the distiller or a warehouse directly to a local board without passing through the Commission's warehouse.

(b) Direct shipments are allowed by the Commission in emergency situations or in a situation that is mutually advantageous to local boards, the Commission and the operator of the Commission's warehouse (for example, commemorative bottles).

(c) Direct shipment shall have written approval from the Commission. Merchandise authorized to be shipped direct shall be consigned by the Commission's warehouse to the distiller's account in care of the local board. The local board shall acknowledge receipt of the merchandise on the shipping documents and forward them to the contractor for processing through the accounting system as though the merchandise were shipped from the Commission's warehouse.

*History Note: Authority G.S. 18B-100; 18B-109(a); 18B-207; 18B-701(1);  
Eff. January 1, 1982;  
Amended Eff. January 1, 2011; May 1, 1984.*

**SECTION .1400 - PURCHASE OF ALCOHOLIC BEVERAGES BY LOCAL BOARDS**

**04 NCAC 02R .1401 PURCHASE LIMITED TO APPROVED BRANDS**

Except for special orders, no purchases of any spirituous liquor or fortified wine shall be made by any local board other than brands approved for resale in ABC stores by the Commission.

*History Note: Authority G.S. 18B-207; 18B-800(c);  
Eff. January 1, 1982;  
Amended Eff. July 1, 1992; May 1, 1984.*

**04 NCAC 02R .1402 PERMIT REQUIRED TO SELL ALCOHOLIC BEVERAGES**

No purchase of any spirituous liquor or fortified wine for resale in ABC stores shall be made by any local board from any person that does not hold a permit from the Commission authorizing the sale of those beverages to the local boards, except that approved brands of taxpaid liquor may be purchased for resale from the board of county commissioners of any county for an amount not to exceed the usual wholesale price of the liquor when liquor has been confiscated for a violation of the ABC laws. A local board shall purchase fortified wine only from a North Carolina wholesaler who has been issued a wine wholesaler permit.

*History Note: Authority G.S. 18B-207; 18B-304(a); 18B-503(e); 18B-1107(a)(2);  
Eff. January 1, 1982;  
Amended Eff. July 1, 1992; May 1, 1984.*

**04 NCAC 02R .1403 DIRECT ORDERS BY LOCAL BOARD**

*History Note: Authority G.S. 18B-207; 18B-807;  
Eff. January 1, 1982;  
Repealed Eff. May 1, 1984.*

#### **04 NCAC 02R .1404 SPECIAL ORDERS**

The Commission will approve special orders when a local board has a request from a customer for one or more cases of merchandise not on the approved list, including container sizes not on the approved list, provided the following steps are taken:

- (1) The local board requests that the Commission obtain the price from the vendor, including freight, bailment surcharge and bailment; the Commission determines the retail price and advises the local board making the request;
- (2) The local board advises the customer of the retail price for the particular case of merchandise. If the customer places an order, the entire purchase price is at that time paid to the local board, and the Commission is advised that the local board has a bona fide order;
- (3) The Commission places the order with the proper vendor and the merchandise is shipped to the state ABC warehouse for delivery to the local board with the next regularly scheduled shipment to the local board; and
- (4) The local board reports the sale of each case of merchandise sold on its monthly report to the Commission.

*History Note:* Authority G.S. 18B-207; 18B-800(c); 18B-807;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984.

#### **04 NCAC 02R .1405 COMMEMORATIVE BOTTLES**

The Commission shall approve local boards' orders and sales of specially designed bottles commemorating particular events, occasions, or ceremonies, provided advertising borne upon commemorative bottles is limited to commemorating historical events of the local board and non-profit, charitable enterprises (i.e., ordinary profit-oriented businesses are not permitted to advertise themselves or their products via commemorative bottles.)

*History Note:* Authority G.S. 18B-207; 18B-807;  
Eff. January 1, 1982;  
Amended Eff. November 1, 2010.

#### **04 NCAC 02R .1406 RECORDS REQUIRED**

A record of all orders, receipts, invoices, and payments shall be maintained by local boards and be available for inspection by any representative of the Commission at any reasonable time. More specifically, local boards shall retain records as follows:

- (1) sales report (until annual audit completed),
- (2) warehouse report (one year),
- (3) daily store report (until annual audit completed),
- (4) stock difference report (three years),
- (5) receiving report (until annual audit completed),
- (6) clerk's daily sales and cash report (until annual audit completed), and
- (7) paid invoices (three years).

In addition, local boards shall retain the Loss and Damage Claim records and required records related to the sale of mixed beverages for a period of three years.

*History Note:* Authority G.S. 18B-203(a); 18B-205; 18B-207; 18B-702(c),(e);  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984.

**04 NCAC 02R .1407 PAYMENT**

- (a) Local boards shall remit full payment of the contractor's statement of account pertaining to the bailment fee within 30 days of receipt of the statement.
- (b) Local boards shall remit full payment of the contractor's statement of account pertaining to the bailment surcharge within 15 days of receipt of the statement.
- (c) Local boards shall remit full payment of the distiller's invoice within 30 days of delivery of the liquor.
- (d) Local boards that obtain spirituous liquor from another local board pursuant to 04 NCAC 02R .1302(e) shall remit full payment within 15 days of the transaction.

*History Note: Authority G.S. 18B-207; 18B-702(e);  
Eff. May 1, 1984;  
Amended Eff. November 1, 2010; July 1, 1992.*

**SECTION .1500 - PRICING OF SPIRITUOUS LIQUOR**

**04 NCAC 02R .1501 PRICE INCREASES**

Distillers shall not increase F.O.B. prices except at a regularly scheduled effective date of the Commission's official price list, namely: February 1, May 1, August 1, and November 1 of each year.

*History Note: Authority G.S. 18B-203(a)(3); 18B-207;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984.*

**04 NCAC 02R .1502 MARKUP FORMULA**

- (a) On every delivered case of spirituous liquors, there shall be an added markup, which is derived by the following formula:
  - (1) local board markup, plus
  - (2) (one added to the local board markup) multiplied by the state excise tax, plus
  - (3) (one added to the local board markup) multiplied by 3.5 percent, equals
  - (4) the total markup.
- (b) The selling price of spirituous liquor is derived by the following steps:
  - (1) Determine the subtotal case cost by adding base case cost, freight and bailment together;
  - (2) Multiply the subtotal case cost by the total markup calculated in Paragraph (a) of this Rule, to four decimals;
  - (3) Add the bailment surcharge;
  - (4) Divide the result by the number of bottles in the case;
  - (5) Add five cents (\$.05) rehabilitation tax [Add one cent (\$.01) for bottles 50 ml. or less];
  - (6) Add five cents (\$.05) for the local board charge [Add one cent (\$.01) for bottles 50 ml. or less];
  - (7) Round the result to an integer evenly divisible by five cents. The break point is one cent, one mill.
  - (8) The result is the retail selling price per bottle.

*History Note: Authority G.S. 18B-203(a)(3); 18B-207; 18B-804;  
Eff. January 1, 1982;  
Amended Eff. November 1, 2010; November 1, 1993; August 1, 1991; November 1, 1988; June 1, 1986.*

#### **04 NCAC 02R .1503 SPECIAL PURCHASE ALLOWANCES; POST OFFS; PASS THROUGHHS**

(a) Temporary Price Reductions. The Commission will, from time to time, reduce the retail prices of selected liquor products to reflect manufacturer or importer offers of special price reductions.

(b) Selection of Items. Individual liquor products will be selected for retail price reductions based on the following criteria:

- (1) Amount of reduction offered by industry member;
- (2) Profitability of product;
- (3) Sales history of product;
- (4) Quantity of product available; and
- (5) Marketing support offered by industry member.

(c) Offers of Reductions. In order for a product to be considered, an industry member shall file, within the time set by the Commission, special purchase allowances offered for its products.

(d) Time Periods. If approved by the Commission, the reduction of the retail price of a liquor product will be in effect for a period of 30 days. The Commission will notify industry members and local boards at least 30 days in advance of the effective date of a reduced price for each approved price reduction.

(e) Supplemental Price Lists. The Commission will publish additional price lists indicating price reductions to supplement the quarterly price lists published in February, May, August and November of each year. Supplemental price lists shall be made available by each local board in each of its ABC stores, and all reduced prices shall be posted by either affixing the price of the product to the shelf or affixing a price sticker on the container. Additional signs may be utilized by an ABC store to notify customers of the price reductions.

(f) Reduced Prices Effective Statewide. A local board that sells a product selected for a temporary price reduction shall sell that product at the reduced price for the entire period the lower price is in effect.

*History Note:* Authority G.S. 18B-203(a)(3); 18B-207; 18B-702(e); 18B-804; 18B-807;  
Eff. July 1, 1992.

#### **SECTION .1600 - WAREHOUSE STORAGE OF SPIRITUOUS LIQUORS**

##### **04 NCAC 02R .1601 PERMIT REQUIRED**

Permits to store spirituous liquors will be issued to privately-owned bonded warehouses when application has been made to the Commission if the applicant complies with the conditions as set forth in this Section and the requirements of G.S. 18B-900.

*History Note:* Authority G.S. 18B-204; 18B-207; 18B-900;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984.

##### **04 NCAC 02R .1602 INSPECTION UPON APPLICATION**

Upon receipt of an application for a storage permit from a privately-owned bonded warehouse, the Commission shall cause an inspection to be made of the warehouse to determine whether the warehouse has adequate security measures necessary for safe and proper storage and whether the warehouse is a safe and proper physical structure for the storage of spirituous liquors.

*History Note:* Authority G.S. 18B-204; 18B-207;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984.

#### **04 NCAC 02R .1603      REQUIREMENTS FOR STORAGE**

All privately-owned bonded warehouses holding permits for the storage of spirituous liquors are required to:

- (1) store all liquor separately and apart from other merchandise;
- (2) store all military codes separately and apart from state codes;
- (3) store all liquor of the same code together and spaced evenly for inventory purposes;
- (4) submit to the Commission monthly reports of all spirituous liquors received and delivered so that a perpetual inventory may be kept at the Commission, which report must match the inventory at the bonded warehouse at all times and upon inspections for inventory purposes;
- (5) take at their expense, and submit to the Commission, semi-annual inventories of all spirituous liquors being held in the bonded warehouse, which inventories may be observed by representatives of the Commission or the State Auditor's Office;
- (6) return all distressed liquor received to the distiller within 30 days of its receipt, or destroy in the presence of a distiller representative;
- (7) destroy, in the presence of the distiller representative for the brand involved, all liquor that becomes distressed after it is received.

*History Note:*      *Authority G.S. 18B-204; 18B-207;*  
*Eff. January 1, 1982;*  
*Amended Eff. May 1, 1984.*

#### **04 NCAC 02R .1604      PROHIBITED PRACTICES**

- (a) The removal of any spirituous liquors except as provided for in these Rules to any place except the state ABC warehouse, military posts, points outside the State of North Carolina or the shipping distillery is prohibited.
- (b) No liquor, distressed or otherwise, shall be given to any distiller representative or employee of the warehouse but shall be destroyed and recorded in the Unsalable Merchandise Report in the presence of a distiller representative.

*History Note:*      *Authority G.S. 18B-204; 18B-207;*  
*Eff. January 1, 1982;*  
*Amended Eff. May 1, 1984.*

#### **04 NCAC 02R .1605      INSPECTION OF PREMISES AND RECORDS**

All warehouses receiving a permit for the storage of spirituous liquors shall make available to the Commission on request all records, invoices, and inventories pertaining to the storage of spirituous liquors. All spirituous liquors inventories shall be kept segregated and filed according to distillery name. These records shall be retained by the warehouse for a period of three years.

*History Note:*      *Authority G.S. 18B-204; 18B-207;*  
*Eff. January 1, 1982;*  
*Amended Eff. May 1, 1984.*

#### **04 NCAC 02R .1606      SUSPENSION OF PERMIT**

- (a) Notice of suspension and discontinuance of the storage of spirituous liquors by privately-owned bonded warehouses may be given to any person holding storage permits by the Commission. Upon receiving this notice, permittees shall halt the storage of spirituous liquors until the Commission has by appropriate action declared that storage may be resumed in the warehouse. Upon notification, the warehouse permittee shall remove all spirituous liquors to a proper storage facility within 30 days.
- (b) The Commission may revoke or suspend the permit of any person violating any order issued pursuant to these Rules.

*History Note:*      *Authority G.S. 18B-204; 18B-207;*  
*Eff. January 1, 1982;*  
*Amended Eff. May 1, 1984.*

## SECTION .1700 - RETAIL SALES OF ALCOHOLIC BEVERAGES

### 04 NCAC 02R .1701 REMOVAL OF BEVERAGES FROM ABC STORES

(a) Spirituous liquor, either distressed or otherwise, shall not leave the custody of a local board after receipt unless:

- (1) The spirituous liquor is sold at retail;
- (2) The liquor is returned to the state ABC warehouse; or
- (3) The liquor is purchased, exchanged, or otherwise obtained by another local board as provided by 04 NCAC 02R .1302(e).

Any spirituous liquor otherwise leaving the local board is nontaxpaid spirituous liquor.

(b) Distressed Liquor. Distressed liquor shall be given to a public or private hospital for medicinal purposes only or destroyed and the destruction witnessed by the manager or his designee and a distiller representative. A Destruction of Unsalable Merchandise Report shall be completed and signed by the witnessing parties. A written copy of the report shall be sent to the distiller and a written or electronic copy shall be sent quarterly to the Commission. The original shall be retained by the local board for a period of three years.

(c) No sales of alcoholic beverages shall be made to employees, board members or other retail customers on credit. This does not prohibit purchases made by the use of credit cards.

*History Note:* Authority G.S. 18B-806; 18B-807;  
Eff. January 1, 1982;  
Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984.

### 04 NCAC 02R .1702 SALE OF CERTAIN BEVERAGES BELOW RETAIL PRICE

The Commission may authorize a local board to sell certain alcoholic beverages at below the uniform price.

*History Note:* Authority G.S. 18B-804(a); 18B-807;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984.

### 04 NCAC 02R .1703 STORES: APPEARANCE AND STATE LIST

(a) Interior Appearance of Stores. Stores shall meet the following standards:

- (1) Stores shall be well lit so as an average customer can shop safely and be free of trash;
- (2) Floors shall be clean;
- (3) Bottles and shelves shall be clean;
- (4) Signs and displays shall not be faded or worn;
- (5) Televisions that are on shall be tuned to a news, weather or community service channel when not providing liquor related information and the volume shall be kept low enough so as not to interfere with sales;
- (6) Smoking shall not be permitted in any stores, warehouses or storage areas; and
- (7) Security systems shall be functional.

(b) Exterior Appearance of Stores. Stores shall meet the following standards:

- (1) Areas around stores shall be well lit and free of trash; and
- (2) Signs shall not be faded or worn.

(c) State List to be Available. Every store shall make available for its customers' inspection a copy of the most current complete state price list and any supplemental price lists. A local board may draw up and post its own price list for items or brands sold in its stores, provided the items and prices listed on the local list are also listed on the complete state list.

*History Note:* Authority G.S. 18B-100; G.S. 18B-102(a); 18B-203(a)(20); 18B-807;  
Eff. January 1, 1982;  
Amended Eff. November 1, 2011; July 1, 1992; May 1, 1984.

### 04 NCAC 02R .1704 SALE OF WINE

*History Note:* Authority G.S. 18B-800(b); 18B-804(c); 18B-807;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984;  
Repealed Eff. July 1, 1992.

**04 NCAC 02R .1705 HOURS OF SALE**

- (a) No local board shall sell any alcoholic beverages at any store:
- (1) after the closing hours as established by the local board; provided, however, that no sales shall be made between 9:00 p.m. and 9:00 a.m.;
  - (2) on any day the local board so designates;
  - (3) on Sundays; and
  - (4) on the following holidays: New Year's Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day.
- (b) No employee shall enter a store at any time the store is not open, as designated in this Rule, except by permission of the store manager.

*History Note: Authority G.S. 18B-802; 18B-807;  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984.*

**04 NCAC 02R .1706 CUSTOMER SERVICE**

- (a) The manager and the employees in every store shall see that customers are waited on professionally and as soon as possible to reduce customers' wait time. The manager and the employees shall not allow people without the intent to purchase to loiter.
- (b) If a local board has a price discrepancy between the price on the shelf or bottle and the cash register, and the price on the shelf or bottle is lower, the local board shall sell the item at the shelf or bottle price and correct the shelf or bottle price to match the Commission's published price.
- (c) If a customer inquires about a product that a local board does not carry, the local board's manager or employee shall inform the customer that a case of the product can be special ordered. The manager or employee shall also inform the customer what guidelines must be followed to place the special order.

*History Note: Authority G.S. 18B-100; 18B-203(a)(20); 18B-807;  
Eff. January 1, 1982;  
Amended Eff. November 1, 2011.*

**04 NCAC 02R .1707 SALES RECOMMENDATIONS PROHIBITED**

*History Note: Authority G.S. 18B-807;  
Eff. January 1, 1982;  
Repealed Eff. July 1, 1992.*

**04 NCAC 02R .1708 PURCHASE-TRANSPORTATION PERMITS**

A copy of all Purchase-Transportation Permits shall be maintained by local boards for a period of one year following issuance. A copy of all Mixed Beverages Purchase-Transportation Permit/Invoice forms shall be retained by the local board for a period of at least three years.

*History Note: Authority G.S. 18B-207; 18B-303; 18B-403; 18B-404; 18B-807;  
Eff. January 1, 1982;  
Amended Eff. November 1, 2010; July 1, 1992; May 1, 1984.*

**04 NCAC 02R .1709 ALCOHOL REHABILITATION COLLECTIONS PERMITTED**

- (a) Local boards may provide containers for the collection of voluntary contributions to alcohol rehabilitation programs approved by the Commission.
- (b) Collection or solicitation of contributions for any other purpose is prohibited.

*History Note: Authority G.S. 18B-207; 18B-807;  
Eff. May 1, 1984.*

**04 NCAC 02R .1710 CREDIT CARD SALES**

*History Note: Authority G.S. 18B-203(b); 18B-702(e); 18B-807;  
Eff. July 1, 1992;  
Repealed Eff. November 1, 2010.*

**04 NCAC 02R .1711 SHELF MANAGEMENT**

(a) Each local board shall establish and maintain a shelf management plan. The local board shall establish policies within its plan that incorporates the following concepts:

- (1) set the higher priced items on the upper shelves at eye level and set the lower priced items on the bottom shelves;
- (2) block categories in vertical sets per their category;
- (3) arrange bottle sizes so they increase left to right of the same item;
- (4) create brand billboard by stacking all brand sizes together;
- (5) set shelf space for products considering the following factors:
  - (A) market share;
  - (B) promotions;
  - (C) traffic patterns
  - (D) seasonal sales; and
  - (E) cross merchandising;
- (6) set and maintain all bottles at the front of the shelf; and
- (7) discontinue low profit slow moving items.

(b) Each local board shall keep a copy of its shelf management plan at each store location and, upon request, provide a copy to a Commission representative.

*History Note: Authority G.S. 18B-100; 18B-203(a)(20);  
Eff. December 1, 2011.*

**SECTION .1800 - PURCHASE-TRANSPORTATION PERMITS FOR INDIVIDUALS AND MIXED BEVERAGES PERMITTEES**

**04 NCAC 02R .1801 PURCHASE-TRANSPORTATION PERMITS: WINE: LIQUOR:**

(a) Form. The Purchase-Transportation Permit shall be issued on a printed three-part form and shall specify the following information on the face of the permit:

- (1) the name and location of the store from which the purchase is to be made;
- (2) whether the purchase is for unfortified wine, fortified wine or spirituous liquor;
- (3) destination of the alcoholic beverages including name and address of location;
- (4) Special Occasions Permit number of a location, if alcoholic beverages are purchased for a special occasion;
- (5) time and date of commencement and conclusion of special occasion, if any;
- (6) quantity and type of alcoholic beverages purchased;
- (7) signature of local ABC official issuing the permit;
- (8) name, address and driver's license number of purchaser.

The form shall contain a statement that the permit is valid for only one purchase on the date shown and will expire at 9:30 p.m. on the date of purchase and a further statement that the permit shall accompany the beverages during transport and storage and be exhibited to any law enforcement officer upon request.

(b) A local board issuing a Purchase-Transportation Permit shall retain one copy of the permit in its files for a period of one year and give the purchaser two copies, one of which the purchaser shall give the store from which the alcoholic beverages are purchased.

*History Note: Authority G.S. 18B-207; 18B-303(a); 18B-403;  
Eff. January 1, 1982;  
Amended Eff. November 1, 2010; July 1, 1992; May 1, 1984.*

**04 NCAC 02R .1802 MIXED BEVERAGE PERMIT/INVOICE FORM**

(a) Providing Form. A local board in a jurisdiction in which the sale of mixed beverages is lawful shall provide to a mixed beverages permittee ordering and purchasing spirituous liquor for resale in mixed beverages a Purchase-Transportation Permit/Invoice Form for every purchase of liquor by the permittee.

(b) Contents of Form; Copies. Each Purchase-Transportation Permit/Invoice Form shall be printed in duplicate and shall show on the face of the form the information required by 04 NCAC 02S .0502. The local board shall retain one copy in its permanent records for a period of three years and shall give one copy of the permit/invoice to the mixed beverages permittee or designated employee to accompany the liquor during transport.

*History Note: Authority G.S. 18B-205; 18B-207; 18B-404(b);  
Eff. January 1, 1982;  
Amended Eff. November 1, 2010; May 1, 1984.*

**04 NCAC 02R .1803 CABINET PERMITTEES; PURCHASE-TRANSPORTATION PERMITS**

(a) Approved Container Sizes. Local ABC Boards may sell 50 milliliter, 100 milliliter, 200 milliliter, 355 milliliter, and 375 milliliter containers of liquor to a hotel that has been issued a Guest Room Cabinet Permit.

(b) Purchase-Transportation Permits. A local board receiving an order from a guest room cabinet permittee for liquor intended for resale from guest room cabinets shall provide a separate Purchase-Transportation Permit/Invoice form for the permittee in the same manner as for sales of liquor for mixed beverages permittees, as specified in Rule .1802 of this Section. The Purchase-Transportation Permit/Invoice shall contain all the information required by 04 NCAC 02S .0502(b), and in addition, shall show on the face of the form the permittee's Guest Room Cabinet Permit number. One copy of the Purchase-Transportation Permit/Invoice form for guest room cabinet permittees shall be retained by the local board for a period of three years.

(c) Minimum Orders. A local board may require a guest room cabinet permittee to make a minimum purchase of multi-bottle packages or "sleeves" packaged by the manufacturer or bottler, but may not require minimum purchases in case quantities except as authorized by Rule .1404 of this Subchapter.

*History Note: Authority G.S. 18B-205; 18B-207; 18B-404(d); 18B-1001;  
Eff. July 1, 1992;  
Amended Eff. November 1, 2010.*

**04 NCAC 02R .1804 TAX STAMP PROCEDURES FOR GUEST ROOM CABINET PERMITTEES**

(a) A local board selling liquor for resale in guest room cabinets shall either affix the mixed beverages tax stamp to each individual container of liquor sold to a guest room cabinet permittee, or shall give the permittee one tax stamp for each container purchased so the permittee may affix the stamps to the containers so long as the unaffixed stamps conform to the requirements in Paragraph (b) of this Rule.

(b) A local board choosing to give unaffixed mixed beverages tax stamps to a guest room cabinet permittee shall use a stamp substantially different in size and color from the mixed beverages tax stamp used for regular mixed beverages sales.

(c) Each mixed beverages tax stamp for liquor sold to a guest room cabinet permittee shall contain the same information required by Rule .1901 of this Subchapter, except that the permittee's Guest Room Cabinet Permit number shall appear on the stamp in lieu of the permittee's Mixed Beverages Permit number.

(d) Nothing in this Rule shall be construed to allow a local board to give unaffixed mixed beverages tax stamps to a mixed beverages permittee for liquor containers purchased for resale in mixed beverages.

*History Note: Authority G.S. 18B-203(a)(1); 18B-207; 18B-804(b)(9); 18B-807;  
Eff. July 1, 1992.*

**04 NCAC 02R .1805 LOCAL RULES REQUIRED FOR GUEST ROOM CABINET SALES**

(a) Each local board selling liquor to a hotel with a Guest Room Cabinet Permit shall adopt rules governing purchases of liquor by guest room cabinet permittees and shall submit those rules to the Commission for approval as required by Rule .1102 of this Subchapter.

(b) Areas to be regulated shall include:

- (1) minimum purchase requirements;
- (2) responsibility for affixing tax stamps;
- (3) pre-ordering requirements;
- (4) special orders; and
- (5) times when sales shall be made.

(c) Upon approval by the Commission, the local board shall provide a copy of such rules to each guest room cabinet permittee, and shall have a copy available on the premises of the store from which sales will be made.

*History Note: Authority G.S. 18B-203(a)(10); 18B-207; 18B-701(2); 18B-807;  
Eff. July 1, 1992.*

**SECTION .1900 - SALES OF LIQUOR TO MIXED BEVERAGES PERMITTEES**

**04 NCAC 02R .1901 MIXED BEVERAGES TAX STAMP**

(a) Prior to the sale of any container of spirituous liquor to a permittee, the local board shall affix to the container a mixed beverages tax stamp that indicates the following:

- (1) local board system of sale,
- (2) permittee's transaction number,
- (3) permittee's Mixed Beverage Permit number.

(b) The mixed beverages tax stamp shall be affixed to the original paper labeling of each container, except that in the case of a container bearing no original label the stamp shall be affixed to any conspicuous portion of the container. In no event may the stamp be affixed to the cap or closure of a container. Where a case of one brand has been purchased, the mixed beverages tax stamp shall be affixed to each container in the case and it shall not be sufficient to stamp the exterior of the case.

(c) For sales of liquor to a guest room cabinet permittee, a local board may affix the mixed beverages tax stamp to any portion of the container other than the cap or closure. In lieu of affixing the stamp to each container purchased by a guest room cabinet permittee, a local board may choose to give to the guest room cabinet permittee one tax stamp for each container of liquor purchased for resale from a guest room cabinet, as authorized by Rule .1804 of this Subchapter.

(d) Mixed beverage permittees may transport no more than eight liters of opened containers of spirituous liquor without a purchase-transportation permit to and from an ABC Board in the non-passenger area of a motor vehicle for the purpose of replacing mixed beverage tax stamps that are defaced or that have worn out numbers.

*History Note: Authority G.S. 18B-100; 18B-203(a)(1); 18B-207; 18B-804(b)(8); 18B-807;  
Eff. January 1, 1982;  
Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984.*

**04 NCAC 02R .1902 DESIGNATION OF STORE**

*History Note: Authority G.S. 18B-207; 18B-404(c);  
Eff. January 1, 1982;  
Amended Eff. May 1, 1984;  
Repealed Eff. November 1, 2010.*

#### **04 NCAC 02R .1903 LOCAL BOARD PRODUCT IDENTIFICATION**

Prior to the sale of any container of spirituous liquor to the public at retail, the local board may affix to the container or the individual container's packaging a stamp that indicates the following:

- (1) local board system of sale; and
- (2) local board store number.

*History Note:* Authority G.S. 18B-807;  
Eff. May 1, 1984;  
Amended Eff. September 1, 1993; July 1, 1992.

### **SECTION .2000 – LOCAL BOARD TRAINING**

#### **04 NCAC 02R .2001 LOCAL BOARD MEMBERS AND EMPLOYEES**

(a) All board members, finance officers and general managers of local boards shall complete a Commission training course for local boards by August 2, 2011. Completion of a Commission training course for local boards prior to May 2, 2011, is acceptable. Thereafter:

- (1) All board members shall complete a Commission training course for local boards within 12 months of their initial appointment. All board members shall complete a Commission training course for local boards within 12 months of any subsequent appointment.
- (2) All finance officers and general managers shall complete a Commission training course for local boards within 12 months of their initial employment.
- (3) After taking the initial Commission training course for local boards, all finance officers and general managers shall complete a Commission training course for local boards every three years that they are employed by a local board.

(b) Non-Commission training courses are not acceptable forms of training and do not meet the requirements of this Rule.

(c) Board members, finance officers and general managers of local boards who do not meet the requirements of this Section are subject to removal by the Commission as referenced by G.S. 18B-704(c)(iii).

*History Note:* Authority G.S. 18B-100; 18B-203(a)(21); 18B-701(b); 18B-704(c)(iii); 18B-706(b);  
Temporary Adoption Eff. May 2, 2011;  
Eff. August 1, 2011.

#### **04 NCAC 02R .2002 LOCAL BOARD TRAINING COURSES**

All Commission training courses for local boards shall consist of two hours of ethics as a subject matter and no more than two hours of other subject matter.

*History Note:* Authority G.S. 18B-100; 18B-203(a)(21); 18B-701(b); 18B-704(c)(iii); 18B-706(b);  
Temporary Adoption Eff. May 2, 2011;  
Eff. August 1, 2011.

**04 NCAC 02R .2003 PARTICIPATION STANDARDS AND ATTENDANCE REQUIREMENTS**

(a) Instructors shall require that participants comply with the following participation standards:

- (1) Attendees shall direct their attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction.
- (2) Attendees shall refrain from engaging in any activities which are distracting to other participants or the instructor, or which otherwise disrupt the orderly conduct of a class.

(b) Instructors may dismiss from a training course any attendee who fails to comply with the participation standards prescribed in Paragraph (a) of this Rule.

(c) Instructors shall not issue a training course completion certificate to any attendee who fails to comply with the participation standards set forth in Paragraph (a) of this Rule, nor shall instructors include the name of such attendee on their reports verifying completion of a training course. Instructors shall submit to the Commission with their reports for the training course a written statement which includes the name of the attendee and the name of the attendee's local board for whom the instructor does not report course credit, details concerning the attendee's failure to comply with the participation standards, and names of other persons in attendance at the class who witnessed the attendee's conduct.

(d) Attendees must complete at least 90 percent of a Commission local board training course to be issued a local board training course completion certificate. Attendees shall not be admitted to a scheduled local board training course after 10 percent of the allotted time has elapsed. Instructors may not make any exceptions to the attendance requirement.

*History Note: Authority G.S. 18B-100; 18B-203(a)(21); 18B-701(b); 18B-704(c)(iii); 18B-706(b);  
Temporary Adoption Eff. May 2, 2011;  
Eff. August 1, 2011.*