

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

SECTION .0100 - DEFINITIONS: PERMIT APPLICATION PROCEDURES

04 NCAC 02S .0101 DEFINITIONS

In addition to the definitions found in Sections 18B-101 and 18B-1000 of the North Carolina General Statutes, the following definitions apply to this Subchapter:

- (1) "Employee" means any person who performs a service for any person holding an ABC permit, regardless of whether that person is compensated for the performance of those services.
- (2) "Intoxicated" means the condition of a person whose mental or physical functioning appears to be presently substantially impaired as a result of the use of alcohol or other substance, such as when the person appears to a reasonable observer to be so far under such influence that:
 - (A) the person's emotions are conspicuously uncontrolled; or
 - (B) the person's intelligence, sense-perceptions, judgment, continuity of thought or of ideas, speech and coordination of volition with muscular action, or some of these faculties or processes are materially impaired.
- (3) "Modified Plan Permits," as used in 04 NCAC 02S .0105 and 04 NCAC 02S .0106, mean on-premise malt beverage permits authorized by elections held pursuant to G.S. 18B-602(a)(4).
- (4) "Original container" means a bottle, can or other alcoholic beverage product container filled by a manufacturer or bottler that has been approved for sale within this State.
- (5) "Premises" means the same as defined in G.S. 18B-101(12a). A diagram attached to the investigative report and kept in the permittee's file is prima facie evidence of the premises covered by that permit and for which the permittee and his employees are responsible. Permits shall authorize the sale and possession or consumption of alcoholic beverages only on the premises described in the investigative report and diagram furnished by the investigating agent.
- (6) "Private dining area" means any area of a restaurant or hotel that is or can be substantially closed off from public view.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-305; 18B-602(a)(4); 18B-1008; 122C-3(18);
Eff. January 1, 1982;
Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984.*

04 NCAC 02S .0102 APPLICATIONS FOR PERMITS: GENERAL PROVISIONS

- (a) Forms. Application forms for all ABC permits may be obtained from the North Carolina Alcoholic Beverage Control Commission.
- (b) Statutory Requirements. Before the issuance of any ABC permit, an applicant shall comply with the statutory requirements of Articles 9 and 10 of Chapter 18B of the General Statutes and with the rules of the Commission.
- (c) Separate Permits Required. An applicant operating separate buildings or structures not connected directly with each other or businesses with separate trade names shall obtain and hold separate permits for each building or business for which he wants permits, and he shall pay the appropriate application fees as provided in G.S. 18B-902(d). Where there are multiple buildings, and the Commission determines that the business is operated as one entity, the Commission may, in its discretion, issue one permit.
- (d) Information Required on Application. An applicant for an ABC permit shall file a written application with the Commission and in the application shall state, under oath, the following information:
 - (1) name and address of applicant;
 - (2) corporate, limited liability company or partnership name;
 - (3) mailing address and location address of business for which permit is desired, and county in which business is located;
 - (4) trade name of business;
 - (5) name and address of owner of premises;
 - (6) applicant's date and place of birth;

- (7) if a corporation or limited liability company, the name and address of agent or employee authorized to serve as process agent (person upon whom legal service of Commission notices or orders can be made);
- (8) if a non-resident, name and address of person appointed as attorney-in-fact by a power of attorney;
- (9) a diagram of the premises showing:
 - (A) entrances and exits;
 - (B) storage area for alcoholic beverages; and
 - (C) locations where alcoholic beverages will be served or consumed;
- (10) that the applicant is the actual and bona fide owner or lessee of the premises for which a permit is sought and shall submit a copy or memorandum of the lease showing the applicant as tenant, or a copy of the deed showing the applicant as the grantee or owner;
- (11) that the applicant intends to carry on the business authorized by the permit himself or under his immediate supervision and direction; and
- (12) that the applicant is an actual and bona fide resident of the State of North Carolina or, as a non-resident, has appointed, by a power of attorney, a resident manager to serve as attorney-in-fact who will manage the business and accept service of process and official Commission notices or orders.

(e) General Restriction; Living Quarters. No permit for the possession, sale or consumption of alcoholic beverages shall be issued to any establishment when there are living quarters connected directly thereto, and no permittee shall establish or maintain living quarters in or connected to his licensed premises.

(f) General Restriction; Restrooms. No permit for the on-premises possession, sale, or consumption of alcoholic beverages shall be issued to any establishment unless there are two restrooms in working order on the premises. This requirement shall be waived upon a showing that the permittee will suffer financial hardship or the safety of the employees will be jeopardized.

(g) Areas for Sales and Consumption. In determining the areas in which alcoholic beverages will be sold and consumed, the Commission shall consider the convenience of the permittee and his patrons, allowing the fullest use of the premises consistent with the control of the sale and consumption of alcoholic beverages, but will attempt to avoid consumption in areas open to the general public other than patrons.

(h) Temporary Permits for Continuation of Business. The Commission may issue temporary permits to an applicant for the continuation of a business operation that holds current ABC permits when a change in ownership or location of a business has occurred. To obtain a temporary permit an applicant shall submit the appropriate ABC permit application form, all required fees, a lease or other proof of legal ownership or possession of the property on which the business is to be operated, and a written statement from the ALE agent in that area stating that there are no pending ABC violations against the business. An applicant for a temporary permit shall also submit the permits of the prior permittee for cancellation prior to the issuance of any temporary permit. No temporary permit shall be issued to any applicant unless all prior ABC permits issued for the premises have been cancelled by the Commission.

(i) Retail Sales at Public Places Restricted. The sale and delivery of alcoholic beverages by permitted retail outlets located on fair grounds, golf courses, ball parks, race tracks, and other similar public places are restricted to an enclosed establishment in a designated place. No alcoholic beverages, shall be sold, served, or delivered by these outlets outside the enclosed establishment, nor in grandstands, stadiums or bleachers at public gatherings.

As used in this Rule, the term "enclosed establishment" includes a temporary structure or structures constructed and used for the purpose of dispensing food and beverages at events to be held on fairgrounds, golf courses, ball parks, race tracks, and other similar places.

Sales of alcoholic beverages may be made in box seats only under the following conditions:

- (1) table service of food and non-alcoholic beverages are available to patrons in box seats;
- (2) no alcoholic beverages are delivered to the box seats area until after orders have been taken; and
- (3) box seat areas have been designated as part of the permittee's premises on a diagram submitted by the permittee, and the Commission has granted written approval of alcoholic beverage sales in these seating areas.

(j) Separate Locations at Airport. If one permittee has more than one location within a single terminal of an airport boarding at least 150,000 passengers annually and that permittee leases space from the airport authority, the permittee in such a situation may:

- (1) obtain a single permit for all its locations in the terminal;
- (2) use one central facility for storing the alcoholic beverages it sells at its locations; and
- (3) pool the gross receipts from all its locations for determining whether it meets the requirements of G.S. 18B-1000(6) and 04 NCAC 02S .0519.

(k) Food Businesses. Unless the business otherwise qualifies as a wine shop primarily engaged in selling wines for off-premise consumption, a food business qualifies for an off-premise fortified wine permit only if it has and maintains an inventory of staple foods worth at least one thousand five hundred dollars (\$1,500) at retail value. Staple foods include meat, poultry, fish, bread, cereals, vegetables, fruits, vegetable and fruit juices and dairy products. Staple foods do not include coffee, tea, cocoa, soft drinks, candy, condiments and spices.

History Note: Authority 18B-100; 18B-207; 18B-900; 18B-901(d); 18B-902; 18B-903; 18B-905; 18B-1000(3); 18B-1008;
Eff. January 1, 1982;
Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984.

04 NCAC 02S .0103 CORPORATIONS HOLDING PERMITS

Any corporation holding an ABC permit in this State that seeks permits for any additional business location shall have the manager of the new location file the appropriate application and fee, and qualify under G.S. 18B-900(a).

History Note: Authority G.S. 18B-207; 18B-900; 18B-902(a); 18B-903(d);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02S .0104 NONRESIDENT PERMITTEE: RESIDENT MANAGER REQUIRED

All nonresident applicants for retail ABC permits shall appoint a resident of North Carolina as manager of the business for which the permit is sought. In addition, the nonresident applicant shall execute a power of attorney, appointing the resident manager as attorney-in-fact for the nonresident. The power of attorney shall be registered in the county in which the proposed licensed business is located as provided in G.S. 47-28. A certified copy of the duly registered power of attorney shall be submitted with the application of all persons required to file and qualify under G.S. 18B-900(c).

History Note: Authority G.S. 18B-207; 18B-900(a),(c); 47-28; 47-43; 47-43.1;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.

04 NCAC 02S .0105 SPECIAL REQUIREMENTS FOR RESTAURANTS

(a) Requirements to Qualify for Brownbagging, On-premise Fortified Wine, Mixed Beverages, or Modified Plan Permits. To qualify as a restaurant for a Brownbagging, on-premise Fortified Wine or Mixed Beverages Permit, or a Malt Beverages Permit in areas approving on-premise malt beverages under G.S. 18B-602(a)(4), a business shall have an inside dining area set aside for the service of meals that contains seating for at least 36 persons. Food shall be available at all times that alcoholic beverages are being served. After 10:00 P.M., restaurants may offer a partial food menu or prepackaged food in individual servings.

(b) Typical Characteristics. Although a facility need not possess all of the following characteristics to qualify as a restaurant, each is typical of a bona fide restaurant and the Commission shall consider the extent to which a facility possesses these characteristics in deciding whether to issue, suspend, or revoke the permits listed in Paragraph (a):

- (1) The facility has a printed menu listing full meals with substantial entrees;
- (2) The facility has complete cooking and refrigeration equipment;
- (3) The greatest portion of the food sold is prepared in the facility's own kitchen and prepackaged food is only an incidental part of the sales;
- (4) The greatest portion of the food sold is consumed on the premises;
- (5) There are separate kitchen and service staffs;
- (6) Seating for dining customers is primarily at tables;
- (7) Only a small portion of the premises is devoted to activities unrelated to the service and consumption of food; and
- (8) Sales of food are significantly greater than sales of nonalcoholic beverages, especially nonalcoholic beverages sold as "set-ups."

(c) Requirements for Application. For a restaurant to obtain a permit listed in Paragraph (a), the applicant shall submit to the Commission the appropriate application fee and the following documents:

- (1) a completed application on a form provided by the Commission, which includes the full names and addresses of all owners, officers, directors, shareholders owning 25 percent or more of the stock,

- interest holders holding 25 percent or more of the interest, and the manager; if, however, a corporation holds any other ABC permit, application by the manager is sufficient;
- (2) a copy of the restaurant's menu or list of food served;
 - (3) photographs of sufficient detail to show the following:
 - (A) entire kitchen, including all equipment;
 - (B) all dining areas, showing seating arrangements, including patios or outdoor areas where alcoholic beverages will be sold or consumed;
 - (C) bars, counters, mixing stations;
 - (D) locked storage area or areas for storage of alcoholic beverages; and
 - (E) front exterior of premises or if establishment is located in an office building, mall or other larger structure, the main entrance.

History Note: Authority G.S. 18B-100; 18B-207; 18B-900; 18B-901; 18B-902; 18B-1000(6); 18B-1008; Eff. January 1, 1982; Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984.

04 NCAC 02S .0106 SPECIAL REQUIREMENTS FOR HOTELS

(a) Requirements to Qualify for Brownbagging, On-premise Fortified Wine, Mixed Beverages, or Modified Plan Permits. To qualify as a hotel for a Brownbagging or a Mixed Beverages Permit, or a Malt Beverage Permit in areas approving on-premise malt beverages under G.S. 18B-602(a)(4), an establishment shall have on or closely associated with its premises a restaurant providing at least 36 seats. The restaurant may or may not be owned by the same person who owns the hotel. (If the restaurant is owned by a person different from the owner of the hotel, permits shall not be issued to the restaurant unless it qualifies under Rule .0105 of this Section).

(b) For a hotel to obtain one of the permits listed in Paragraph (a), the applicant shall submit to the Commission, the appropriate application fee and the following documents:

- (1) a completed application on a form provided by the Commission, which includes the full names and addresses of all owners, officers, directors, shareholders owning 25 percent or more of the stock, interest holders holding 25 percent of the interest, and the manager; if, however, a corporation holds any other ABC permit, application by the manager is sufficient;
- (2) a copy of the restaurant's menu or a list of food served; and
- (3) photographs of sufficient detail to show the following:
 - (A) entire kitchen including all equipment;
 - (B) all permanent dining areas, showing seating arrangements, including patio or outdoor areas where alcoholic beverages might be served or consumed;
 - (C) bars, counters and mixing stations;
 - (D) locked storage area or areas; and
 - (E) front exterior of hotel and restaurant.

(c) Locations Where Sales Permitted. Brownbagging by patrons, consumption of alcoholic beverages and sales of mixed beverages are allowed at any time during lawful hours in the restaurant and in any lounge or other place that is customarily open to the general public and that is associated with the restaurant. These lounges and other places need not be directly connected to the restaurant as long as the services of the restaurant are available to the lounge at all times that alcoholic beverages are being served. Sales and consumption of mixed beverages are allowed in banquet rooms, convention rooms, suites and similar places not usually open to the general public only during scheduled events and only to persons attending those events. Portable bars may be used for the sale or mixing of mixed beverages in those rooms.

(d) Diagram of Premises. The diagram of the premises submitted with the application for a permit under this Rule and the diagram submitted to the Commission when the permit is issued shall be marked to indicate which spaces are considered part of the restaurant and lounge or other places associated with the restaurant and customarily open to the general public, and which spaces are considered banquet rooms, convention rooms, meeting rooms, suites, and similar places where mixed beverages are to be sold only during scheduled events.

(e) Managers' Receptions. Hotels operating lodging, restaurant and lounge facilities under one set of ABC permits may offer lodging guests up to two alcoholic beverages per guest per day in the price of the room package under the following conditions:

- (1) The reception or social hour is held on the licensed premises of the hotel;
- (2) The hotel issues a voucher or other proof of guest registration for the beverages that can be used by the guest to obtain the beverage of his choice;

- (3) Nonalcoholic beverages are also offered to lodging guests during the function; and
- (4) The hotel accounts for the beverages by an internal accounting procedure that insures that the price of each beverage included in the room rate package is the same price as is being charged other patrons in the lounge or restaurant for the same beverage.

(f) Guest Room Cabinet Permits; Application Requirements. Applications for a Guest Room Cabinet permit shall be accepted only from hotels with Mixed Beverages permits, or from hotels simultaneously applying for Mixed Beverages permits.

In addition to the general requirements for permit applications in this Rule and in Rule .0102 of this Section, a hotel applying for a Guest Room Cabinet permit shall submit the following items along with the completed application form and appropriate fee:

- (1) List of lodging rooms by room number in which cabinets will be placed;
- (2) Total number of lodging rooms and total number of rooms set aside that will not have a cabinet;
- (3) Description of cabinets to be installed by the hotel. A manufacturer's brochure describing the cabinet is sufficient, or the permittee may submit photographs and a written description of the lock used on the cabinet; and
- (4) Written policies developed by the permittee regarding the procedures that will be implemented by the hotel to:
 - (A) insure no one under 21 is able to obtain a key to the cabinet;
 - (B) control inventory;
 - (C) insure price lists for items sold from cabinets are easily readable;
 - (D) dispose of all opened alcoholic beverage containers sold from cabinets after guest has checked out; and
 - (E) maintain adequate numbers of ice and soft drink vending machines elsewhere on the premises.

History Note: Authority G.S. 18B-100; 18B-207; 18B-900; 18B-901; 18B-902; 18B-1000(4); 18B-1001(13); 18B-1008; S.L. 1991, c. 565, s. 7; Eff. January 1, 1982; Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984.

04 NCAC 02S .0107 SPECIAL REQUIREMENTS FOR PRIVATE CLUBS

(a) Use of the private club's facility shall not be open to the general public but shall be limited to members of the private club and their guests.

(b) Typical Characteristics. Although a private facility need not possess all of the following characteristics to qualify as a private club, each is typical of a club and the Commission shall consider the extent to which a facility possesses these characteristics in deciding whether to issue, suspend, or revoke a Brownbagging, Fortified Wine or Mixed Beverages Permit:

- (1) Membership is subject to stated requirements that tend to show a common bond among members;
- (2) Some limit related to the size of the facility is placed on total membership;
- (3) All members are allowed to participate in its organizational affairs, including the selection of officers or directors at reasonably frequent intervals;
- (4) The club operates pursuant to a charter, articles of association, constitution, or similar basic document and has adopted by-laws, copies of which are provided to each member;
- (5) The club has stated objectives of a social, recreational, patriotic or fraternal nature and its activities advance those objectives;
- (6) Membership entitles a person to multiple privileges other than the consumption of alcoholic beverages;
- (7) Most members hold full rather than limited memberships;
- (8) Facilities and activities other than those customarily related to the consumption of alcoholic beverages are available to members;
- (9) Some limits are placed on the number of times a guest may use the facility; and
- (10) Guests constitute a relatively small portion of the users of the facility.

(c) Mandatory Requirements. To qualify as a private club, a facility shall meet the following requirements concerning membership:

- (1) collect an annual membership fee separate from any admission or cover charge, no dues from which shall be more than 30 days past due;
 - (2) maintain a written policy on the granting of full and limited memberships;
 - (3) require each prospective member to complete a written application that contains questions directly related to the applicant's interest in the social, patriotic, fraternal or recreational purpose of the club, the applicant's qualifications for membership, and the applicant's background;
 - (4) retain each completed application, if approved, in the organization's permanent records as long as the individual's membership continues;
 - (5) issue written or printed evidence of membership to each member, which evidence of membership or other reasonably reliable document of identification shall be in the possession of each member present on the licensed premises;
 - (6) maintain on the premises a current alphabetical roster of all members and their complete addresses; and
 - (7) maintain and provide to each member a written policy concerning the use of facilities by guests.
- (d) Permit Application Procedures. For a private club to obtain a Brownbagging, or Fortified Wine or Mixed Beverages Permit, the applicant shall submit to the Commission the appropriate application fee and the following documents:
- (1) a completed application on a form provided by the Commission, which includes the full names and addresses of all officers and directors (including those chosen by the membership), and the manager;
 - (2) the written policy on granting of full and limited memberships;
 - (3) a copy of the membership application form;
 - (4) a copy of the membership card or certificate to be issued to members;
 - (5) the written policy on use of facilities by guests; and
 - (6) the charter, articles of incorporation, constitution, or other basic documents, and the by-laws, if any.

History Note: Authority G.S. 18B-100; 18B-207; 18B-900; 18B-901; 18B-902; 18B-1000(5); 18B-1008; Eff. January 1, 1982; Amended Eff. January 1, 2011; July 1, 1992; February 1, 1986; May 1, 1984.

04 NCAC 02S .0108 ILLEGAL USE OF PERMITS: CHANGE OF OWNERSHIP OR NAME

- (a) No permittee shall allow any other person to use his permit to operate the licensed premises after disposing of his financial interest in the licensed premises.
- (b) A permittee shall not pay any profits derived from the operation of the licensed business to any person who neither owns a financial interest in the business nor performs a service for the business. This restriction shall not, however, prohibit a permittee from entering into a lease by which the landlord is entitled to a percentage of receipts in lieu of or in addition to a periodic rent payment.
- (c) Change in Ownership. A permit shall automatically terminate whenever any change in the ownership of the business, as provided in G.S. 18B-903(c) occurs. Permits issued for a business in which a change of ownership has occurred shall be returned to the Commission or delivered to the State ALE agent assigned to the area.
- (d) Change in Name. When the permittee's name or name of business is changed, the permittee shall apply to the Commission for duplicate permits in accordance with G.S. 18B-903(g).

History Note: Authority G.S. 18B-207; 18B-901(c); 18B-903(c); 18B-903(g); Eff. January 1, 1982; Amended Eff. July 1, 1992; May 1, 1984.

SECTION .0200 - GENERAL RULES AFFECTING RETAILERS AND BROWNBAGGING PERMITTEES

04 NCAC 02S .0201 GENERAL GUIDELINES

(a) The permittee shall ensure that the Commission's rules governing the sale, possession, transportation, storage, and consumption of alcoholic beverages on the licensed premises are adhered to by employees and patrons. Further, a permittee shall ensure that all Commission rules on the operation of a business with ABC permits are adhered to by employees and patrons.

(b) Wrist bands, ink stamps or other similar devices are not reasonable indications of age of a purchaser at the time of sale as referenced by G.S. 18B-302(d)(2).

(c) The permittee is responsible for the actions of all sellers and servers of alcoholic beverages on the permitted premises.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-302(d)(2); 18B-1003(b);
Eff. January 1, 1982;
Amended Eff. November 1, 2011; May 1, 1984.*

04 NCAC 02S .0202 CLEARING TABLES/COUNTERS; HOURS FOR POSSESSION/REMOVAL

(a) Clearing Beverages Off Tables and Counters. All tables and counters shall be cleared of all alcoholic beverages, bottles, cans, glasses and containers by 2:30 a.m. No permittee or his employees shall allow a patron to possess a container of alcoholic beverages after 2:30 a.m.

(b) Removal From Premises. No alcoholic beverages may be removed from any retail licensed premises whenever the sale of alcoholic beverages is prohibited by law.

*History Note: Authority G.S. 18B-207; 18B-1004;
Eff. January 1, 1982;
Amended Eff. July 1, 1992.*

04 NCAC 02S .0203 HOURS FOR CONSUMPTION

04 NCAC 02S .0204 SALES TO AND CONSUMPTION BY MINORS: AGE REQUIREMENTS

*History Note: Authority G.S. 18B-207; 18B-302;
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.*

04 NCAC 02S .0205 EMPLOYEE AGE REQUIREMENT

(a) Age Requirement: Brownbagging, Mixed Beverages and Special Occasions Permits. Persons holding Brownbagging, Mixed Beverages or Special Occasions Permits shall have an employee who is at least 21 years of age in charge of the licensed premises at all times.

(b) Age Requirement: Malt Beverage, Unfortified Wine and Fortified Wine Permits. Persons holding retail Malt Beverage, Unfortified Wine, or Fortified Wine Permits shall have an employee who is at least 18 years old in charge of the licensed premises at all times.

(c) Bartenders: Brownbagging, Mixed Beverages and Special Occasions Permits. No person under the age of 21 may be employed by any permittee to mix drinks containing spirituous liquor.

(d) Waiters and Waitresses. Ages of persons employed in the preparation, serving, sale or delivery of alcoholic beverages at any establishment holding permits for the on-premise sale or consumption of alcoholic beverages are governed by the provisions of The Wage and Hour Act, Article 2A of Chapter 95 of the N.C. General Statutes.

(e) Other Employees: This Rule does not prohibit the employment of a minor by a permittee if the minor does not prepare, serve, sell, or deliver any alcoholic beverages, and if the employment is otherwise lawful under the Wage and Hour Act.

(f) Off-Premise Permits. This Rule does not prohibit the employment of minors at an establishment holding only off-premise permits for the retail sale of malt beverages or wine.

(g) Topless Minors. No permittee may employ or allow any female under the age of 18 to perform any service if the minor exposes to public view or wears transparent clothing that reveals the nipple or any portion of the areola of the breast.

History Note: Authority G.S. 18B-207; 18B-900; 95-25.5(a),(j); 95-25.14;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02S .0206 INTOXICATED PERSONS

No permittee or his employees shall allow an intoxicated person to consume alcoholic beverages on his licensed premises.

History Note: Authority G.S. 18B-207; 18B-305;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.

04 NCAC 02S .0207 GAMBLING: GAMBLING DEVICES PROHIBITED

(a) No permittee or his employee shall engage in gambling nor allow any other person to engage in gambling on the licensed premises.

(b) No permittee or his employees shall possess or permit the possession by another person of any gambling devices on the licensed premises.

History Note: Authority G.S. 14-292 through 14-297; 18B-207; 18B-1005(a)(3);
Eff. January 1, 1982;
Amended Eff. May 1, 1984.

04 NCAC 02S .0208 ILLEGAL DRUG USE PROHIBITED

No permittee or his employees shall possess or use, or knowingly allow any other person to possess or use any controlled substance or other illegal drug in violation of the North Carolina Controlled Substances Act (Article 5 of Chapter 90 of the N. C. General Statutes) on the licensed premises.

History Note: Authority G.S. 18B-207; 18B-1005(a)(3);
Eff. January 1, 1982.

04 NCAC 02S .0209 USE OF PROFANITY PROHIBITED

History Note: Authority G.S. 18B-207; 18B-1005(a)(6);
Eff. January 1, 1982;
Repealed Eff. January 1, 2011.

04 NCAC 02S .0210 DISORDERLY CONDUCT PROHIBITED

No permittee or his employee shall engage in an affray or disorderly conduct, or permit any other persons to engage in an affray or disorderly conduct on the licensed premises.

History Note: Authority G.S. 18B-207; 18B-1005(a)(2);
Eff. January 1, 1982.

04 NCAC 02S .0211 UNLAWFUL POSSESSION OR CONSUMPTION OF ALCOHOLIC BEVERAGES

No permittee or his employee shall sell, offer for sale, possess or knowingly permit the possession or consumption on the licensed premises of any kind of alcoholic beverages, the sale or possession of which is not authorized by the ABC laws or by the permits issued to that permittee.

History Note: Authority G.S. 18B-102(a); 18B-207; 18B-301(f)(4),(6); 18B-1006(c),(d);
Eff. January 1, 1982;

Amended Eff. May 1, 1984.

04 NCAC 02S .0212 CONSUMPTION: INTOXICATION BY PERMITTEE PROHIBITED

(a) No permittee or his employees shall be on the licensed premises after consuming alcoholic beverages except under the following conditions:

- (1) The permittee or employee is off duty for the remainder of that day or night during which he consumes any alcoholic beverage;
- (2) The permittee or employee is out of uniform when uniforms are required to be worn while performing any on duty services; and
- (3) The permittee or employee shall not perform any on duty services of any nature while or after consuming alcoholic beverages.

(b) Notwithstanding Paragraph (a) of this Rule, a malt beverage or wine permittee or its employee who is of legal age and who is responsible for ordering or serving beverage alcohol may sample new malt beverage or wine products as provided by 04 NCAC 02T .0713(b) on the premises. Samples shall not exceed two ounce servings of individual products and the total of the samples shall not exceed eight ounces in one calendar day.

(c) No permittee or his agents or employees shall be or become intoxicated on the licensed premises.

*History Note: Authority 18B-100; 18B-203(b); 18B-207; 18B-1005(b); 18B-1006(d);
Eff. January 1, 1982;
Amended Eff. May 1, 1984;
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge James L. Conner, II declared Rule 04 NCAC 02S .0212(b) void as applied in North Carolina Alcoholic Beverage Control Commission v. Midnight Sun Investments, Inc. t/a Tiki Cabaret (03 ABC 1732);
Amended Eff. January 1, 2011.*

04 NCAC 02S .0213 COOPERATION WITH LAW ENFORCEMENT OFFICERS

No permittee or his employee shall interfere with or fail to cooperate with an ALE agent or any other law enforcement officer in the performance of his duties.

*History Note: Authority G.S. 18B-207; 18B-500; 18B-501; 18B-502;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02S .0214 EMPLOYMENT OF UNSUITABLE PERSONS

A permittee shall not employ an unsuitable person in any position involved with the preparation, sale, distribution, or dispensing of alcoholic beverages or place such a person in charge of the licensed premises. For purposes of this Rule, "unsuitable person" includes a person who:

- (1) has been convicted of a felony within the preceding three years;
- (2) has been convicted of an alcoholic beverage or controlled substances offense within the preceding two years; or
- (3) has had any permit for the sale or possession of alcoholic beverages revoked within the preceding three years.

The Commission may waive the provisions of this Rule upon investigation and determination that the restriction would cause undue hardship for the employee or the permittee or otherwise unreasonably interfere with the operation of a licensed establishment.

*History Note: Authority G.S. 18B-207; 18B-1003(c);
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02S .0215 SUPERVISION OF PREMISES

- (a) No permittee or his employee shall allow any persons to use the yards or grounds of the licensed premises as a toilet.
- (b) A permittee shall keep the licensed premises clean and arranged and well lighted to allow ready access and observation by enforcement officers and to avoid any undue hazards to patrons.

History Note: Authority G.S. 18B-207; 18B-1005;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.

04 NCAC 02S .0216 ENTERTAINERS AND CONDUCT
04 NCAC 02S .0217 VISUAL DISPLAYS

History Note: Authority G.S. 18B-207; 18B-1005(a)(4),(5),(6);
Eff. January 1, 1982;
Amended Eff. May 1, 1984;
Repealed Eff. January 1, 2011.

04 NCAC 02S .0218 COIN VENDING MACHINES TO DISPENSE BEVERAGES PROHIBITED

- (a) No permittee or his employee shall use or permit the use of any automatically operated or coin vending machines for dispensing alcoholic beverages.
- (b) In-room bars or cabinets from which alcoholic beverages are dispensed, that are placed in the lodging rooms of a guest room cabinet permittee, shall not be considered automatically operated vending machines.

History Note: Authority G.S. 18B-207; 18B-1001(13);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02S .0219 PERMITTEES PROHIBITED FROM ACCEPTING FOOD COUPONS

History Note: Authority G.S. 18B-207; 18B-1005(a)(3);
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.

04 NCAC 02S .0220 TRADE NAME SIGNS

Within 60 days of receipt of his permanent permit, a permittee shall have at least one sign on the exterior of his premises that states the trade name of his premises as it appears on his permit. The sign shall be maintained on the exterior of the premises at all times.

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

04 NCAC 02S .0221 MAXIMUM QUANTITIES ALLOWED TO BE SOLD

History Note: Authority G.S. 18B-207; 18B-303;
Eff. January 1, 1982;
Amended Eff. May 1, 1984;
Repealed Eff. July 1, 1992.

04 NCAC 02S .0222 SALES ONLY OF APPROVED PRODUCTS

Except as otherwise provided in the Commission's rules, no person holding a permit for the retail sale of any alcoholic beverages shall sell, offer for sale, or possess for the purpose of sale any alcoholic beverage product that has not been first approved by the Commission for sale and distribution in the State of North Carolina.

History Note: Authority G.S. 18B-206; 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.

04 NCAC 02S .0223 SPECIAL ORDERS FOR WINES

Individuals with an approved special order permit may order and purchase wines not on the Commission's approved list of wines for their personal consumption and for consumption by their bona fide guests. Restaurants with both the appropriate on-premise wine permit and an approved special order permit may order and purchase wine for resale to their patrons. The customer shall be of good character and reputation, have no record of violation of the ABC laws, and certify that his purchase is for the use of himself or bona fide guests or for use at a restaurant holding the appropriate on-premise wine permit. A special order permit is issued at no charge for one year and is good for all purchases made through the same retailer during that year. Orders for these purchases shall be made at licensed retail outlets that in turn place their orders with licensed wine wholesalers. These orders and purchases shall be made in case quantities not exceeding the legal limit for any one purchaser. When the wholesaler or retailer possesses the wine, he shall also possess a copy of the permit. Any wine specially ordered shall meet the standards of identity and labeling requirements for wine set forth in the Subchapter 2T, Section .0400.

History Note: Authority G.S. 18B-207; 18B-403(a); 18B-1006(c);
Eff. January 1, 1982;
Amended Eff. May 1, 1984.

04 NCAC 02S .0224 FILL OR REFILL ORIGINAL CONTAINERS

No permittee except a bottler or manufacturer shall fill or refill in whole or in part any original container of alcoholic beverages with the same or any other kind of alcoholic beverage.

History Note: Authority G.S. 18B-206(a); 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.

04 NCAC 02S .0225 RETURN OF MILITARY ITEMS

History Note: Authority G.S. 18B-207; 18B-304(b);
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.

04 NCAC 02S .0226 ADULTERATION OF MALT BEVERAGES AND WINE PROHIBITED

Except as provided in the ABC laws, no permittee or his employee shall fortify, adulterate, contaminate, or in any manner change the character or purity of a malt beverage, unfortified wine, or fortified wine product from that as originally marketed, packaged, and sealed by the manufacturer or bottler.

History Note: Authority G.S. 18B-206(a); 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.

04 NCAC 02S .0227 CONTAINER SIZES

Fortified wine may be sold in any original container that holds up to five liters, and unfortified wine may be sold in any original container that holds up to 20 liters.

History Note: Authority G.S. 18B-206; 18B-207;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; June 1, 1986; May 1, 1984.

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

(a) Malt Beverages; On-Premises. Malt beverages may be sold by persons holding on-premise permits in the original containers, by the glass, or by the pitcher.

The brand name of draught malt beverages dispensed in retail outlets shall be shown on the knobs of draught faucets. Covers for these faucets bearing a brand name may be used if the brand name appearing on the cover corresponds with the brand name on the knob of the faucets that are to be used for that brand.

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

(c) Wine; On-premise. A person holding an on-premises wine permit may sell wine in the unopened original container, by the carafe, by the glass, or mixed with non-alcoholic beverages.

Wine served in carafes or by the glass may be dispensed under pressure from nitrogen from sealed bulk containers provided the containers and dispensing systems have been approved by the Commission and the State Commissioner of Health Services.

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

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

History Note: Authority G.S. 18B-206; 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.

04 NCAC 02S .0229 DESTRUCTION OF UNCONSUMED BEVERAGES

Any alcoholic beverages served to a customer that he does not completely consume and that he leaves shall be destroyed immediately, except that a hotel guest cabinet permittee shall not be required to dispose of opened containers of alcoholic beverages sold from an in-room bar or cabinet until after the lodging guest has checked out of the hotel.

History Note: Authority G.S. 18B-206; 18B-207;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02S .0230 DRAUGHT BEER SALES: RESTRICTIONS

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

04 NCAC 02S .0231 SALES ON APPROVED PREMISES ONLY: ALTERATION

(a) Sale, possession, consumption, and storage of alcoholic beverages is prohibited in areas of the premises other than those specifically approved by the Commission for that purpose. The permittee is responsible for any sale, possession, consumption, or storage that takes place on any part of his licensed premises.

(b) Any structural renovation or expansion of the premises that significantly alters or expands the area where alcoholic beverages are to be sold, possessed, stored, or consumed shall be submitted as a proposal in diagram form to the Commission for approval. Upon submission of such a proposal, the Commission may modify the areas previously approved for sale, possession, consumption, and storage.

History Note: Authority G.S. 18B-207; 18B-901(d);
Eff. May 1, 1984.

04 NCAC 02S .0232 HAPPY HOURS REGULATED

(a) An on-premise permittee or his agent shall not:

- (1) sell more than one drink to a patron for a single price;
- (2) establish a single price based upon the required purchase of more than one drink; or
- (3) deliver more than one drink at one time to a patron for his consumption.

This Rule does not prohibit the sale of pitchers of alcoholic beverages to two or more patrons. This Rule also does not prohibit serving a single carafe or bottle of wine to a single patron.

(b) An on-premise permittee or his agent shall not give away a drink or sell one at a price that is different from the usual or established price charged for the drink for any period of time less than one full business day. Free or reduced drinks under this provision shall be offered to all customers, not just a segment of the population.

(c) For purposes of this Rule, a "drink" contains the amount of alcoholic beverages usually and customarily served to a single patron as a single serving by the permittee. A "drink" may also include two different alcoholic beverages served separately at the same time to a single patron if such "drink" is a customary combination, such as a shot of spirituous liquor with a malt beverage.

(d) An on-premise permittee may include alcoholic beverages in a package offering that includes a meal or entertainment.

(e) The offer of a meal and alcoholic beverage at a single total price is not a violation of this Rule so long as the total price reflects the actual price of the alcoholic beverages and not a reduced price.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-1008;
Eff. August 1, 1985;
Amended Eff. January 1, 2011; July 1, 1992.*

04 NCAC 02S .0233 CONSUMPTION BY UNDERAGE PERSONS

(a) Consumption by Persons Under Age. No permittee or his employees shall knowingly allow a person under the age of 21 to possess or consume any alcoholic beverages on the licensed premises.

(b) Identification. It shall be the duty of the permittee and his employees to determine the age of any person consuming or possessing alcoholic beverages on the licensed premises. Acceptable identification for purposes of determining age shall be a driver's license, a special identification card issued by the North Carolina Division of Motor Vehicles, a military identification card, or a passport.

*History Note: Authority G.S. 18B-207; 18B-302; 18B-1005(a)(1);
Eff. July 1, 1992.*

04 NCAC 02S .0234 PRIVATE CLUBS: GENERAL PROHIBITIONS; GUESTS

(a) Private club permittees or their employees shall not allow any person who is not a member or a guest of a member to purchase or possess alcoholic beverages on the premises.

(b) "House" Guests. No private club permittee or his employee shall admit patrons as "house" guests.

(c) Employee Member. An employee who is also a member of the private club shall not admit a patron as his guest while that employee is on duty.

(d) A member shall designate his own guest. If a member accepts a patron as his guest at the behest of the private club mixed beverages permittee or employee, then the Commission shall consider that member to be acting as the permittee's agent.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-1008;
Eff. July 1, 1992;
Amended Eff. January 1, 2011.*

04 NCAC 02S .0235 PRIVATE CLUBS; RECIPROCAL MEMBERSHIPS

A private club permittee may offer reciprocal memberships to members of other private clubs under the following conditions:

- (1) Reciprocity shall extend only to members of private clubs holding Mixed Beverages or Brownbagging permits issued by the Commission.
- (2) All clubs participating in reciprocal membership arrangements shall enter into a written agreement setting forth the terms of their arrangement, and each club shall adopt rules governing the use of their facilities by reciprocal members. The agreement and rules shall be filed with the Commission and made a part of the permittees' files.
- (3) A member of another club who is granted a reciprocal membership shall be required to show a valid membership card indicating he is a member of the reciprocal club each time he enters the facility.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-1008;
Eff. July 1, 1992;
Amended Eff. January 1, 2011.*

04 NCAC 02S .0236 TRANSFER OF PRODUCTS BETWEEN PREMISES PROHIBITED

A permittee owning more than one licensed retail establishment shall not transfer alcoholic beverages from one business location to another except upon written request to and approval by the Commission. No approval for such transfer will be given except upon a showing by the permittee of the following:

- (1) the establishment from which the alcoholic beverages are to be removed is going out of business or closing for such a period of time that the alcoholic beverages will spoil or deteriorate before the business reopens; or
- (2) the wholesaler assigned to the establishment to which the products will be transferred is unable or unwilling to supply the products.

This Rule shall not be construed to authorize a retail permittee to make purchases at a central location or warehouse for distribution to other retail establishments owned by the permittee.

*History Note: Authority G.S. 18B-207; 18B-1006(h); 18B-1007(a);
Eff. July 1, 1992.*

04 NCAC 02S .0237 KEG PURCHASE-TRANSPORTATION PERMIT

(a) Retail Permittee to Issue. Whenever a person chooses to purchase and transport a keg designed to hold and dispense 7.75 gallons or more of malt beverages, the person shall apply to the retail permittee from whom such purchase will be made for a Keg Purchase-Transportation Permit. The retail permittee from whom the keg is purchased shall issue the purchaser such permit following G.S. 18B-403.1.

(b) The Keg Purchase-Transportation Permit shall specify the following information on the face of the permit:

- (1) Date of issue;
- (2) Name and address of the retail business from which the purchase is made;
- (3) Purchaser's name and address;
- (4) Purchaser's driver's license, North Carolina ID, Military ID or passport number;
- (5) Address of destination of keg(s);
- (6) Total number of kegs purchased;
- (7) Underage responsibility warning; and
- (8) Signatures of the purchaser and an authorized retail employee.

(c) The retailer shall retain a copy of the permit at the retail location where the purchase was made for 90 days unless requested by any individual in writing to the retailer to retain the copy for a specified period longer than 90 days but not longer than 180 days. The permit shall accompany the keg during its transport and usage and shall be exhibited to any law enforcement officer upon request.

(d) The Commission shall provide Keg Purchase-Transportation Permits to any retailer who requests such permits. Permittees may also download a copy of the Keg Purchase-Transportation Permit from the Commission's website (www.ncabc.com).

History Note: Authority G.S. 18B-207; 18B-403.1;
Temporary Adoption Eff. December 1, 2006;
Eff. November 1, 2007.

SECTION .0300 - MALT BEVERAGE AND WINE RETAILER/WHOLESALE RELATIONSHIP

04 NCAC 02S .0301 RETAILER/WHOLESALE RELATIONSHIPS

Rules covering relationships between retail malt beverage and wine permittees and wholesalers are in Subchapter 2T, Sections .0600 and .0700 of these Rules.

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

- 04 NCAC 02S .0302 PLATFORM PURCHASES**
- 04 NCAC 02S .0303 REQUIRING OR ACCEPTING GIFTS PROHIBITED**
- 04 NCAC 02S .0304 QUANTITY DISCOUNTS PROHIBITED**
- 04 NCAC 02S .0305 HOLDING RETAILER CHECK PROHIBITED**
- 04 NCAC 02S .0306 REMOVAL OF BRANDS PROHIBITED**
- 04 NCAC 02S .0307 REQUIRING SERVICES AND INDUCEMENTS PROHIBITED**
- 04 NCAC 02S .0308 CONSIGNMENT SALES PROHIBITED**

History Note: Authority G.S. 18B-207; 18B-1116;
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.

SECTION .0400 - ADDITIONAL REQUIREMENTS FOR BROWNBAGGING PERMITTEES

04 NCAC 02S .0401 GENERAL REQUIREMENT

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

04 NCAC 02S .0402 PRIVATE CLUBS: POSSESSION OF ALCOHOLIC BEVERAGES

(a) Quantity. No private club brownbagging permittee shall allow a member or guest of the club to possess more than five liters of spirituous liquor or five liters of fortified wine, or five liters of the two combined; more than 80 liters of malt beverages (nine cases of 355 milliliter cans plus nine 355 milliliter cans, or seven cases of 473 milliliter cans plus one 473 milliliter can); or more than 20 liters of unfortified wine upon the premises.

(b) Label Required. A permittee shall ensure that each container brought onto the premises is labeled immediately with the member's name substantially as it appears on the membership roster and that containers brought by guests are labeled with the names of the guest and the sponsoring member.

(c) Possession by Permittee Not Holding Mixed Beverages Permit. A permittee not holding a Mixed Beverages Permit or his employee may maintain custody over a member's or guest's alcoholic beverages and locker key provided that during custody, the member or guest is present on the premises. The member's or guest's alcoholic beverages shall be used exclusively by the member and his bona fide guests, and the alcoholic beverage containers and locker key shall be returned to the member or guest before he leaves the premises.

(d) Furnishing Alcoholic Beverages Limited. Neither the permittee nor a member shall furnish or have furnished alcoholic beverages to other members or bona fide guests of members unless the member owning the beverages is physically present upon the premises.

History Note: Authority G.S. 18B-207; 18B-1001(7); 18B-1006(b);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02S .0403 PRIVATE CLUBS: STORAGE OF ALCOHOLIC BEVERAGES

(a) A private club brownbagging permittee shall see that alcoholic beverages are stored in compliance with the following conditions:

- (1) All alcoholic beverages stored at the club shall be kept in individual lockers that are labeled with the members' names as they appear on the membership roster; lockers shall remain locked when the member is not on the premises;
- (2) Each locker shall contain a lock that can be opened only with a key, and the key shall be possessed by the individual member when that member is not present on the premises of the club;
- (3) No member shall store, whether in one or more lockers, more than five liters of fortified wine or spirituous liquor, or five liters of the two combined; five liters of malt beverages; or five liters of unfortified wine upon the premises;

Note: For example, one member may store the above mentioned quantities of alcoholic beverages in the aggregate in one or more lockers, such as a beverage locker and a sports equipment locker on one premises, provided that beverage containers and lockers are labeled as required, and when he is not on the premises, the member has exclusive possession of the key or keys.

- (4) Alcoholic beverages belonging to different members shall not be stored in the same locker, except that a husband and wife may store alcoholic beverages in the same locker as long as the total quantity does not exceed the quantities stated in Subparagraph (3) of this Paragraph.
- (b) The permittee and his employee shall be responsible for returning to a member when he leaves the premises all malt beverages and unfortified wine brought to the club by the member in excess of the amounts that may be legally stored at the establishment by the member.
- (c) All alcoholic beverages left on the premises of the club contrary to the provisions of this Rule shall be destroyed by the permittee or his employee.

History Note: Authority G.S. 18B-207; 18B-301(b)(3); 18B-1001(7); 18B-1008;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02S .0404 RESTAURANTS: HOTELS: DISPLAY: CONTROL OF BEVERAGES

(a) A restaurant or hotel holding a Brownbagging Permit shall ensure that all fortified wine and liquor is possessed inconspicuously by patrons when they are not in a private dining area.

(b) Every person possessing fortified wine or spirituous liquor in restaurants and hotels with Brownbagging Permits shall at all times retain control of his alcoholic beverages.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1001(7);
Eff. January 1, 1982;
Amended Eff. January 1, 2011; May 1, 1984.

04 NCAC 02S .0405 RESTAURANTS AND HOTELS: MIXING DRINKS

A restaurant or hotel holding a Brownbagging Permit may sell and distribute ice and set-ups, but neither the permittee nor his employee may mix drinks for customers except in private dining areas.

History Note: Authority G.S. 18B-207; 18B-1001(7);
Eff. January 1, 1982;
Amended Eff. May 1, 1984.

04 NCAC 02S .0406 PRIVATE CLUBS WITH BROWNBAGGING/MIXED BEVERAGES PERMITS

History Note: Authority G.S. 18B-207; 18B-1008;
Eff. May 1, 1984;
Repealed Eff. July 1, 1992.

04 NCAC 02S .0407 CONGRESSIONALLY CHARTERED VETERANS ORGANIZATIONS

A congressionally chartered veterans organization holding a brown-bagging permit pursuant to G.S. 18B-1001(7) may provide its members with locker storage facilities on the premises. If such a permittee provides lockers, possession and storage of alcoholic beverages shall be in compliance with the rules of this Section.

History Note: Authority G.S. 18B-207; 18B-1001(7);
Eff. July 1, 1992.

SECTION .0500 - ADDITIONAL REQUIREMENTS FOR MIXED BEVERAGES PERMITTEES

04 NCAC 02S .0501 GENERAL REQUIREMENTS

History Note: Authority G.S. 18B-207; 18B-1008;
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.

04 NCAC 02S .0502 PURCHASE TRANSPORTATION PERMIT/PURCHASE INVOICE FORM

(a) A mixed beverages permittee or a designated employee shall obtain a Purchase-Transportation Permit/Invoice form from the ABC store designated by the local board as the place where spirituous liquor will be sold to mixed beverages permittees.

(b) A Purchase-Transportation Permit/Invoice form, which shall be completed by the local ABC board, shall contain the following:

- (1) permittee's name;
- (2) trade name, address and telephone number of the licensed premises;
- (3) permittee's Mixed Beverages Permit number;
- (4) name and driver's license number of person or persons authorized to purchase and transport spirituous liquor;
- (5) number and location of ABC store where purchase is to be made;
- (6) permittee's transaction or order number;
- (7) date of transaction;
- (8) destination of the spirituous liquor which shall be the address given in Subparagraph (b)(2) of this Rule;
- (9) brand, quantity, size and item code number of each spirituous liquor container purchased and transported, including the serial number of each complete case or carton sold;
- (10) signatures of persons issuing and receiving permit/invoice form;
- (11) regular retail price per container;
- (12) mixed beverages tax per container;
- (13) total price per container;
- (14) total cost of transaction; and
- (15) date of order, date of purchase, and expiration date.

(c) The Purchase-Transportation Permit/Invoice form shall be retained by the permittee for three years.

History Note: Authority G.S. 18B-207; 18B-403(d); 18B-404;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02S .0503 PRE-ORDERS

A mixed beverages permittee shall make every effort to place orders for spirituous liquor with the local board at least 24 hours in advance and in every case shall comply with local board policies regarding the purchase of liquor for resale in mixed beverages.

History Note: *Authority G.S. 18B-207; 18B-404;*
Eff. January 1, 1982;
Amended Eff. May 1, 1984;
RRC Objection due to ambiguity Eff. May 21, 1992;
Amended Eff. July 6, 1992.

04 NCAC 02S .0504 SALES ON APPROVED PREMISES ONLY

04 NCAC 02S .0505 ALTERATION OF PREMISES

04 NCAC 02S .0506 RELATIONSHIP WITH INDUSTRY REPRESENTATIVES

History Note: *Authority G.S. 18B-207; 18B-1116;*
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.

04 NCAC 02S .0507 CONFLICTS OF INTEREST

No person shall be employed or allowed by a mixed beverages permittee to work on the licensed premises if that person is employed or engaged in any manner in the manufacturing, rectifying, bottling or wholesaling of spirituous liquor.

History Note: *Authority G.S. 18B-207; 18B-1116;*
Eff. January 1, 1982.

04 NCAC 02S .0508 DISPENSING EQUIPMENT

(a) A mixed beverages permittee may not install or use any equipment or device for the automated mixing or dispensing of mixed beverages unless use of the equipment or device has been approved by the Commission. A brand or type of equipment will not be approved by the Commission if it:

- (1) dispenses from any container other than the spirituous liquor container to which the mixed beverages tax stamp is affixed,
- (2) employs an in-series hook-up which would permit spirituous liquor to flow from container to container before reaching the dispensing spigot or nozzle, or
- (3) allows the intermixing of different kind of products or brands.

(b) Neither a mixed beverages permittee nor an employee of a permittee may mix or dispense any mixed beverage from any automated equipment or device unless a card, label sign, plate or other insignia indicating the brand of spirituous liquor being dispensed is displayed at the location where the equipment is in use.

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

04 NCAC 02S .0509 MINIMUM CONTENTS OF MIXED BEVERAGES

A permittee shall not advertise or sell as a mixed beverage a drink that contains less than one ounce of spirituous liquor unless the permittee informs the customer that the drink contains a lesser amount.

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

04 NCAC 02S .0510 PRICE LISTS: MISREPRESENTATION

- (a) Each mixed beverages permittee shall have available for its customers a written price list containing current prices for the most common or popular mixed beverages the permittee offers for sale. Any menu, master beverage price list or other written list that contains prices is sufficient as long as the prices listed are current and the list is readily available to the customer.
- (b) Neither a mixed beverages permittee nor his employee shall misrepresent the price of any mixed beverage that is sold or offered for sale on the licensed premises.
- (c) A guest room cabinet permittee shall affix to the door of every in-room bar or cabinet a complete list of the current prices of each alcoholic beverage offered for sale from the cabinet.

History Note: Authority G.S. 18B-207; 18B-1001(13); 18B-1007(c);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02S .0511 PRE-MIXING DRINKS

- (a) Except as provided in this Rule, neither a mixed beverage permittee nor his employee shall pre-mix mixed beverages or prepare any mixed beverage before receiving an order for the beverage from a customer.
- (b) A mixed beverages permittee may pre-mix mixed beverages upon receiving Commission approval provided the following conditions are complied with:
- (1) No spirituous liquor may be used in the pre-mixing of mixed beverages except spirituous liquor on which the mixed beverages charge imposed by G.S. 18B-804(b)(8) has been paid. All spirituous liquor used for pre-mixing of mixed beverages shall be dispensed into the approved pre-mixing system from a container to which a mixed beverages tax stamp is affixed;
 - (2) All pre-mixing shall be done pursuant to a recipe that has been approved by the Commission. That recipe shall state the exact percentage and type or types of spirituous liquors and other alcoholic beverages used in the mixture;
 - (3) Pre-mixing shall be limited to those approved recipes for which the permittee prepares and sells at least five gallons per week. The Commission shall withdraw its approval for pre-mixing of any recipe for which this minimum standard is not maintained;
 - (4) Only equipment and systems approved by the Commission shall be employed in the pre-mixing and dispensing of mixed beverages;
 - (5) A permittee that is authorized to pre-mix mixed beverages shall maintain at all times an accurate inventory reflecting withdrawals from his spirituous liquor stock for purposes of pre-mixing that specifies:
 - (A) the brand and container size of each item withdrawn;
 - (B) the date and time of withdrawal; and
 - (C) the date and time partially used containers are returned to storage.

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

04 NCAC 02S .0512 STORAGE AND DISPOSAL OF SPIRITUOUS LIQUOR CONTAINERS

- (a) Keys Required. Any lock used to secure a storage area shall be capable of being unlocked with a key that is available on the premises at all times.
- (b) Official Inspections. Storage areas shall be open to inspection by the Commission or law enforcement officers pursuant to G.S. 18B-502.
- (c) Empty Containers. As soon as a container of spirituous liquor is empty, the permittee or his employee shall permanently deface the mixed beverages tax stamp and dispose of the bottle.
- (d) Guest Room Cabinet Permittees. A hotel that has been issued a Guest Room Cabinet Permit may store spirituous liquor and premixed cocktails purchased for resale from guest room cabinets in the same storage area with alcoholic beverages purchased for resale in mixed beverages, as provided in Paragraph (a) of this Rule. A hotel shall not, however, place on display at mixing stations any 50 milliliter containers of liquor that were purchased for resale from cabinets. Empty or partially empty containers of alcoholic beverages purchased by a room guest from a cabinet shall be disposed of by the permittee after the room guest has checked out of the hotel.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-502; 18B-1001(13); 18B-1007(b);
Eff. January 1, 1982;
Amended Eff. April 1, 2011; July 1, 1992; May 1, 1984.*

04 NCAC 02S .0513 PROHIBITED ACTS: HANDLING AND STORAGE OF LIQUOR

Neither a mixed beverages permittee nor his employee, whether on or off the premises, shall:

- (1) add any alcoholic beverage to any container of spirituous liquor purchased for resale in mixed beverages;
- (2) transfer from one spirituous liquor container to another or remove from any liquor container the mixed beverages tax stamp or any other stamp, label, seal or device required by law to be affixed to the container;
- (3) destroy, alter or deface the mixed beverages tax stamp or any other stamp, label, seal or device required by law to be affixed to a liquor container before the container has been emptied;
- (4) possess a counterfeit mixed beverages stamp, place a counterfeit mixed beverages stamp on any liquor container, or knowingly possess any container with a counterfeit stamp;
- (5) store any spirituous liquor purchased for resale in mixed beverages in any place other than the approved storage area of the premises specified in the purchase-transportation permit;
- (6) place or have in the approved storage area or possess elsewhere on the licensed premises any container of spirituous liquor not bearing a mixed beverages tax stamp;
- (7) dilute or otherwise tamper with the contents of any container of alcoholic beverages;
- (8) give or sell to any patron any container of spirituous liquor that was purchased for resale as mixed beverages, whether the container is full or partially full; provided, however, this prohibition shall not be construed to prohibit a room guest from removing from the hotel a container of alcoholic beverages purchased from a guest room cabinet;
- (9) possess any empty container of spirituous liquor purchased for resale in mixed beverages if the mixed beverages tax stamp on that container has not been permanently defaced;
- (10) possess or sell on the premises any brand of spirituous liquor that has not been approved by the Commission for sale in North Carolina or that was not purchased by the permittee pursuant to an approved special order;
- (11) purchase any spirituous liquor for resale in mixed beverages other than as authorized by a valid purchase-transportation permit;
- (12) conceal or otherwise fail to indicate truthfully and accurately in any records required to be kept by the permittee the sale of any alcoholic beverages on the licensed premises; or

- (13) make any other incomplete, inaccurate, false or misleading statements in any report or record required by these Rules.

Editor's Note: *Beecher R. Gray, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 04 NCAC 02S .0513(3) void as applied in North Carolina Alcoholic Beverage Control Commission v. Keven Scott Heath, Robinhood Grille, LLC, T/A Robinhood Grille (00 ABC 1026).*

History Note: Authority G.S. 18B-207; 18B-404; 18B-1001(13); 18B-1007; 18B-1008; Eff. January 1, 1982; Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02S .0514 PROHIBITED ACTS: SERVING ALCOHOLIC BEVERAGES

Neither a mixed beverages permittee nor his employee shall:

- (1) sell or allow the consumption of any mixed beverages in an area other than one specifically approved by the Commission for that purpose;
- (2) sell, offer to sell, or serve on the premises any mixed beverage by customer self-service or allow any such sale or service, except that a guest room cabinet permittee may sell alcoholic beverages from guest room cabinets as authorized by G.S. 18B-1001(12) and the rules of the Commission;
- (3) sell, offer for sale, or possess for the purpose of sale on the premises any alcoholic beverages that the permittee is not licensed to sell;
- (4) possess or consume, or allow any other person to possess or consume, on the premises any alcoholic beverages for which no permit is held if a permit is required by law for the possession or consumption of that beverage;
- (5) misrepresent the brand of any spirituous liquor contained in any mixed beverage sold or offered for sale; or
- (6) sell or serve any brand of alcoholic beverage not identical to that ordered by the patron without first advising the patron of the difference.

History Note: Authority G.S. 18B-207; 18B-1001(13); 18B-1006(d); Eff. January 1, 1982; Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02S .0515 PRIVATE CLUBS: GENERAL PROHIBITIONS: GUESTS

History Note: Authority G.S. 18B-207; 18B-1008; Eff. January 1, 1982; Amended Eff. February 1, 1986; May 1, 1984; Repealed Eff. July 1, 1992.

04 NCAC 02S .0516 PRIVATE CLUBS: MEMBERS' LIQUOR KEPT SEPARATE

In a private club with both a Mixed Beverages Permit and a Brownbagging Permit, the permittee shall comply with the following requirements:

- (1) The permittee shall not allow a member or guest to possess on the premises more than five liters of fortified wine or spirituous liquor, or five liters of the two combined, or more than 80 liters of malt beverages other than draft malt beverages in kegs;
- (2) The permittee shall ensure that each container of alcoholic beverages brought onto the premises by a member or guest is labeled immediately with the member's name or the guest's and sponsoring member's names;
- (3) Neither a permittee nor a member shall furnish or have any person furnish a member's alcoholic beverages to another member or a guest of a member unless the member owning the beverage is present on the licensed premises;
- (4) Other than to label a container, or during private meetings or parties held under a Special Occasion Permit, neither a permittee nor an employee shall possess or maintain custody over a member's alcoholic beverages or a member's storage locker key, whether or not the member is present on the licensed premises.

Note: This Paragraph prohibits the employees of the private club from handling a member's alcoholic beverages in any way whatsoever other than to put on the member's name label or when a private function is being held for a private group under a Special Occasion Permit, pursuant to G.S. 18B-1001(8). It is a violation of this Rule for a member's alcoholic beverages to be kept at or behind the bar where mixed beverages are prepared and sold.

*History Note: Authority G.S. 18B-207; 18B-1006(b); 18B-1008;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02S .0517 PRIVATE CLUBS: STORAGE OF MEMBERS' BEVERAGES

In a private club with both a Mixed Beverages Permit and a Brownbagging Permit, the permittee and his employees shall ensure that members' alcoholic beverages, other than those being consumed, are stored in strict compliance with the provisions of Rule .0403 of this Subchapter.

*History Note: Authority G.S. 18B-207; 18B-1006(b); 18B-1008;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02S .0518 PRIVATE CLUBS: FINANCIAL STATEMENTS: RECORD KEEPING

(a) A private club holding a Mixed Beverages Permit shall maintain full and accurate monthly records of its finances, separately indicating each of the following:

- (1) amounts expended for the purchase of spirituous liquor from ABC stores and the quantity of spirituous liquor purchased;
- (2) amounts collected from the sale of mixed beverages and, by brand and container size, the quantity of spirituous liquor sold;
- (3) amounts received in payment of members' dues;
- (4) amounts received from charges to members and guests of members; and
- (5) quantity of spirituous liquor, by brand and container size, that was not sold but is no longer on the licensed premises due to stated reasons, such as breakage or theft.

(b) Records of purchases of spirituous liquor and sales of mixed beverages shall be filed separate and apart from all other records maintained on the premises.

(c) Records, including original invoices for the items in Paragraph (a) of this Rule, shall be maintained on the premises for three years and shall be open for inspection or audit pursuant to G.S. 18B-502.

(d) A private club holding a Mixed Beverages Permit shall submit to the Commission for its review, reports summarizing the information required to be maintained by this Rule. These reports shall be submitted on an annual basis or upon request by the Commission.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-1008;
Eff. January 1, 1982;
Amended Eff. April 1, 2011; July 1, 1992; May 1, 1984.*

04 NCAC 02S .0519 RESTAURANTS: INCOME FROM SALES

(a) For the purposes of G.S. 18B-1000(6), in determining what portions of sales can be attributed to the sale of food and non-alcoholic beverages, the following sales may be included:

- (1) food prepared in the permittee's kitchen and served as a meal to be consumed on the premises or as a "take-out" order;
- (2) prepackaged food sold to accompany the meal; and
- (3) non-alcoholic beverages sold to accompany the meal.

(b) For the purposes of G.S. 18B-1000(6), in determining what portions of sales can be attributed to the sale of food and non-alcoholic beverages, the following items may not be included:

- (1) mixed beverages, including the mixer;
- (2) any other alcoholic beverages;
- (3) grocery items not ordered and purchased with meals; and
- (4) cover charges.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1000(6); 18B-1008;

Eff. January 1, 1982;
Amended Eff. April 1, 2011; July 1, 1992; May 1, 1984.

04 NCAC 02S .0520 RESTAURANTS, HOTELS, AND TOUR BOATS: RECORD KEEPING

(a) Monthly Records. Restaurants, hotels and tour boats holding Mixed Beverages Permits shall maintain full and accurate monthly records of their finances, separately indicating each of the following:

- (1) amounts expended for the purchase of spirituous liquor from ABC stores and the quantity of spirituous liquor purchased;
- (2) amounts collected from the sale of mixed beverages and, by brand and container size, the quantity of spirituous liquor sold;
- (3) if a guest room cabinet permittee, the amounts collected from the sale of liquor from guest room cabinets, and by container size, the quantity of liquor sold from cabinets;
- (4) the quantity of spirituous liquor, by brand and container size, that was not sold but is no longer on the premises due to stated reasons, such as breakage or theft;
- (5) if a restaurant or tour boat, amounts collected from the sale of:
 - (A) food and non-alcoholic beverages;
 - (B) items other than food and beverages of all kinds; and
 - (C) malt beverages, unfortified wine and fortified wine;
- (6) if a hotel, amounts collected from:
 - (A) furnishing lodging;
 - (B) sale of meals;
 - (C) sale of malt beverages, unfortified wine and fortified wine; and
 - (D) all other sources.

(b) Segregation of Records. Records of purchases of spirituous liquor and sales of alcoholic beverages shall be filed separate and apart from all other records maintained on the premises.

(c) Retention and Inspection of Records. Records, including original invoices related to alcoholic beverages and mixed beverages, shall be maintained on the premises for three years and shall be open for inspection or audit pursuant to G.S. 18B-502.

(d) Submission of Financial Records. A restaurant, tour boat, or hotel holding a Mixed Beverages Permit shall submit to the Commission for its review, reports summarizing the information required to be maintained by this Rule. These reports shall be submitted on an annual basis or upon request by the Commission.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1006(i); 18B-1008;
Eff. January 1, 1982;
Amended Eff. April 1, 2011; July 1, 1992; May 1, 1984.

04 NCAC 02S .0521 HOTELS: ROOM SERVICE PROHIBITED

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

04 NCAC 02S .0522 WHEN SPECIAL OCCASIONS PERMIT NOT APPLICABLE

History Note: Authority G.S. 18B-207; 18B-1008;
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.

04 NCAC 02S .0523 HOTELS: INCOME FROM SALES

For the purpose of defining a hotel, the term "substantially engaged in the business of furnishing lodging" in G.S. 18B-1000(4) means that the establishment's gross receipts from the rental of lodging rooms, sale of food, and sale of non-alcoholic beverages are greater than its gross receipts from the sale of alcoholic beverages.

History Note: Authority G.S. 18B-1000(4); 18B-1008;
Eff. July 1, 1992.

04 NCAC 02S .0524 GUEST ROOM CABINET PERMITTEES: PURCHASES OF LIQUOR

(a) Ordering Liquor. A guest room cabinet permittee shall comply with Rule .0503 of this Section and place orders for liquor to be sold from guest room cabinets in accordance with the local board's rules and the following additional conditions:

- (1) Orders for liquor to be sold from cabinets shall be placed separately from orders for liquor to be resold in mixed beverages;
- (2) Liquor may be purchased for resale from cabinets in 50, 355 and 375 milliliter sizes only; premixed cocktails purchased for resale from cabinets may be purchased in 355 or 375 milliliter sizes only.

(b) Mixed Beverages Surcharge Stamps. A guest room cabinet permittee who receives unaffixed stamps from a local board shall immediately affix one stamp to each container of liquor before the container is logged into the permittee's inventory. Errors in receiving incorrect numbers of stamps or containers from local board personnel shall be the responsibility of the permittee at the time of purchase.

History Note: Authority G.S. 18B-207; 18B-404(d); 18B-1001(13);
Eff. July 1, 1992.

04 NCAC 02S .0525 GUEST ROOM CABINETS; INVENTORY AND RECORDS

A guest room cabinet permittee shall maintain on the premises complete and accurate inventory and sales records of all liquor purchased for resale in cabinets in accordance with the following requirements:

- (1) During the first year of operation with a Guest Room Cabinet permit, inventory records for guest room cabinet liquor shall be maintained as required by Rule .0512(f)(1) and (2) of this Section.
- (2) Sales records of guest room cabinet liquor shall be kept on a monthly basis in accordance with the requirements of Rule .0520 of this Section.
- (3) Purchase-transportation permits for liquor to be sold from guest room cabinets shall be maintained by the permittee on the premises for a period of three years.

History Note: Authority G.S. 18B-207; 18B-1001(13);
Eff. July 1, 1992.

04 NCAC 02S .0526 GUEST ROOM CABINETS; SALES OF ALCOHOLIC BEVERAGES

(a) Restrictions on 50 Milliliter Containers. A guest room cabinet permittee shall not display or sell any 50 milliliter container of liquor on any part of the hotel premises other than in guest room cabinets installed in guest rooms.

(b) Cabinet Locks and Keys. A guest room cabinet shall contain a lock which may be opened only with a key that is separate from the hotel room key. Electronically operated locking systems for guest room cabinets may be installed by a permittee upon written approval of the Commission when it has been shown that the electronic locking system contains adequate safeguards against underage persons being able to obtain alcoholic beverages from guest room cabinets.

(c) Lodging Guests. No guest room cabinet permittee or his employee shall give a guest room cabinet key to any person under 21 years of age. No lodging guest shall be required to accept a guest room cabinet key if the guest does not wish to have a key.

(d) Price List. Every guest room cabinet installed by a permittee shall have firmly affixed to the door of the cabinet a complete list of all alcoholic beverages offered for sale from the cabinet and the current price of each alcoholic beverage.

(e) Notice of Age Requirement. In addition to the price list required in Paragraph (d) of this Rule, each guest room cabinet shall contain a notice to guests that reads as follows: "IT IS UNLAWFUL IN NORTH CAROLINA FOR ANY PERSON TO GIVE ALCOHOLIC BEVERAGES TO ANY PERSON UNDER 21 YEARS OF AGE. G.S. 18B-302."

History Note: Authority G.S. 18B-207; 18B-302(a); 18B-404(d); 18B-1001(13);

Eff. July 1, 1992.

04 NCAC 02S .0527 GUEST ROOMS CONSIDERED RESIDENCE

(a) Law Enforcement Jurisdiction. A hotel room is considered a place of temporary residence and not part of the permittee's retail licensed premises. Therefore, when a hotel room has been rented to a lodging guest, entrance by a law enforcement officer into the guest room is governed by the same laws as entry into any residence, notwithstanding the fact that the hotel has installed a guest room cabinet in the room.

For the purposes of enforcing the ABC laws related to guest room cabinets, a permittee shall allow Alcohol Law Enforcement agents, local ABC officers and employees of the Commission reasonable access to guest rooms that are not rented to a lodging guest at the time of the inspection.

(b) Certain Restrictions Not Applicable to Guest Room Cabinet Sales. Because a rented hotel room is considered a temporary residence, the rooms are not considered part of the permittee's retail licensed premises. Therefore, rules regulating such areas as "happy hours," and advertising are not applicable to sales of alcoholic beverages from hotel cabinets.

*History Note: Authority G.S. 18B-207; 18B-301(a); 18B-502; 18B-1001(13);
Eff. July 1, 1992.*

04 NCAC 02S .0528 MIXED BEVERAGES CATERING PERMITS; GENERAL

(a) Liquor Purchases. Liquor catered by a mixed beverages permittee shall be purchased by the permittee from the mixed beverages store operated by the local ABC board for the jurisdiction in which the restaurant or hotel is issued a Mixed Beverages permit. A hotel or restaurant with a Mixed Beverages Catering permit shall not cater any liquor on which the mixed beverages surcharge imposed by G.S. 18B-804(b)(8) has not been paid.

(b) Cash Bars Prohibited. The Mixed Beverages Catering permit does not authorize the sale of individual mixed beverages at a catered event. Therefore, no mixed beverages catering permittee shall set up a cash bar for beer, wine or mixed beverages at any place other than on the licensed premises of the hotel or restaurant.

(c) Food Required. A mixed beverages catering permittee who is catering liquor at an event held off the licensed premises of the hotel or restaurant shall also cater food at that event.

(d) Intent of Rules. Nothing in the provisions of the rules of the Commission shall be construed to allow a mixed beverages catering permittee to contract with the holder of a Special Occasions or Brownbagging permit to serve or sell mixed beverages to the patrons of that permittee's business for a function to be held at the location for which those permits were issued.

*History Note: Authority G.S. 18B-203(a)(1); 18B-207; 18B-1001(12); 18B-1007(a);
18B-1008;
Eff. July 1, 1992.*

04 NCAC 02S .0529 MIXED BEVERAGES CATERING PERMITS IN "DRY AREAS"

(a) Definitions. For purposes of this Rule, the following definitions shall apply:

- (1) "Dry area" means a jurisdiction in which the sale of mixed beverages has not been approved in an election held pursuant to G.S. 18B-600 or by any other provision of the ABC laws.
- (2) "Private function" means an unadvertised event for which the host has issued personal invitations. Events for which invitations are issued by radio, television, newspaper, circular or fliers to the general public shall not be construed as "private."

(b) Restrictions. In addition to Rule .0528 of this Section, the following additional restrictions shall apply to all events being catered in areas in which the sale of mixed beverages is not lawful:

- (1) Liquor may be catered at political or charitable events held to allow a non-profit or political organization to raise funds where the host organization has obtained a Special One-Time permit pursuant to G.S. 18B-1002(5) authorizing the serving of mixed beverages to persons attending the event. These fund-raising events may be private or open to the public, and may be held on private, commercial, or government owned property unless prohibited by the provisions of G.S. 18B-300 or G.S. 18B-301(f).
- (2) Liquor may be catered at any private function held on the premises of a business that holds a Special Occasion permit, or for a person who has obtained a Limited Special Occasion permit only if:
 - (A) the host is not a permittee who has been issued a Special Occasion permit pursuant to G.S. 18B-1001(8); and
 - (B) there is no admission charged to those attending.
- (3) Liquor may be catered at any private function held on private residential or non-commercial property so long as no admission is charged to those attending.

History Note: Authority G.S. 18B-203(a); 18B-207; 18B-301(a),(c); 18B-603; 18B-1001; 18B-1001(12); 18B-1002(5);
Eff. July 1, 1992.

SECTION .0600 - SPECIAL REQUIREMENTS FOR CONVENTION CENTERS, COMMUNITY THEATRES, SPORTS CLUBS, AND NONPROFIT AND POLITICAL ORGANIZATIONS

04 NCAC 02S .0601 CONVENTION CENTERS: GENERAL REQUIREMENT

History Note: Authority G.S. 18B-207; 18B-900(e); 18B-1000(1a);
Eff. January 1, 1982;
Amended Eff. May 1, 1984;
Repealed Eff. July 1, 1992.

04 NCAC 02S .0602 DIAGRAM TO ACCOMPANY APPLICATION

History Note: Authority G.S. 18B-207; 18B-1000(1a);
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.

04 NCAC 02S .0603 CONVENTION CENTERS: CATERER MAY PERFORM ACTIVITIES

History Note: Authority G.S. 18B-207; 18B-900(e);
Eff. January 1, 1982;
Amended Eff. May 1, 1984;
Repealed Eff. July 1, 1992.

04 NCAC 02S .0604 STORAGE OF SPIRITUOUS LIQUOR UNDER MIXED BEVERAGES PERMIT

History Note: Authority G.S. 18B-207; 18B-1007;
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.

04 NCAC 02S .0605 CONVENTION CENTERS: MIXED BEVERAGE RECORDS
04 NCAC 02S .0606 COMMUNITY THEATRES: SALES

History Note: Authority G.S. 18B-207; 18B-1000(1); 18B-1008;
Eff. January 1, 1982;
Amended Eff. May 1, 1984;
Repealed Eff. July 1, 1992.

04 NCAC 02S .0607 COMMUNITY THEATRES: QUALIFICATIONS
04 NCAC 02S .0608 COMMUNITY THEATRES: WHEN PERMITS VALID
04 NCAC 02S .0609 COOKING SCHOOLS: SALES
04 NCAC 02S .0610 COOKING SCHOOLS: QUALIFICATIONS
04 NCAC 02S .0611 COOKING SCHOOLS: SALES RESTRICTED TO STUDENTS

History Note: Authority G.S. 18B-207; 18B-1000(1),(1b); 18B-1006(g);
Eff. May 1, 1984;
Repealed Eff. July 1, 1992.

04 NCAC 02S .0612 RECORD KEEPING

- (a) Convention centers, community theatres, nonprofit and political organizations holding Mixed Beverages permits shall maintain full and accurate monthly records of their finances, separately indicating each of the following:
- (1) amounts expended for the purchase of spirituous liquor from ABC stores and the quantity of spirituous liquor purchased;
 - (2) amounts collected from the sale of mixed beverages and, by brand and container size, the quantity of spirituous liquor sold; and
 - (3) the quantity of spirituous liquor, by brand and container size, that was not sold but is no longer on the premises due to stated reasons, such as breakage or theft.
- (b) Segregation of Records. Records of purchases of spirituous liquor and sales of alcoholic beverages shall be filed separate and apart from all other records maintained on the premises.
- (c) Retention and Inspection of Records. Records, including original invoices related to alcoholic beverages and mixed beverages, shall be maintained on the premises for three years and shall be open for inspection or audit pursuant to G.S. 18B-502.
- (d) Submission of Financial Records. A permittee holding a Mixed Beverages permit under this Rule shall submit to the Commission for its review, reports summarizing the information required to be maintained by the rule. These reports shall be submitted on an annual basis or upon request by the Commission.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1007;
Eff. July 1, 1992;
Temporary Amendment Eff. September 24, 1993 for a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner;

Amended Eff. April 1, 2011; February 1, 1994.

04 NCAC 02S .0613 SPORTS CLUB: DEFINITIONS

In interpreting the term sports club as contained in G.S. 18B-1000(8), the following definitions shall apply:

- (1) "Equipment" means golf clubs, tennis rackets, golf and tennis balls, golf and tennis shoes, golf and tennis gloves, golf tees, golf and tennis clothing, and other items worn or utilized by the golfer or tennis player while engaged in the activities of golf or tennis.
- (2) "Golf course" means an 18 hole course designed and maintained for the play of the game of golf with a total tee to green length of at least 4,000 yards.
- (3) "Gross receipts for alcoholic beverages" means all sales of beer, wine and spirituous liquor including any mixers sold in mixed beverages.
- (4) "Receipts for food" means that portion of the establishment's sales which can be attributed to the sale of food and non-alcoholic beverages, which portion is to be determined in accordance with the provisions of 4 NCAC 2S .0519(b) and (c).
- (5) "Restaurant" means restaurant as defined in G.S. 18B-1000(6) and 4 NCAC 2S .0105.
- (6) "Tennis court" means a 60 foot by 120 foot surface composed of asphalt, concrete, composite, grass or other similar material which is constructed and maintained so as to permit the play of tennis on a regular basis and which is completely enclosed by a chain link, particle board or other comparable fence.

*History Note: Filed as a Temporary Adoption Eff. September 24, 1993 for a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner;
Authority G.S. 18B-207; 18B-1000(5a); 18B-1008;
Eff. February 1, 1994.*

04 NCAC 02S .0614 SPORTS CLUB: REQUIREMENTS FOR RECEIVING AND HOLDING PERMITS

To be eligible to receive and to hold ABC permits as a sports club, in addition to the requirements imposed by G.S. 18B-1000(8), an establishment shall:

- (1) operate a golf course or a tennis court or both on its premises, and
- (2) derive at least 15% of its club activity fees from sources other than receipts for food.

*History Note: Filed as a Temporary Adoption Eff. September 24, 1993 for a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner;
Authority G.S. 18B-207; 18B-1000(5a); 18B-1008;
Eff. February 1, 1994.*

04 NCAC 02S .0615 SPORTS CLUB: CLUB ACTIVITY FEES

Club activity fees may only include revenues from the following:

- (1) membership dues paid for golf or tennis privileges;
- (2) court or greens fees paid by patrons for the privilege of using the golf course or the tennis court located on the sports club's premises;
- (3) receipts for food if the establishment operates a restaurant on its licensed premises;
- (4) equipment sales on the sports club's licensed premises;
- (5) golf cart rental fees;
- (6) teaching fees paid to golf or tennis professionals for lessons given on the sports club's premises;
- (7) equipment rental fees, if the equipment is rented for use on the sports club's golf course or tennis court;
- (8) entry fees for golf or tennis tournaments held on the sports club's premises;

- (9) revenue generated by the sale of tickets to golf or tennis tournaments held on the sports club's premises.

History Note: Filed as a Temporary Adoption Eff. September 24, 1993 for a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner;
Authority G.S. 18B-207; 18B-1000(5a); 18B-1008;
Eff. February 1, 1994.

04 NCAC 02S .0616 SPORTS CLUB: RECORD KEEPING REQUIREMENTS

(a) Monthly Records. A sports club holding ABC permits issued by the Commission shall maintain full and accurate monthly records of the following:

- (1) amounts expended for the purchase of spirituous liquor from ABC stores and the quantity of spirituous liquor purchased;
- (2) amounts collected from the sale of mixed beverages and, by brand and container size, the quantity of spirituous liquor sold;
- (3) the quantity of spirituous liquor, by brand and container size, that was not sold but is no longer on the premises due to stated reasons, such as breakage or theft;
- (4) amounts collected from the sale of malt beverages, fortified wine, and unfortified wine;
- (5) amounts collected from club activity fees, excluding receipts for food; and
- (6) receipts for food.

(b) The records required to be kept by this Rule shall be kept separate and apart from all other records maintained on the premises.

(c) Records, including original invoices related to alcoholic beverages and mixed beverages, shall be maintained on the premises for three years and shall be open to inspection or audit pursuant to G.S. 18B-502.

(d) A sports club holding ABC permits shall submit to the Commission for its review, reports summarizing the information required by this Rule. These reports shall be submitted on an annual basis or upon request by the Commission.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1000(5a); 18B-1008;
Temporary Adoption Eff. September 24, 1993 for a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner;
Eff. February 1, 1994;
Amended Eff. April 1, 2011.

SECTION .0700 - SPECIAL OCCASIONS PERMITS

04 NCAC 02S .0701 GENERAL PROVISIONS: TYPES OF PERMITS

04 NCAC 02S .0702 TRANSPORTATION OF ALCOHOLIC BEVERAGES

History Note: Authority G.S. 18B-207; 18B-403; 18B-903; 18B-1001(8),(9);
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.

04 NCAC 02S .0703 STORAGE OF ALCOHOLIC BEVERAGES

Alcoholic beverages possessed under a Special Occasion Permit or a Limited Special Occasion Permit may be stored on the premises covered by the permit in accordance with G.S. 18B-403(g), as long as the beverages are stored in a secure area and are not stored in a mixed beverage permittee's storage area or commingled with the mixed beverages inventory.

History Note: Authority G.S. 18B-207; 18B-403(g); 18B-1001(8),(9);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02S .0704 NOTICE TO BE POSTED

When a private function is being held under a Special Occasion Permit or Limited Special Occasion Permit, the permittee shall post a notice certifying that a private function is being held. The notice shall be posted in that area of the establishment in which alcoholic beverages are being consumed or possessed.

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

04 NCAC 02S .0705 NO PERMIT REQUIRED AT APARTMENT CLUBHOUSE

A Special Occasion Permit is not required of club rooms or social centers that are provided by apartment complexes or multiple family housing projects for use by residents and their guests for parties, meetings or other social events as long as no more than a nominal fee is charged to cover additional or special janitorial services. (In those instances the club rooms or social centers shall be considered a reasonable extension of the residents' private residences, and no Special Occasion Permit is required). A club room or social center shall be considered a commercial establishment for which a Special Occasion Permit is required if the club room or social center:

- (1) is rented to nonresidents of the multiple family housing complex;
- (2) is rented to residents for a charge in excess of that reasonably calculated to cover additional or special janitorial services; or
- (3) holds a retail Malt Beverage, Unfortified Wine, Fortified Wine, or Mixed Beverages Permit.

History Note: Authority G.S. 18B-207; 18B-301(c);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02S .0706 WHEN PERMITS INVALID: MIXED BEVERAGE SALES

When mixed beverages are being sold in a private dining area, any other private area, or when the entire premises is being used for a private function, any Special Occasion Permit that would otherwise be applicable to the premises or area of the premises is invalid for that period, and no person shall possess any spirituous liquor at that private function other than the permittee and his employees.

History Note: Authority G.S. 18B-207; 18B-1008;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02S .0707 DESTRUCTION OF LEFTOVER BEVERAGES

The owner or operator of a commercial establishment holding a Special Occasion Permit shall destroy all fortified wine and spirituous liquor left on the premises by the host of a private function more than 48 hours after the conclusion of the function.

History Note: Authority G.S. 18B-207; 18B-403(g); 18B-1001(8);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02S .0708 TYPES OF PERMITS REQUIRED

The owner or operator of any commercial facility or commercial establishment renting or furnishing the premises thereof for a private function where the host of the function will possess more than five liters of fortified wine or spirituous liquor, or five liters of the two combined, shall either:

- (1) apply for and obtain a Special Occasion Permit, as required by G.S. 18B-1001(8) and G.S. 18B-902; or
- (2) require the person in charge of the private function to apply for and obtain a Limited Special Occasion Permit under the provisions of G.S. 18B-1001(9) and 18B-902.

History Note: Authority G.S. 18B-207; 18B-301(c); 18B-1001(8),(9);
Eff. July 1, 1992.

SECTION .0800 - CULINARY PERMITS

04 NCAC 02S .0801 GENERAL REQUIREMENTS

In addition to the general requirements for restaurants, hotels and cooking schools in G.S. 18B-1000 and the Rules of the Commission, a restaurant, hotel, cooking school or catering service using fortified wine or spirituous liquor for culinary purposes shall obtain those alcoholic beverages from a lawful source within this State.

History Note: Authority G.S. 18B-207; 18B-1000(1b),(4),(6); 18B-1001(11); 18B-1006(h);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02S .0802 POSSESSION AND STORAGE OF WINE AND LIQUOR 04 NCAC 02S .0803 RECORDS REQUIRED 04 NCAC 02S .0804 USE OF WINE AND LIQUOR

History Note: Authority G.S. 18B-207; 18B-502; 18B-1001(11);
Eff. January 1, 1982;
Amended Eff. May 1, 1984;
Repealed Eff. July 1, 1992.

04 NCAC 02S .0805 SUSPENSION OF MIXED BEVERAGES PERMIT

If the Mixed Beverages Permit of any permittee is suspended, no fortified wine or spirituous liquor shall be used by the permittee for culinary purposes during the period of suspension.

History Note: Authority G.S. 18B-104; 18B-207; 18B-1001(10),(11); 18B-1008;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.

SECTION .0900 - WINE AND BEER TASTINGS

04 NCAC 02S .0901 TASTINGS HELD BY RETAILERS FOR CONSUMERS

(a) General. A retail wine or malt beverage permittee may conduct tastings of wine or malt beverages for consumers. A tasting held on the retailer's premises requires a tasting permit. Any retailer conducting a wine or malt beverage tasting shall:

- (1) Provide training to its employees conducting and supervising any tasting, including:
 - (A) identification of potential underage customers;
 - (B) recognition of fictitious identification;
 - (C) identification of potentially intoxicated customers; and
 - (D) service of correct sample sizes; and
- (2) Prominently display in the area where the tasting is being conducted a sign informing customers that they must be 21 years of age to participate in the tasting.

(b) Tastings Assisted by Industry Member. For the purposes of this Rule, "industry member" means any manufacturer, bottler, importer, vendor, representative or wholesaler of alcoholic beverages. An industry member may assist with wine or malt beverage tastings for consumers in conjunction with, or on the licensed premises of, a retailer provided that:

- (1) The wine or malt beverage is taken directly from the retailer's existing inventory;

- (2) The industry member makes no payment to or on behalf of the retailer for promoting or advertising the tasting;
- (3) The retailer provides instruction to any participating industry member outlining how the tasting will be conducted prior to the tasting;
- (4) The retailer designates one of its employees to supervise the tasting. The retail supervisor shall:
 - (A) be physically present, actively supervise and be readily available to any participating industry member at all times during the tasting;
 - (B) wear visible identification;
 - (C) physically check-in with any participating industry member at each tasting station at least once per hour;
 - (D) make a final determination on the eligibility of a consumer to participate in a tasting in the event such a question arises;
 - (E) maintain an accurate accounting of all wine or malt beverages purchased for and consumed at the tasting; and
 - (F) dispose of any opened wine or malt beverage containers remaining after the tasting, unless the remaining wine is retained by a wine shop permittee.

(c) Unlawful Inducements Prohibited. No industry member shall require a retailer, and no retailer shall require an industry member, to conduct a wine or malt beverage tasting.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1001(15); 18B-1001(18);
Eff. January 1, 1982;
Amended Eff. January 1, 2011; May 1, 1984.

04 NCAC 02S .0902 TASTINGS HELD BY INDUSTRY MEMBERS FOR CONSUMERS

Where the legal sale of those beverages is permitted, an industry member may furnish wine or malt beverages for tastings for consumers provided that:

- (1) The tasting is conducted for promotional purposes; and
- (2) No alcoholic beverages are sold, no sales or orders are solicited, and no order blanks are placed in or about the premises.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1107(a)(4); 18B-1109(a)(4); 18B-1116(b);
Eff. January 1, 1982;
Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984.

04 NCAC 02S .0903 TASTINGS HELD BY INDUSTRY MEMBERS FOR RETAIL PERMITTEES: SAMPLES

(a) Samples. An industry member may give samples of wine, malt beverages or spirituous liquor to a retail permittee authorized to sell that beverage under the following circumstances:

- (1) The industry member may give the retailer up to three gallons per brand of malt beverages, up to three liters per brand of wine and up to 50 milliliters per brand of spirituous liquor; and
- (2) The retailer has not previously purchased those brands from the industry member within the previous calendar year.

(b) Tastings. At educational seminars, an industry member may give a retail permittee samples by the glass of any products he offers for sale. A tasting may be conducted on the industry member's premises or at any other location. A tasting under this Paragraph shall not be conducted in conjunction with a meal, a party, or any other social event but shall be for business purposes only.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1107(a)(4); 18B-1109(a)(4); 18B-1116(b);
Eff. January 1, 1982;
Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984.

04 NCAC 02S .0904 TASTINGS HELD BY INDUSTRY MEMBERS FOR ABC BOARDS

(a) Distiller representatives may conduct educational tastings for ABC board members, general managers and employees, whose duties include product selection, upon notification by the distiller representative to the Commission and if the distiller representative has obtained a permit under G.S. 18B-1001(9).

- (b) A tasting held under this Rule shall not be conducted in conjunction with a meal, a party or any other social event, but shall be for business purposes only.
- (c) No tasting shall be held on ABC board property.

*History Note: Authority G.S. 18B-100; 18B-203(a)(9); 18B-207; 18B-1116;
Eff. April 1, 2011.*

SECTION .1000 - ADVERTISING

04 NCAC 02S .1001 DEFINITIONS

As used in this Section:

- (1) The terms defined in G.S. Chapter 18B and Subchapters 2R through 2T of this Chapter shall have the same meaning when used in this Section.
- (2) "Advertising" means the publicizing of the trade name of a permittee, in connection with or relating to alcoholic beverages or the publicizing of alcoholic beverages by brand name, manufacturer's name or by other reference and shall include any display intended to attract attention by a combination of letters, pictures, objects, lighting effects, illustrations, etc., except that such term shall not include:
 - (a) any label affixed to any container of alcoholic beverages or any individual covering, carton or other wrapper of the container; or
 - (b) any editorial for which no money or other valuable consideration is paid or promised, directly or indirectly, by any person subject to these Rules.
- (3) "Cooperative advertising" means any joint effort between permittees occupying a vertical relationship to each other to advertise alcoholic beverages, the retailer's business, or any promotion as defined in 4 NCAC 2T .0702(3) of this Chapter. Cooperative advertising, however, shall not be construed to include point-of-sale advertising furnished by an industry member.
- (4) "Direct Mail" means any advertising material mailed via any class of postal service to a consumer.
- (5) "Display" means the exhibition of alcoholic beverage containers in cases, or bottles or cans outside of cases, together with advertising material, the purpose of which is to advertise those products to prospective purchasers on the premises.
- (6) "Case display" means alcoholic beverages in cartons or cases only. A handypack is included in the term "carton."
- (7) "Magazine" means any trade, fraternal or scientific periodical or a periodical having general circulation and containing descriptive matter, articles and stories, and designed primarily for the edification and entertainment of the reader that is published no less frequently than once each quarter.
- (8) "Newspaper" means any paper published more frequently than once monthly.
- (9) "Point-of-Sale" means advertising that is located inside and on the premises where the product is displayed or sold. Point-of-sale materials do not include consumer or retailer specialty items or novelties.

*History Note: Authority G.S. 18B-105(b);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02S .1002 NEWSPAPERS: MAGAZINES **04 NCAC 02S .1003 RADIO: TELEVISION**

*History Note: Authority G.S. 18B-105(b)(1),(2);
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.*

04 NCAC 02S .1004 GENERAL PROVISIONS

- (a) Compliance with Rules. No permittee or affiliate shall publish, disseminate or broadcast, or cause to be published, disseminated or broadcast, any advertisement, either directly or indirectly, by newspaper, magazine, shopping guide, sign, circular, direct mail, billboard, display, radio, television or other advertising medium unless the advertisement is in conformity with all the rules of the Commission. This requirement shall apply to any alcoholic beverage advertising, whether or not it originates within this state. In addition, the Commission does not hereby waive the discretion conferred upon it under G.S. 18B-105 to prohibit any advertising that it considers objectionable or contrary to public interest.
- (b) Trade Practice Section Applies. In addition to the rules in this Section, industry members shall comply with the trade practice and advertising requirements of Section .0700 of Subchapter 2T of this Chapter in their dealings with retailers and special one-time permittees.
- (c) Approval of Advertising Not Authorized. Upon request and for good cause shown, the Commission may authorize a form of advertising not specifically allowed or authorized by these Rules.
- (d) Limited to Brands Listed. Advertisements of alcoholic beverages shall be limited to the brands actually approved and listed by the Commission at the time the advertisements appear.
- (e) Telephone Directory Listings. Permittees may insert telephone and city directory listings if the listings conform in copy to the restrictions enumerated in these Rules.
- (f) Advertising within Transportation Terminals. Upon application, the Commission may allow a permittee to advertise alcoholic beverages within transportation terminals by displays or otherwise.
- (g) Exchange of Advertising by Permittee. Any retail permittee of the Commission may give to any other retail permittee of the Commission any advertising material if it meets the requirements of these Rules.

Editor's Note: James L. Conner, II, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 4 NCAC 2S .1004(c) void as applied in Daniel W. Shelton t/a Shelton Broers v. N.C. Alcoholic Beverage Control Commission (99 ABC 1641).

*History Note: Authority G.S. 18B-105(b);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02S .1005 PROHIBITED STATEMENTS IN ADVERTISING OR ON LABELS

- (a) General Restrictions. An advertisement or product label shall not contain:
- (1) any statement, design, device or representation that is false or misleading in any material particular;
 - (2) any statement that is disparaging of a competitor's products;
 - (3) any statement, design, device or representation which depicts nudity or is obscene or indecent;
 - (4) any statement, design, device or representation of or relating to analysis, standards or tests, irrespective of falsity, which is likely to mislead the consumer;
 - (5) any statement, design, device or representation of or relating to any guaranty, irrespective of falsity, which is likely to mislead the consumer. Nothing in this Section shall prohibit the use of an enforceable guaranty in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package";
 - (6) any statement that the product is produced, blended, made, bottled, packed or sold under or in accordance with any authorization, law or regulation of any municipality, county or state, federal or foreign government, unless such statement is required or specifically authorized by the laws or regulations of such government; and if a municipal, county, state or federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto;
 - (7) any statement, picture or illustration implying that the consumption of alcoholic beverages enhances athletic prowess, or any statement, picture or illustration referring to any known athlete, if such

statement, picture or illustration implies, or if the reader may reasonably infer, that the use of this product contributed to such athlete's athletic achievements;

- (8) any picture or illustration depicting the use of alcoholic beverages in a scene which is undignified, immodest or in bad taste;
- (9) any offer of a prize or award upon the completion of any contest in which there is a requirement to purchase the advertised product, provided that, no advertisement shall promote a game of chance or a lottery;
- (10) any subject matter or illustrations inducing persons under 21 years of age to drink;
- (11) any statement, picture or illustration inconsistent with the spirit of safety or safe driving programs;
- (12) any scene that would be contrary to state laws and rules governing sale, storage and consumption of alcoholic beverages;
- (13) any statement concerning a brand that is inconsistent with any statement on the labeling thereof;
- (14) any statement, design or device representing that the use of a brand has curative or therapeutic effects, if such statement is untrue in any particular, or tends to create a misleading impression;
- (15) any statement or representation that the product was manufactured in or imported from a place or country other than that of the actual origin, or was produced or processed by one who was not in fact the actual producer or processor;
- (16) any statement, design, device or pictorial representation of or relating to or capable of being construed as relating to the armed forces of the United States or the American Flag, state flag, or any emblem, seal, insignia or decoration associated with any such flag of armed forces of the United States; nor shall any advertisement contain any statement, device, design or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer into believing that the product has been endorsed, made or used by, produced for or under the supervision of or in accordance with the specifications of the government, organizations, family or individual with whom the flag, seal, coat of arms, crest or insignia is associated; or
- (17) words such as "high test," "high proof," "full strength," "extra strong," or similar descriptive terms, or direct or indirect references to the intoxicating effect of the product.

(b) Prohibited Statements in Regard to Wine. In addition to the applicable prohibited statements as set forth in Paragraph (a) of this Rule, an advertisement or label for wine shall not contain:

- (1) any statement of bonded winecellar and bonded winery numbers unless stated in direct conjunction with the name and address of the person operating such winery or storeroom. Statement of bonded winecellar and bonded winery numbers may be made in the following form:
"Bonded Winecellar No. ____, "B.W.C. No. ____."
"Bonded Winery No. ____, "B.W. No. ____."
No additional reference thereto shall be made, nor shall any use be made of such statement that may convey the impression that the wine has been made or matured under United States Government or any state government supervision or in accordance with United States Government or any state government specifications or standards;
- (2) any statement, design or representation which relates to alcoholic content or which tends to create the impression that a wine is "unfortified" or has been "fortified" or has intoxicating qualities, or contains spirituous liquor (except for a reference to spirituous liquor in a statement of composition where such statement is required by these Rules to appear as part of the designation of the product); or
- (3) statement of age or dates, or any statement of age or representation relative to age (including words or devices in any brand name or trademark), except that:
 - (A) In the case of vintage wine, the year of vintage may be stated if it appears on the label; or
 - (B) Truthful references of a general and informative nature relating to methods of production involving storage or aging, such as "This wine has been mellowed in oak casks," "Stored in small barrels" or "Matured at regulated temperatures in our cellars" may be made.

The statement of any bottling date shall not be deemed to be representation relative to age, if such statement appears without undue emphasis in the following form: "Bottled in ____" (inserting the year in which the wine was bottled). No date, except as provided in this Section with respect to statement of vintage year and bottling date, shall be stated unless, in addition thereto and in direct conjunction therewith, in the same size and kind of printing there shall be stated an explanation of the significance of such date. Provided, that if any date refers to the date of establishment of any business, firm or

corporation such date shall be stated without undue emphasis and in direct conjunction with the name of the person, firm or corporation to whom it refers.

(c) Prohibited Statements in Regard to Spirituous Liquor. In addition to the applicable prohibited statements in Paragraph (a) of this Rule, an advertisement for spirituous liquor shall not contain:

- (1) words "bond," "bonded," etc; any statement containing the words "bond," "bonded," or "bottled in bond," "aged in bond" or phrases containing these or synonymous terms, unless such words or phrases appear upon the labels of the spirituous liquor advertised, and are stated in the advertisement in the manner and form in which they appear upon the label;
- (2) statements of age; any statement, design or device directly or by implication concerning age or maturity of any brand or lot of spirituous liquor unless a statement of age appears on the labels of the advertised product; When any such statement, design or device concerning age or maturity is contained in any advertisement, it shall include, in direct conjunction therewith and with substantially equal conspicuousness, all parts of the statement concerning age and percentages, if any, which appear on the label. However, an advertisement for any whiskey or brandy which does not bear a statement of age on the label, or an advertisement for rum which is four years or more old, may contain general inconspicuous age, maturity or other similar representation, e.g., "aged in wood," "mellowed in fine oak casks";
- (3) the word "pure" except as part of the bona fide name of a permittee; or
- (4) the terms "double distilled," "triple distilled" or any other similar term.

Editor's Note: James L. Conner, II, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 4 NCAC 2S .1005(a)(3) void as applied in Daniel W. Shelton t/a Shelton Broers v. N.C. Alcoholic Beverage Control Commission (99 ABC 1641).

*History Note: Authority G.S. 18B-105(b);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02S .1006 GENERAL PROHIBITIONS

(a) For the purposes of this Rule, the following definitions shall apply:

- (1) "Coupon" means a part of a retail permittee's advertisement that is redeemed by a purchaser to the retail permittee to obtain a discount at the time of sale;
- (2) "Loyalty card, discount card, or membership card" means a card that is issued by a retail permittee to customers that, upon presentation to the retail permittee, provides for the purchaser to receive a loyalty card, discount card, membership card, or coupon discount on a portion of the amount paid by the purchaser for off-premises beer or wine consumption sales at the time of sale; and
- (3) "Rebate" for a retail permittee, means a promise by the retail permittee to return a portion of the amount paid by the purchaser upon the condition the purchaser completes a rebate form and the purchaser meets the terms and conditions of the rebate form's requirements.

(b) Advertising for an alcoholic beverage shall not include a coupon or an offer for a free alcoholic beverage. No person shall advertise by means of a coupon, a rebate or a permittee's loyalty card, discount card or membership card offering a discount off the purchase of a malt beverage or wine, except as provided in this section. A combination of the use of a coupon, a rebate or a permittee's loyalty card, discount card or membership card shall not exceed a total of 25 percent of the advertised retail price of the item. Permittees may advertise by means of a coupon, a rebate or a permittee's loyalty card, discount card or membership card under the following conditions:

- (1) A permittee who holds an on-premises or off-premises malt beverage or wine permit under G.S. 18B-1001(1) through (6) or a wine shop permit under G.S. 18B-1001(16) may advertise by means of a coupon or a rebate in the following circumstances:
 - (A) The permittee may provide a coupon or a rebate for use by a customer when purchasing a malt beverage or wine sold at the permittee's retail location for off-premises consumption;
 - (B) The permittee may require a customer to use the permittee's loyalty card, discount card or membership card with the use of a coupon or rebate when purchasing a malt beverage or wine sold at the permittee's retail location for off-premises consumption;
 - (C) No coupons or rebates shall be honored for the purchase of alcohol for any individual below the legal age for purchase of alcohol;

- (D) A coupon or rebate shall not provide a discount exceeding 25 percent of the advertised retail price of the item;
 - (E) A permittee shall not advertise or distribute coupons or rebates in a publication produced for or by a higher education institution; and
 - (F) In any advertisement displaying a discount coupon or rebate, the permittee shall include the following statement on or about the discount coupon or rebate in a similar font to the discount coupon or rebate, "Drink Responsibly – Be 21;" and
- (2) A permittee who holds an on-premises or off-premises malt beverage or wine permit under G.S. 18B-1001(1) through (6) or a wine shop permit under G.S. 18B-1001(16) may advertise discounts, coupons and rebates with the requirement of the use of the permittee's loyalty card, discount card or membership card in the following circumstances;
- (A) The permittee shall require customers to present a loyalty card, discount card or membership card to receive the advertised loyalty card, discount card or membership card discount when purchasing a malt beverage or wine sold at the permittee's retail location for off-premises consumption;
 - (B) No loyalty card, discount card or membership card shall be honored for the purchase of alcohol for any individual below the legal age for purchase of alcohol;
 - (C) A loyalty card, discount card or membership card shall not provide a discount exceeding 25 percent of the advertised retail price of the item;
 - (D) A permittee shall not advertise permittee loyalty card, discount card or membership card discounts in a publication produced for or by a higher education institution; and
 - (E) In any advertisement displaying a permittee loyalty card, discount card or membership card discount, the permittee shall include the following statement on or about the discount coupon or rebate in a similar font to the discount, "Drink Responsibly – Be 21."

Direct or indirect cooperation shall not occur between a retailer and an industry member in either marketing, redemption or funding of coupons, rebates or loyalty card, discount card or membership card discounts under this Rule. Participation of an industry member in the use of coupons, rebates or loyalty card, discount card or membership card discounts is a violation of G.S. 18B-1116(a)(3).

(c) No industry member or retailer shall advertise alcoholic beverages in any programs for events or activities in connection with any elementary or secondary schools; nor shall any alcoholic beverages advertising be connected with these events when broadcast over radio or television.

(d) No industry member or retailer is permitted to advertise alcoholic beverages by use of sound trucks.

(e) No industry member or retailer shall advertise spirituous liquor upon the picture screen of any theater.

(f) Except as otherwise provided in these Rules, no industry member or retailer shall promote an alcoholic beverage product by giving prizes, premiums or merchandise to individuals for which any purchase of alcoholic beverages is required or based on the return of empty containers unless all containers of like products are accepted and considered on an equal basis with the product sold by the promoter.

(g) No on-premise permittee or his agent shall advertise any drink promotion prohibited by 04 NCAC 02S .0232. This Paragraph includes a ban on all advertisements of "2 for 1," "buy 1 get 1 free," "buy 1 get another for a _____ (nickle, penny, etc.)," and any other similar statement indicating that a patron must buy more than one drink.

History Note: Authority G.S. 18B-100; 18B-105(b); 18B-1116(a)(3);
Eff. January 1, 1982;
Amended Eff. January 1, 2011; July 1, 1992; August 1, 1985; May 1, 1984.

04 NCAC 02S .1007 COOPERATIVE ADVERTISING PROHIBITED

Except for point-of-sale advertising furnished to a retailer by an industry member, a retailer and an industry member shall not directly or indirectly cooperate in a joint effort to advertise alcoholic beverages, the retailer's business, or any promotion or other event unless prior written approval has been obtained from the Commission under 4 NCAC 2T .0717 of this Chapter. This Rule shall not be construed to prohibit the use by a retailer of items and services that may be lawfully sold or provided by an industry member as described in 4 NCAC 2T .0700 of this Chapter.

History Note: Authority G.S. 18B-105(b);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02S .1008 ADVERTISING OF MALT BEVERAGES, WINE AND MIXED BEVERAGES BY RETAILERS

(a) Interior Advertising.

- (1) Point-of-Sale. Retail malt beverage, wine and mixed beverage permittees may utilize any amount of point-of-sale advertising for malt beverage, wine and mixed beverage products offered for sale in the establishment. This advertising may be supplied by the industry member unless it constitutes a fixture or has value other than as advertising material; except that an industry member may give a retailer brand-identified items listed in 04 NCAC 02T .0713(c) for use as point-of-sale advertising;
- (2) Price Boards. Retail malt beverage, wine and mixed beverage permittees may display inside price boards showing the brand names and prices of malt beverage, wine and mixed beverage products offered for sale in the establishment;
- (3) Menus and Beverage Lists. Retail on-premise malt beverage, wine and mixed beverage permittees may place on the menu and beverage lists the brand names and prices of malt beverage, wine and mixed beverage products offered for sale in the establishment. Beverage lists may be supplied by an industry member and may include up to six items from the retailer's food menu but shall not include the name, logo or other identifier of the retail permittee on the advertisement. A table tent is considered a beverage list for purposes of this Rule;
- (4) Retailer Advertising Specialty Items. Retailer advertising specialty items are items such as trays, coasters, mats, meal checks, paper napkins, glassware, cups, foam scrapers, back bar mats, thermometers and other similar items that bear advertising matter. Advertising specialty items may be provided to a retailer by an industry member as provided in 04 NCAC 02T .0713(b)(8);
- (5) Window Displays. Retail malt beverage, wine and mixed beverage permittees may arrange unopened malt beverage, wine or spirituous liquor products in a window display;
- (6) Location. No point-of-sale advertising, advertising specialty item or price board shall be displayed in a manner designed or intended to advertise malt beverages, wine or mixed beverages on the outside of the establishment;
- (7) T-shirts. A retailer's employees shall not wear alcoholic beverage brand identified t-shirts while working on the retailer's licensed premises; and
- (8) Removal of Signs. A permittee shall remove any sign, display or advertisement in or about his licensed premises if the Commission finds it is contrary to public interest and orders its removal.

(b) Exterior Advertising.

- (1) Outside signs on the premises.
 - (A) Malt Beverages. Retail malt beverage permittees may display the term "beer", "cold beer", "draught beer", "specialty beer", "craft beer", "North Carolina beer", "local beer" or "imported beer" on a single, non-mechanical outside sign. This sign may be neon illuminated. The letters and figures on the sign shall not be more than 5 inches in height and 2 inches apart and the sign shall be attached to the building on the licensed premises. Retail malt beverage permittees may also display the term "beer", "cold beer", "draught beer", "specialty beer", "craft beer", "North Carolina beer", "local beer" or "imported beer" or a similar term on a single, portable, non-mechanical sidewalk sign that is no larger than 25 inches by 45 inches on each of its two sides. The sidewalk sign shall be displayed only during the hours of operation;
 - (B) Wine. Retail wine permittees may display the term "wine permit-off premise", "wine permit-on premise", "fine wine" or a similar term on a single non-mechanical outside sign. This sign may be neon illuminated. The letters and figures on the sign shall not be more than 5 inches in height and 2 inches apart and the sign shall be attached to the building on the licensed premises. Instead of the sign described in this Paragraph, retail wine permittees engaged in off-premise sales of wine may display the term "Wine Shop", "Wine and Cheese" or a similar term on a single non-mechanical sign. This sign may be neon illuminated. The letters and

figures on the sign shall not be more than 18 inches in height and the sign shall be attached to the building on the licensed premises. Retail wine permittees may also display the term "wine permit-off premise", "wine permit-on premise", "fine wine" or a similar term on a single, portable, non-mechanical sidewalk sign that is no larger than 25 inches by 45 inches on each of its two sides. Instead of the sidewalk sign described in this Paragraph, retail wine permittees engaged in off-premise sales of wine may display the term "Wine Shop", "Wine and Cheese", "fine wine" or a similar term on a single, portable, non-mechanical sidewalk sign that is no larger than 25 inches by 45 inches on each of its two sides. A sidewalk sign shall be displayed only during the hours of operation;

- (C) Restriction. Retail malt beverage, wine and mixed beverage permittees shall not allow price advertising or additional signs advertising malt beverages, wine and mixed beverages on the outside of their premises. Outside signs alluding to malt beverages, wine or mixed beverages by slang descriptions such as "brew," "suds," "six-pack," "vino" or "booze" are prohibited;
 - (D) Exceptions; Menus; Trade Names. The placement of a food menu that also contains a list of alcoholic beverages by brand and price in a window, on the exterior of the retailer's building or on a sidewalk sign that is no larger than 25 inches by 45 inches on each of its two sides is not a violation of this Rule. A sidewalk sign shall be displayed only during the hours of operation;
 - (E) Mixed Beverages. Retail mixed beverage permittees may display the term "mixed beverages," "all ABC permits," "mixed drinks," "cocktails," or "spirits," on a single non-mechanical, non-neon, or otherwise self-illuminated outside sign. The letters and figures on the sign shall not be more than five inches in height and two inches apart and the sign shall be attached to the building on the licensed premises; and
 - (F) Private Club. A private club shall not display any exterior sign advertising the availability of malt beverages, wine or mixed beverages;
- (2) Billboards. Retail permittees shall not advertise malt beverage, wine or mixed beverage products or the availability of alcoholic beverages by means of a billboard or outdoor sign except as provided in this Section. Industry members with retail permits may advertise tastings;
 - (3) Aerial Displays. Retail permittees shall not advertise malt beverage, wine or mixed beverage products or the availability of alcoholic beverages by means of an aerial display or an inflatable item that is tethered; and
 - (4) Only exterior advertising permitted by local ordinances is authorized.
- (c) Removal of Signs. A permittee shall remove any sign, display, or advertisement in or about his licensed premises if the Commission finds it is contrary to public interest and orders its removal.
- (d) Media Advertising. A retail malt beverage, wine or mixed beverage permittee may advertise price and brand of malt beverage, wine and mixed beverage products offered for sale by means of circular, newspaper, magazine, radio, television and internet.

*History Note: Authority G.S. 18B-100; 18B-105; 18B-1116(b);
Eff. January 1, 1982;
Amended Eff. March 1, 2012; January 1, 2011; July 1, 1992; May 1, 1984.*

04 NCAC 02S .1009 ADVERTISING OF MALT BEVERAGES AND WINE BY INDUSTRY MEMBERS

- (a) Billboards; Media. Industry members may advertise malt beverages or wine on outdoor billboards, by radio, television, newspaper or magazine, and by other similar means. Outdoor billboards or signs shall not be displayed on the premises of any retail permittee's establishment nor in areas where sale of that product is unlawful.
- (b) Aerial Display. Malt beverages and wine may be advertised by industry members by means of aerial displays or tethered inflatables, including banner-towing, hot air balloons and parachutes, if:
 - (1) One or more photographs or drawings of the displays have been submitted to the Commission and the permittee has received prior written approval;
 - (2) The advertising on the aerial display is in conformity with all other rules in this Section; and
 - (3) No aerial display or inflatable is placed on or over the premises of a retail permittee's establishment.
- (c) Delivery Trucks and Uniforms. Trucks owned by or leased exclusively to an industry member may be used for advertising purposes limited to the name or trade name of the permittee, and the brand names, slogans, house marks or

trademarks of the alcoholic beverages manufactured or sold by the permittee. Wholesale permittees may display on the uniforms of their employees the names of their company and the brand names of the products handled by them.

(d) Other Signs. Industry members may maintain any signs required by the laws of the United States to be displayed on their premises as well as signs on the premises indicating the brand names of malt beverages and wine sold by them, including the word "beer," or words describing other malt beverages and wine.

(e) Price. Industry members shall not advertise the price of malt beverages or wine. A wholesaler may give a wholesale price list that contains the brand names and prices of his products to retail permittees.

(f) College Campuses. All print advertising, including posters, flyers, display ads, or point-of-sale materials that are published primarily for distribution to college students or for dissemination on college campuses shall first be submitted to the Commission for approval prior to any publication or distribution. Industry members are encouraged to submit such advertising at least two months prior to distribution deadlines in order to allow adequate review by the Commission.

*History Note: Authority G.S. 18B-105;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02S .1010 ADVERTISING OF MIXED BEVERAGES

*History Note: Authority G.S. 18B-105;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984;
Repealed Eff. November 1, 2011.*

04 NCAC 02S .1011 ADVERTISING OF SPIRITUOUS LIQUORS

(a) ABC Stores. An ABC store may have one or more outside signs located on the premises for the purpose of identifying the outlet if the sign is not prohibited by local ordinance and it has been approved by the Commission. During the approval process the Commission shall consider the following factors:

- (1) the proximity of the ABC store to schools and churches;
- (2) the number and size of the signs requested;
- (3) the text and graphics on the sign;
- (4) the materials that make up the sign; and
- (5) the public concern in matters of the public's welfare.

(b) Aerial Displays. No distiller, importer, or rectifier of spirituous liquor, or representative thereof, nor any retail permittee, shall advertise by means of an aerial display or inflatable the brand name or availability of spirituous liquor.

(c) Billboards; Media. Industry members may advertise spirituous liquor on outdoor billboards, by radio, television, newspaper, magazine or internet, and by other similar means. Outdoor billboards or signs shall not be displayed on the premises of any retail permittee's establishment nor in areas where sale of that product is unlawful.

(d) Point-of-Sale. Point-of-sale and advertising specialties for spirituous liquor may be used in ABC stores but not in retail establishments holding permits issued by the Commission. Advertising used in ABC stores shall conform to the provisions of Rule .1005 of this Section, and in addition shall not:

- (1) incorporate the use of any present or former athlete or athletic team; or
- (2) refer to the availability of or offer any alcoholic beverages by mail.

All point-of-sale advertising material, advertising specialties, and recipes, booklets or brochures intended for use and display in ABC stores shall first be submitted to the Commission prior to their display in an ABC store.

(e) Local ABC Boards. Local ABC boards may advertise on their web site or social networking page the following information:

- (1) general information such as the history of the ABC board, locations, hours of operation, contact information, employment opportunities, alcohol enforcement, alcohol education, underage drinking education and other local government information; and
- (2) liquor products and prices, as long as:
 - (A) no logos are shown;
 - (B) when a product is listed, all products that are offered are listed;
 - (C) when a product's regular price is listed, all products' regular prices offered by the board are listed; and

(D) when a special price is listed for a product, all products with special prices offered by the board are listed.

(f) Local boards may join local chambers of commerce or visitor's bureaus and may provide them general board information which includes store locations and hours to be distributed through the chambers of commerces' or visitor's bureaus' media information.

History Note: Authority G.S. 18B-100; 18B-105; 18B-207; 18B-801;
Eff. January 1, 1982;
Amended Eff. November 1, 2011; January 1, 2011; July 1, 1992; May 1, 1984.

04 NCAC 02S .1012 NOVELTIES UTILIZING TRADEMARKS/NAMES: OTHER MATERIALS

Industry members may use or allow to be used their trademark, trade name or other similar advertising materials in the manufacturing of novelty items such as ice chests, beach towels, umbrellas, and other similar items provided that any advertising material other than trade name or trademark shall receive approval by the Commission prior to distribution in North Carolina. Novelties may be sold to a retailer by an industry member as provided in 4 NCAC 2T .0713(a)(1) of this Chapter.

History Note: Authority G.S. 18B-105(b);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02S .1013 BOTTLE NECK HANGERS

Bottle neck hangers that are in conformity with Rule .1005 of this Section may be used.

History Note: Authority G.S. 18B-105(b);
Eff. January 1, 1982;
Amended Eff. May 1, 1984.

04 NCAC 02S .1014 RECIPES AND BOOKLETS

Recipes, booklets and brochures for cooking with alcoholic beverages and information with reference to the use of those products with certain foods are permitted and may specify the brand and the name of the bottler, manufacturer or importer. Malt beverage and wine industry members may give recipes, booklets and brochures for cooking with those products to retailers. Recipes, booklets and brochures for cooking with spirituous liquor shall be submitted to the Commission with point-of-sale materials as required in Rule .1011(e) of this Section.

History Note: Authority G.S. 18B-105(b);
Eff. January 1, 1982;
Amended Eff. July 1, 1992.

04 NCAC 02S .1015 REVOCATION OR SUSPENSION OF PERMITS

(a) The permit of any manufacturer or wholesaler distributor that violates any of the provisions of this Section may be suspended or revoked in the discretion of the Commission.

(b) The suspension or revocation of the permit of any wholesaler for a violation of these Rules shall raise a rebuttable presumption that the unlawful activity by the wholesaler was done with the knowledge and consent of the manufacturer.

(c) Upon a finding that the manufacturer had knowledge of the wholesaler's violation of any of these Rules and that the manufacturer failed to take appropriate disciplinary action the permit of the manufacturer to do business in North Carolina may be suspended or revoked in the discretion of the Commission or any codes listed by the Commission may be put on embargo by the Commission for a specific period of time.

History Note: Authority G.S. 18B-104; 18B-105(a);
Eff. January 1, 1982;
Amended Eff. May 1, 1984.

04 NCAC 02S .1016 ADVERTISING WITHIN TRANSPORTATION TERMINALS

04 NCAC 02S .1017 REVOCATION OR SUSPENSION OF PERMITS

(d) Suspensions shall begin at 7:00 a.m. on the effective date ordered by the Commission in the Order of Suspension or Order of Compromise.

History Note: Authority G.S. 18B-104; 18B-207; 18B-1004(a); 18B-1008;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02S .1102 PROHIBITED ACTIVITY DURING SUSPENSION: BROWNBAGGING

The suspension of a Brownbagging Permit suspends the permittee's privilege to allow patrons or members to possess, store, and consume fortified wine or spirituous liquor upon the premises during the period of suspension.

History Note: Authority G.S. 18B-104; 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.

04 NCAC 02S .1103 MEMBERSHIP REQUIREMENTS STILL APPLICABLE

Suspension of a private club permit does not operate to relieve the permittee of the continuing requirements for qualification for a private club permit, including requirements regarding membership and operation as a private facility.

History Note: Authority G.S. 18B-207; 18B-1008;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02S .1104 ADMINISTRATIVE FINES: PAYMENT

Pursuant to G.S. 18B-104, the Commission may fine a permittee whenever the ABC law authorizes suspension or revocation of his permit.

When the Commission orders a permittee to pay a fine as part of a penalty, payment shall be received in Commission offices in Raleigh no later than 15 days following the meeting at which the Commission orders the fine. The Commission shall include, as part of the order, what penalty will be imposed if the fine has not been received by the Commission by the prescribed deadline. Payment shall be by certified check, cashier's check, or money order made payable to the North Carolina ABC Commission.

History Note: Authority G.S. 18B-104; 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.

04 NCAC 02S .1105 REVOCATION OF PERMIT HELD BY HUSBAND OR WIFE

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

04 NCAC 02S .1106 OFFER IN COMPROMISE

When the Commission accepts from a permittee an offer in compromise as settlement or partial settlement in a contested case, the monetary payment accepted in the offer shall be paid on or before the date set by the Commission or a hearing officer and shall be paid by means of a certified check, cashier's check or money order made payable to the North Carolina ABC Commission.

History Note: Authority G.S. 18B-104; 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.

