



State of North Carolina
ALCOHOLIC BEVERAGE CONTROL COMMISSION

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FISCAL ANALYSIS OF PROPOSED RULES

**Spirituuous Liquor Special Event Rules: Definitions; Application Procedures; Distiller,
Supplier and Brokerage Representative: Prohibited Acts; Special Event Permits
14B NCAC 15C .0101; 15C .0102; 15C .0901; 15C .1301 - .1306**

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AUTHORITY:

G.S. 18B- 100; 18B-101; 18B-109; 18B-201; 18B-207; 18B-502; 18B-807; 18B-900; 18B-902; 18B-1000; 18B-1001.1; 18B-1105.1; 18B-1112; 18B-1113; 18B-1114; 18B-1114.3; 18B-1114.7; 18B-1116; 18B-1203; 18B-1303.

IMPACT SUMMARY:

| | |
|-------------------------------------|------------|
| State Government: | YES |
| Local Government: | NO |
| Substantial Economic Impact: | NO |

SUMMARY OF NEED FOR RULE:

The Alcoholic Beverage Control (ABC) Commission is required to adopt rules to implement G.S. 18B-1114.7 as enacted by the General Assembly in 2017 and amended in 2018. These rules will provide the process for distilleries, supplier representatives, and brokerage representatives to be able to provide free tastings of spirituous liquor to consumers at certain defined events, while ensuring the safety of the consumers and the compliance with the ABC laws with regards to who is eligible to taste (both by age and state of intoxication) and what quantities can be provided.

In the process of adopting these rules, the ABC Commission has identified conforming, clarifying and corrective changes needed to collateral rules related to the commercial permitting application process and

to establish in rules administrative policies and procedures that are currently being utilized to carry out statutory requirements.

Specifically, through a comparison of the requirements of 14B NCAC 15C .0102 and the application forms, processes, and statutory requirements for qualifying for various ABC commercial permits, the ABC Commission has identified additions and deletions to the rules to conform to the permit application processes and policies used by the ABC Commission when issuing these permits. Additionally, the ABC Commission wants to include in rule a listing of collateral documents required by statute that are required to be submitted as part of this application process.

SUMMARY OF PROPOSED RULE CHANGES:

Rules 14B NCAC 15C .0101 and .0102.

The proposed amendments to Rule 14B NCAC 15C .0101 and .0102 are necessitated in part by G.S. 18B-1114.7 which authorizes the holder of a supplier representative permit, a brokerage representative permit and a distillery permit to obtain a spirituous liquor special event permit. Since there are no statutory criteria or process for obtaining a supplier representative permit or a brokerage representative permit, rules are needed to establish the process for applying for and issuing these permits.

Under its policies, the ABC Commission has been issuing ABC permits to brokerage representatives and supplier representatives for many years. The agency has been requiring permits for persons acting in these capacities for spirituous liquor brokerage companies and spirituous liquor suppliers. In most situations, these companies and suppliers represent out-of-state distillers that are not required to be licensed to distill in this State but who are otherwise authorized to sell spirituous liquor through the NC ABC system under federal law.

Other than providing for brokerage representatives and supplier representatives permits, the proposed amendments do not make substantive changes in the current policy or practice for commercial permitting, and do not impact the behavior, cost, or benefits of or to the ABC Commission or the regulated public in any way different from current policies or practices.

1. Rule 14B NCAC 15C .0101 defines terms used in Chapter 15C of Title 14B of the Administrative Code. The amendments are adding additional terms that need to be defined in light of G.S. 18B -1114.7.
2. Rule 14B NCAC 15C .0102 is an existing rule, and the amendments do not make any substantive changes in practice or the requirements on the regulated public. The proposed changes to this rule are all clarifying, conforming, or establishing in rule the requirements and procedures currently in place to otherwise comply with the requirements of the ABC statutes.

Specifically:

In regards to 14B NCAC 15B .0101 as revised:

- This rule is amended to add definitions of "branded merchandise", "brokerage", "brokerage representative", "distiller representative", "rectifier", "spirituous liquor supplier", "supplier representative", and "vendor representative". It is also being amended to delete the more general generic definition of "representative" which applied to malt beverages and wine, as well as spirituous liquor, since the representatives of each of these different types of alcoholic beverages are being specifically defined in these amendments. This provision does not make substantive changes in current policy or practice, and does not impose any new burden on the regulated public.

In regards to 14B NCAC 15B .0102 as revised:

- The current Paragraph (a) is amended to add brokerage and supplier representatives to the list of entities and person required to file an application for a commercial ABC permit, but otherwise makes no substantive change.
- The new Paragraph (d) adds brokerage and supplier representatives to the list of representatives who are currently required to disclose in the application process the name of the entities that represent. This paragraph is also amended to require both the representatives, and the entity being represented, to notify the Commission within 30 days after the representative relationship is terminated.

The provisions described below do not make substantive changes in current policy or practice, and do not impose any new burden on the regulated public:

- The current Paragraph (b) is amended to update the information currently required on permit applications. Some old provisions in the existing rule are no longer needed and are not being required on the application. Other changes clarify or conform to existing policies, practices and statutory requirements.
- The new Paragraph (c) puts into rule the list of documents currently required in conjunction with permit applications, the requirement for most of which are set out in statute.
- The new Paragraph (e) clarifies that process for the filing of a distribution agreement with Commission before a wholesaler can represent a vendor of malt beverages or wine and wholesale these beverages in the State. The changes to this rule set forth the requirements, process and procedure for the distribution agreements to be filed with the Commission, as well as any changes made in the agreement from time to time.
- The new Paragraph (f) puts into rule the unique requirements applicable to liquor importer/bottlers.
- The new Paragraph (g) puts into rule the unique requirements applicable to nonresident malt beverage and wine vendors.
- The new Paragraph (h) puts into rule the unique requirements applicable to wine producers.
- The new Paragraph (i) puts into rule the unique requirements applicable to wine shippers.

Rule 14B NCAC 15C .0901:

The proposed amendments to 14B NCAC 15C .0901, necessitated by G.S. 18B-1114.7, add supplier representatives and brokerage representatives to the list of spirituous liquor representatives who are regulated as it relates to permissible contact and conduct in ABC stores and with ABC store personnel and mixed beverage permittees. This rule defines the process the representatives need to follow in order to be allowed to conduct business in the ABC stores, and the types of conduct and contact that the representative is allowed to have with ABC store employees. It also governs the relationship between the representatives and mixed beverage permittees.

Specifically, these amendments add supplier and brokerage representatives to the list of representatives allowed to interact with local ABC stores and their employees in relation to distilleries they represent. The amendments provide that the request for permission and the granting of permission be made in writing, and that approvals be granted in accordance with policies adopted by the local ABC board. Otherwise, the amendments to this Rule do not make substantive changes in current policy or practice, and do not impose any new burdens on the regulated public.

Rules 14B NCAC 15C .1301 - .1306.

The proposed new Rules 14B NCAC 15C .1301, .1302, .1303, .1304, .1305 and .1306 are necessitated by G.S. 18B-1114.7, which authorizes persons holding distillery, supplier representative and brokerage representative permits to obtain spirituous liquor special event permits allowing them to give free tastings

of spirituous liquors at trade shows, conventions, shopping malls, street festivals, holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar events approved by the ABC Commission.

G.S. 18B-1114.7 requires a distillery, supplier representative or brokerage representative to apply annually for a spirituous liquor special event permit in order to be authorized to conduct tastings of spirituous liquor at certain special events. The person seeking a spirituous liquor special event permit will be required to complete and file a permit application and pay an annual fee of \$200.00 in order to obtain a permit.

Under Rules 15C .1301-.1305, in order to be able to conduct tastings, the permittee will have to provide the required training to the permittee's employees and agents, create and write the procedure to ensure compliance with the law regarding tastings serving limits and the prohibition on giving tastings to underage persons. The permittee will also be required to maintain a record of tastings for a year. Permittees who wish to conduct tastings at an "other similar event" will have to make sure the event is approved as such by the ABC Commission prior to participation in the event.

These rules establish the process and criteria for the ABC Commission to approve "other similar events", defines how tastings are to be conducted, establishes the process for permittees to comply with the statutory requirements, and defines what types of point-of-sale advertising materials and advertising specialties may be in the tasting areas, what constitutes a "special event" for purposes of this statute, and what constitutes a local fund-raiser.

Specifically:

In regards to 14B NCAC 15C .1301:

- Paragraph (1) defines a charitable, nonprofit organization as a nonprofit organization that is a charitable organization under G.S. 1-539.11(1).
- Paragraph (2) defines a local fund-raiser as used in G.S. 18B-1114.7, to mean a special event sponsored by a local government, charitable nonprofit organization, or a local political organization to raise funds for a governmental, charitable, or political purpose.
- Paragraph (3) defines what constitutes a "special event" for purposes of this statute, and sets out criteria for special events at shopping malls and the other types of events listed in G.S. 18B-1114.7.

In regards to 14B NCAC 15C .1302

- This rule sets out the process for obtaining approval of "other similar events", including the information the person seeking approval of the event must provide to the Commission in order for the event to be approved. This rule excludes from events that can be approved those sponsored exclusively by the permit holder and those held on retail premises or at ABC stores.

In regards to 14B NCAC 15C .1303:

- Paragraph (a), defines what constitutes a "designated tasting area", and specifies how tastings are to be conducted and what other activities can be conducted in that area as part of the tasting.
- Paragraph (b) makes clear that the statutory limits on sample sizes and the total number of samples a permittee can give to a consumer applies to the limits applicable to each permittee, and not to the cumulative total samples a consumer can be given by all permittees at the special event.
- Paragraph (c) establishes the mandatory training that employees who are conducting or supervising the tasting must be given prior to a tasting.

- Paragraph (d) prohibits the permittee, their agents and employees from being in the designated tasting areas after consumption of alcoholic beverages, except under certain conditions.
- Paragraph (e) prohibit tasting samples from being mixed with any other alcoholic or non-alcoholic product, and prohibits any other non-alcoholic beverage, other than water, from being available to consumers in the tasting area.
- Paragraph (f) requires that spirituous liquor used for tasting samples must have been purchased from an ABC store.

In regards to 14B NCAC 15C .1304:

- Paragraph (a) sets out the requirement that permit holder be present in the tasting areas when the tastings occur and that a copy of the spirituous liquor special event permit be on display and available to law enforcement in the designated tasting area.
- Paragraph (b) requires a copy of any approval by the Commission of the special event as an “other similar event” to be kept in the tasting area and available to law enforcement.
- Paragraph (c) requires the permit holder to have and maintain a written procedure establishing the method to be used by the permittee and the permittee’s employees or agents to ensure compliance with the statutory serving sizes and number of samples per consumer limits, and the prohibition of serving consumers intoxicated or underage.
- Paragraph (d) requires that the written procedure required under Paragraph (c) be maintained for one year, included in the consumer tasting record required by statute to be maintained, and made available upon request to the Commission or law enforcement.

In regards to 14B NCAC 15C .1305:

- This rule specifies that other than tasting samples, only point-of-sale advertising materials and advertising specialties may be given to consumers in the designated tasting area, in addition to the sale of branded merchandise. It also defines what constitutes point-of-sale advertising materials and advertising specialties for these purposes.

In regards to 14B NCAC 15C .1306:

- Paragraph (a) limits the number of days that a permittee can conduct tastings in a shopping mall to 10 days cumulative within any three-month period.
- Paragraph (b) limits the number of days that a permittee can participate in tastings in special events sponsored by the same person or business to 10 days cumulative within any three-month period.
- Paragraph (c) prohibits a spirituous liquor special event permittee from participating in a special event if the permittee is the only permittee invited or allowed to participate in the special event.

FACTORS AFFECTING COSTS

1) 14B NCAC 15C .0102 – Applications for Brokerage Representatives and Supplier Representatives

Fees

There is no authority for the ABC Commission to charge or collect any permit fees with regards to the issuance of brokerage representative permits or supplier representative permits.

Administrative Costs

The ABC Commission has had a policy of issuing brokerage and supplier representative permits for a number of years as part of the process of keeping a record of who represents a specific brokerage, or a supplier who represents out-of-state distillers. Brokerage and supplier representatives arrange sales of alcoholic beverages to local ABC stores and gets spirituous liquor products on the approved list of products

available for order by the local ABC stores through the State ABC warehouse. It appears that all brokerage and supplier representatives are in compliance with the current policies so the rate of compliance in the future should remain the same. These rules do not impact the behavior, cost, or benefit of or to the ABC Commission or the regulated public in any way different from current policies and practices.

Application Approval Process

Generally, the agency staff that processes permit applications of brokerage representatives or supplier representatives is an Administrative Specialist II. The cost for this position is an average mid-range salary of \$40,878 per year, plus 22.86% of salary for social security and retirement, plus \$5,378 per year for employee health benefits, for a total of \$55,601 per year. The average amount of staff time to process a brokerage or supplier representative permit application is approximately 38 minutes.

In FY-18, the agency issued 128 brokerage representative permits and 74 supplier representative permits for a total of 202 new representative permits. It appears that the number of permits issued in FY-18 is typical and would be expected to remain constant in the future. In FY-18 it took approximately 128 hours of staff time to process these permit applications. That translates to a cost of \$3,420 for the year, or \$16.93 per application.

Regulated Public Costs

Based on the estimate of time required for other individuals to get permits, it is estimate that it will take between 1 and 2 hours for a person seeking to obtain a brokerage representative permit or a supplier representative permit to complete and file an application. The cost to the permittee cannot be estimated.

The amendments to 14B NCAC 15C .0102(d) will require representatives, and the parties they represent, to notify the Commission when the authority to represent ceases.

The amendments to 14B NCAC 15C .0102(e) will conform the sequence of filing of distribution agreements with the Commission by wholesalers to the current policies and practice to allow a wholesaler to get a wholesale permit but not be allowed to operate as a wholesaler until a copy of any distribution agreement the wholesaler has entered into with any vendor is filed with the Commission. It also requires any changes in the distribution agreement be filed with the Commission.

2) Spirituous Liquor Special Event Permit

Fees

The ABC Commission is authorized to charge and collect a fee of \$200 per year for spirituous liquor special event permits.

Administrative Costs

Generally, the agency staff that processes application and renewal payments is an Administrative Specialist I. The cost for this position is an average mid-range salary of \$37,850 per year, plus 22.86% of salary for social security and retirement, plus \$5,378 per year for employee health benefits, for a total of \$51,881 per year. The average amount of staff time to process a special event permit application or renewal is approximately 30 minutes.

In FY-18, the agency issued 49 spirituous liquor special event permits. In FY-18 it took approximately 25 hours of staff time to process these permit applications. That translates to a cost of \$624 for the year, or \$12.73 per application.

Regulated Public Costs

Since the Spirituous Liquor Special Event Permit fee was first authorized July 1, 2017, there is a limited amount of history on the collection of these fees. From July 1, 2017 to June 30, 2018, a total of 49 spirituous liquor special event permits have been issued and \$98,000 of revenues collected. These permits will be subject to an annual renewal.

Under Rules 15C .1301-.1306, in order to be able to conduct tastings, the permittee will have to provide the required training to the permittee's employees and agents, create and write the procedure to ensure compliance with the law regarding tastings serving limits and the prohibition on giving tastings to underage persons. The permittee will also be required to maintain a record of tastings for a year. Permittees who wish to conduct tastings at an "other similar event" will have to make sure the event is approved as such by the ABC Commission prior to participation in the event.

It is estimated that it will take approximately one hour to collect the necessary information to complete the application for a spirituous liquor special event permit, fill it in on the application form, and file the form with the ABC Commission. It is estimated that it will take between an hour to two hours to plan and arrange training for employees and agents before they conduct a tasting. It is estimated that the training itself will take about 15 minutes for the trainer and the persons being trained. It is estimated that it will take about 15 minutes per event to create the record of the consumer tasting as required in G.S. 18B-1114.7(b)(10). It is estimated that it will take about an hour for a permittee to collect the necessary information to complete the request for approval of an "other similar event", and submit the request to the ABC Commission for approval. The cost to the permittee cannot be estimated.

3) 14B NCAC 15C .1301 - Other Similar Events Approval

Fees

There is no authority for the ABC Commission to charge or collect any fees for the approval of other similar events under G.S. 18B-1114.7.

Administrative Costs

Generally, the agency staff that processes the requests for approval of other similar events is an Agency Legal Consultant I. The cost for this position is an average mid-range salary of \$70,000 per year, plus 22.86% of salary for social security and retirement, plus \$5,378 per year for employee health benefits, for a total of \$91,380 per year. The average processing time for approving an other similar event is approximately 10 minutes.

In FY-18, the agency considered and approved one other similar events approved for spirituous liquor special event permits tastings. Also during this same period, the agency considered and approved 12 winery or malt beverage other similar events for wine or malt beverage special event permits tastings as authorized under G.S. 18B-1114.1 and 1114.5, respectively. In FY-18 it took approximately 3 hours of staff time to process these permits. That translates to a cost of \$132 for the year, or \$9.41 per request.

Although the law allowing spirituous liquor special event tastings only went into effect on July 1, 2017 and not a large number of approvals have been requested to this point, the types of "other similar events" for which approval is needed are often the same event. Additionally, an "other similar event" only needs to be approved once for wine, malt beverages and spirituous liquor in order for any special event permittee to be allowed to participate. Accordingly, it seems reasonable to assume that the number of requests for approval for all other similar events should be fairly consistent from year to year.

Regulated Public Costs

Based on the estimate of time required for other individuals to get approvals of other similar events for malt beverages and wine, it is estimate that it will take approximately 1 hour for a person seeking approval of an other similar special event to complete and file the approval request form. Only one other similar special event approval will be required for the event, so not every spirituous liquor special event permittee will have to get approval for their participation in every other similar special event. The cost to the permittee cannot be estimated.

4) SUMMARY OF TOTAL ANNUAL COSTS

| <u>PROCESS</u> | <u>STATE COSTS</u> | <u>REGULATED PUBLIC COSTS</u> |
|--|--------------------|-------------------------------|
| Permitting Brokerage and Supplier Representatives | \$ 3,420 | Unquantified |
| Spirituos Liquor Special Event Permits | | |
| Application Process | \$624 | Unquantified |
| Application Fee | N/A | \$98,000 |
| Other Similar Event Approval | \$132 | Unquantified |
| Staff Training | N/A | Unquantified |
| Event Record Compliance | N/A | Unquantified |

BENEFITS

These rules will provide the following benefits to the public, the regulated community, and to State government:

- A safe process, in compliance with State law, that allows consumers to taste samples of spirituous liquor for free prior to purchasing when distillers, supplier representatives and brokerage representatives provide for these tastings.
- A process for brokerage and supplier representatives to be permitted as such so that they may subsequently be issued a spirituous liquor special event permit which allows them to conduct tastings of their principal's spirituous liquor products under certain conditions. Permitting such tastings benefits distillers by providing additional opportunities to promote their products to consumers, potentially increasing sales.
- Out-of-state distillers, not licensed or permitted to distill spirituous liquor under State law, the means to provide tastings of their products through their brokerage representatives and supplier representatives in the way that distillers located and permitted in this State are allowed to do.
- A process for distillers and brokerage and supplier representatives to provide tastings at other similar events not specifically listed in statute, expanding opportunities for distillers to promote their products to consumers and potentially increase sales.
- The regulated public the means to find in rule the detailed permit requirements previously only set forth on the commercial ABC permit application form which could help ensure complete applications when initially filed.
- Additional revenues to the ABC Commission from special event permit fees, estimated collections of at least \$98,000 per year.
- State and local law enforcement assistance in enforcing the ABC laws by requiring permittees to maintain compliance records and have the required records physically on the site of the tastings for review by law enforcement.

PROPOSED RULES TEXT

1 **SPIRITUOUS LIQUOR SPECIAL EVENT PERMITS PROPOSED PERMANENT RULES (Sec. 2, S.L. 2017-**
2 **87 and Sec. 6, 2018-100)**

3
4 14B NCAC 15C .0101 is proposed for amendment as follows:

5
6 **14B NCAC 15C .0101 DEFINITIONS**

7 The following terms shall have the following meanings when used in this Chapter:

- 8 (1) "Brand," in relation to wines, means the name under which a wine is produced and includes trade
9 names or trademarks. A brand shall not be construed to mean a class or type of wine, but all classes
10 and types of wines sold under the same brand label ~~are~~shall be considered a single brand.
11 Differences in packaging such as a different style, ~~type~~type, or size of container ~~are not~~shall not be
12 considered different brands.
- 13 (2) "Branded merchandise" means items, including glassware, cups, signs, t-shirts, hats and other
14 apparel, that bears the brand of the alcoholic beverage being served, or the brand of the brewery,
15 winery, or distiller whose alcoholic beverages is being served, at a tasting conducted pursuant to
16 G.S. 18B-1114.1, 18B-1114.5 or 18B-1114.7.
- 17 (3) "Brokerage" means a business that brokers in the State the sale of spirituous liquor on behalf of a
18 spirituous liquor supplier.
- 19 (4) "Brokerage representative" means an individual who promotes spirituous liquor on behalf of a
20 brokerage.
- 21 (5) "Distiller representative" means an individual who promotes spirituous liquor on behalf of a
22 distiller, or otherwise represents a distiller.
- 23 (6) "Industry member" means any wholesaler, salesman, brewery, winery, bottler, importer, liquor
24 importer/bottler, distiller, distiller representative, brokerage, brokerage representative, supplier
25 representative, rectifier, nonresident vendor, vendor representative, or affiliate thereof, that sells or
26 solicits orders for alcoholic beverages, whether or not licensed in this state.State.
- 27 (7) "Rectifier" means a permittee that processes spirituous liquor by cutting, blending, mixing, or
28 infusing with any ingredient that reacts with the constituents of the distilled spirits and changes the
29 character and nature, or standards of identity, of the distilled spirits, but does not include a person
30 who extracts spirituous liquor by original or continuous distillation, or who mixes spirituous liquor
31 with other ingredients for immediate consumption.
- 32 (3)(8) "Retail permittee" or "retailer" means any permittee holding a retail alcoholic beverage permit
33 issued pursuant to the authority of G.S. 18B-1001, but does not include a non-profit or political
34 organization that has been issued a Special One-Time permit pursuant to the provisions of G.S. 18B-
35 1002(a)(2) or (5).

1 (4) ~~"Representative" means any vendor representative, as that term is used in G.S. 18B-1112, or any~~
2 ~~other person selling or soliciting orders for alcoholic beverages on behalf of a manufacturer, bottler,~~
3 ~~vendor, or importer.~~

4 (5)(9) "Spirituous liquor supplier" means a distiller, liquor importer/bottler, or rectifier.

5 (10) "Supplier representative" means, as the term is used in G.S. 18B-1114.7, an individual who
6 promotes on behalf of a spirituous liquor supplier, or otherwise represents a spirituous liquor
7 supplier.

8 (11) "Vendor" means any brewery, winery, bottler, malt beverages or wine importer, or nonresident malt
9 beverage vendor or nonresident wine vendor, vendor as those terms are used in G.S. 18B-1113 and
10 18B-1114.

11 (12) "Vendor representative" means any person who holds a permit issued pursuant to G.S. 18B-1112.

12 (6)(13) ~~"Wine" means both fortified wine and unfortified wine, as those terms are defined in G.S. 18B-~~
13 ~~101(7) and (15)-wine.~~

14
15 *History Note: Authority G.S. 18B-100; 18B-101; 18B-207; 18B-1112; 18B-1113; 18B-1114; 18B-1114.7; 18B-*
16 *1116;*

17 *Eff. January 1, 1982;*

18 *Amended Eff. April 1, 2011; July 1, 1992; May 1, 1984;*

19 *Transferred and Recodified from 04 NCAC 02T .0101 Eff. August 1, 2015.*

20
21 14B NCAC 15C .0102 is proposed for amendment as follows:

22
23 **14B NCAC 15C .0102 APPLICATION PROCEDURES**

24 (a) Who Files. Before any winery, brewery, distiller, wholesaler, importer, bottler, ~~representative, vendor,~~ distiller
25 ~~representative,~~ brokerage representative, salesman, supplier representative, or vendor representative sells, solicits
26 orders for, or manufactures, ~~bottles~~bottles, or imports any alcoholic beverage in this State, that person shall first file
27 written application for the appropriate permit and pay ~~the~~any required fees, as described in ~~G.S. 18B-902~~G.S. 18B-
28 902, and as set forth in this Rule. Applications for permits for businesses shall be filed by those individuals listed in
29 G.S. 18B-900(c).

30 (b) Application. Application forms for all ABC permits may be obtained from the North Carolina Alcoholic Beverage
31 Control Commission's office or website as set forth in 14B NCAC 15A .0102.

32 Each person shall provide in the application, under oath, the following ~~information:~~information, as applicable:

33 (1) ~~name, address, and residence of applicant;~~ the name, address, email address, last four digits of social
34 security number, and telephone number(s) of the applicant;

35 (2) the mailing address and of location address of the business for which a permit is desired, and the
36 county and state in which where the business is located;

- 1 (3) ~~corporate or partnership name; the name of the business and whether the business is a sole~~
2 ~~proprietorship, corporation, limited liability company, or partnership;~~
3 (4) ~~the trade name of business;~~
4 (5) ~~name and address of owner of premises;~~
5 (6) ~~the applicant's date and place of birth;~~
6 (7)(6) ~~if the business is a corporation,~~ corporation or limited liability company, the name and address of
7 ~~the agent or employee person~~ authorized to serve as process agent; ~~accept service of process of~~
8 ~~Commission notices or orders under G.S. 1A, Rule 4(j).~~
9 (8)(7) ~~if a nonresident,~~ the applicant is a non-resident intending to operate a business in the State of North
10 ~~Carolina,~~ State, the name and address of ~~person~~ a resident of the State appointed as ~~the applicant's~~
11 ~~attorney-in-fact by virtue of a duly executed and registered power of attorney;~~ in accordance with
12 ~~Chapter 32C of the General Statutes for purposes of G.S. 18B-900(a)(2)b.;~~ and
13 (9)(8) ~~if the application is for a vendor representative,~~ representative, brokerage representative, distiller
14 ~~representative, or supplier representative~~ permit, authorization from the commercial
15 ~~permittee,~~ permittee, brokerage, distiller, or spirituous liquor supplier to represent it; and
16 (9) ~~that the applicant is in compliance with G.S. 18B-900(a)(3) through (8).~~

17 ~~In addition the applicant shall certify, under oath, that he has not been convicted of a felony within three years, an~~
18 ~~alcohol or drug law violation within two years, nor had any permit authorizing the sale, importation, or manufacture~~
19 ~~of alcoholic beverages revoked by this State, any other state, or the federal government revoked within the past three~~
20 ~~years.~~

21 (c) Additional documentation. The following documents completed, signed, notarized, and recorded, as applicable,
22 shall be attached to and submitted with an application, and shall be incorporated as part of the application:

- 23 (1) for applicants applying on behalf of a business pursuant to G.S. 18B-900(c), the fingerprint card,
24 Authority for Release of Information Form, and certified check, cashier check, money order,
25 electronic payment, or credit card payment made payable to the North Carolina ABC Commission
26 in the amount of thirty-eight dollars (\$38.00) for payment of a state and national fingerprint-based
27 criminal history record check pursuant to 14B NCAC 18B .0405;
28 (2) for applicants applying for brokerage representative, distiller representative, or supplier
29 representative permits, a certified copy of the applicant's State criminal history record check;
30 (3) payment of applicable permit fees as authorized in 14B NCAC 15A .0104;
31 (4) for businesses located in this State, a certified copy of any recorded power of attorney registered in
32 the county where the proposed licensed premises is located;
33 (5) for corporations not already holding a permit in this State, a copy of the Articles of Incorporation
34 and notarized corporate certification of shareholders holding 25% or more of the shares of the
35 corporation;

1 (6) for limited liability companies not already holding a permit in this State, a copy of Articles of
2 Organization and notarized organizational certification of members owning 25% or more interest in
3 the company. Additionally, if manager-managed, a copy of the Operating Agreement;

4 (7) a black and white copy of applicant's current photo identification;

5 (8) for a business located in this State, a copy or memorandum of the lease showing the applicant as
6 tenant, a copy of the deed showing the applicant as the grantee or owner, or a copy of a management
7 agreement with the owner or lessee of the permitted property showing the applicant has the authority
8 to operate the business at the permitted location; and

9 (9) a Federal Employer Identification/Social Security Number Verification Form.

10 (d) Salesmen, Representatives, Vendors To State Companies. All salesmen, vendor representatives, distiller
11 representatives, brokerage representatives, supplier representatives, and vendors shall further state on the permit
12 application the name of every manufacturer, importer, wholesaler, distiller, brokerage, spirituous liquor supplier, or
13 vendor that the applicant will represent in the State of North Carolina-State. The persons listed in this Paragraph shall
14 notify the Commission when their authorization to represent an industry member ceases. The manufacturer, importer,
15 wholesaler, distiller, brokerage, spirituous liquor supplier, or vendor shall notify the Commission whenever any of the
16 persons listed in this Paragraph are no longer their authorized representative. Notification required pursuant to this
17 Paragraph shall be made to the Commission in writing within thirty (30) days of the termination of the authorization
18 to represent.

19 ~~(d)~~(e) Resident Wholesalers. In addition to the requirements set forth in Paragraphs (a) and (b)(a), (b), and (c) of this
20 Rule, every applicant for a permit to sell malt beverages or wine at wholesale shall submit with the permit
21 application before a wholesaler receives, possesses, transports, sells, delivers, or ships wine or malt beverages in the
22 State, the vendor shall file with the Commission a separate distribution agreement filing form specifying the brands for
23 each brand authorized to be sold by the wholesaler and the specific territory in which where the product may be sold.
24 sold for each wholesaler location. The distribution agreement filing form shall contain the vendor's and wholesaler's
25 names, trade names if applicable, addresses, telephone numbers, ABC permit numbers, and the name of the brand and
26 territory where the sales may take place in the State, by county or parts of counties. For wine vendors, the form shall
27 also state whether the vendor ships 1,250 cases or more of wine in the State each year. The form shall be signed and
28 dated by the vendor and the wholesaler. If any changes in the distribution agreement affect the information on the
29 distribution agreement filing form filed with the Commission, the wholesaler shall amend the form and file it with the
30 Commission on a revised distribution agreement filing form before the changes become effective.

31 (f) Liquor Importer/Bottler. In addition to the requirements set forth in Paragraphs (a), (b), and (c) of this Rule, a
32 liquor importer/bottler applying for a permit shall submit a description of the operations of its business, which shall
33 include the location address of any storage facility or bottling plant, if different than the address shown on the permit
34 application, and any associated federal alcoholic beverage permit numbers.

35 (g) Nonresident Vendors. In addition to the requirements set forth in Paragraphs (a), (b), and (c) of this Rule, a
36 nonresident malt beverage vendor or a nonresident wine vendor applying for a permit shall submit the following:

37 (1) a copy of the Federal Basic Permit or Brewers Notice;

- 1 (2) a statement of whether the business is a malt beverage vendor or a wine vendor;
- 2 (3) a statement whether the applicant has ever been disapproved by any government agency for any
- 3 application to manufacture, use, store, rectify, bottle, distribute, sell, import, or transport distilled
- 4 spirits, beer or wine;
- 5 (4) a statement whether the applicant has ever compromised, by payment of penalties or otherwise, any
- 6 violation of any federal or state laws relating to internal revenue or customs taxation of alcoholic
- 7 beverages; and
- 8 (5) certification of understanding that the applicant can only engage in activities authorized by the ABC
- 9 laws of this State for the permit issued, and that before any wine or malt beverage can be offered
- 10 for sale in the State, the product and label must be approved by the Commission.

11 (h) Wine Producers. In addition to the requirements set forth in Paragraphs (a), (b), and (c) of this Rule, a wine

12 producer applying for a permit shall submit a copy of the recorded deed or lease for the farming establishment that

13 meets the requirements set forth in G.S. 18B-1000(10), including the address of the farm and one of the following:

- 14 (1) a survey or diagram of the farm, indicating the areas and acreage used in the production of grapes,
- 15 berries, or other fruits for the manufacture of unfortified wine; or
- 16 (2) an affidavit stating that the farm consists of at least five acres committed to the production of grapes,
- 17 berries, or other fruits for the manufacture of unfortified wine, listing the acreage used for this
- 18 purpose and its function.

19 (i) Wine Shippers. In addition to the requirements set forth in Paragraphs (a), (b), and (c) of this Rule, a wine shipper

20 applying for a permit shall submit the following:

- 21 (1) a description of the operation of the business;
- 22 (2) a website address through which orders will be received;
- 23 (3) a statement whether the applicant has ever been disapproved by any government agency for any
- 24 application to manufacture, use, store, rectify, bottle, distribute, sell, import or transport distilled
- 25 spirits, beer, or wine;
- 26 (4) a statement whether the applicant has ever compromised, by payment of penalties or otherwise, any
- 27 violation of any federal or state laws relating to internal revenue or customs taxation of alcoholic
- 28 beverages;
- 29 (5) a statement whether the business entity holds a valid Federal Basic Permit, either as a Bonded Wine
- 30 Cellar or Bonded Winery, and a copy of the Federal Basic Permit; and
- 31 (6) a wine shipper brand listing consisting of all brands of fortified and unfortified wines identified to
- 32 be shipped into the State by the wine shipper, including the names of the common carriers used for
- 33 shipping. The permitted wine shipper may amend the brands of wine permitted to be shipped into
- 34 the State by filing an amended wine shipper brand listing with the Commission. Only brands
- 35 identified by the wine shipper to the Commission in writing may be legally shipped into the State.

1 *History Note: Authority G.S. 18B-100; 18B-109; 18B-201; 18B-207; 18B-900; 18B-902; 18B-1000; 18B-1001.1;*
2 *18B-1105.1; 18B-1109(b); 18B-1200 through 18B-1216; 18B-1113; 18B-1114; 18B-1114.3; 18B-*
3 *1114.7; 18B-1203; 18B-1303;*
4 *Eff. January 1, 1982;*
5 *Amended Eff. May 1, 1984;*
6 *Transferred and Recodified from 04 NCAC 02T .0102 Eff. August 1, 2015.*

7
8 14B NCAC 15C .0901 is proposed for amendment as follows:
9

10 **SECTION .0900 - DISTILLERS: REPRESENTATIVES**

11
12 **14B NCAC 15C .0901 DISTILLERDISTILLER, SUPPLIER AND BROKERAGE REPRESENTATIVES:**
13 **PROHIBITED ACTS**

14 (a) Representatives Prohibited from Entering Store. Distiller ~~representatives~~representatives, supplier representatives,
15 or brokerage representatives shall not enter any ABC store except for the purpose of calling on the buyer if the buyer's
16 office is maintained in the store, for the purpose of making a ~~purchase~~purchase, or ~~unless given permission by a local~~
17 ~~Board for the purpose of visiting a store~~ to market product, build displays, or attach added value ~~items~~items in
18 accordance with written permission from the local Board. An initial request for permission to visit a store pursuant
19 to this Paragraph shall be made in writing by the representative to the general manager of the local Board in a form
20 acceptable to the local Board. The local Board may adopt policies regulating when a representative may visit the local
21 Board's ABC store, which may include the times, frequency, purpose, method of requesting and approving, and any
22 advance notice requirements. Permission granted by the general manager, or other persons designated by the local
23 Board, to the representative to visit the local Board's ABC stores shall initially be made in writing and in accordance
24 with any policies adopted by the local Board. The duration of the permission may be for an indefinite time. The local
25 Board's policies may authorize the general manager, or his or her designee, to verbally authorize subsequent specific
26 visits after written permission has been given.

27 (b) Representatives Prohibited from Contacting Store Personnel. Distiller ~~representatives~~representatives, supplier
28 representatives, or brokerage representatives shall not ~~contact, either directly or indirectly, or call upon~~contact store
29 ~~personnel while store personnel are off duty~~ for the purpose of promoting their ~~merchandise~~merchandise while store
30 personnel are off-duty. Store personnel shall not allow distiller ~~representatives~~representatives, supplier
31 representatives, or brokerage representatives to contact them, ~~either directly or indirectly, or allow the distiller~~
32 ~~representatives to call upon them in any manner while they are off duty~~ for the purpose of promoting their
33 ~~merchandise~~merchandise while store personnel are off-duty.

34 (c) Gifts Prohibited. ~~Representatives~~Distiller representatives, supplier representatives, or brokerage representatives
35 shall not give liquor, including samples, or anything of value to local ABC board members or employees, ~~which~~
36 ~~includes~~including store managers and general managers, at any time. Local ABC board members or employees, which
37 includes store managers and general managers, shall not accept gifts, either directly or ~~indirectly, or through a third~~
38 person, from any distiller representative, supplier representative, or brokerage representative.

1 (d) Soliciting and Advertising Prohibited. ~~Except for purchases made by state or local officials for supply of ABC~~
2 ~~stores, salesmen of spirituous liquor shall not with regard to purchases of spirituous liquor by any person:~~

3 Except for contact with the Commission, local ABC boards, and retail permittees, with regards to the promotion and
4 purchase of spirituous liquor, no distiller representative, supplier representative, or brokerage representative shall:

5 (1) solicit any order, agreement, or other commitment to purchase liquor, whether or not it is legally
6 enforceable; or

7 (2) advertise, ~~promote~~promote, or encourage purchases by any means or method or furnish any means
8 by which spirituous liquor may be obtained, except as provided in 14B NCAC 15B .1008.

9 ~~Exceptions shall be made upon notification from the Commission to a distiller representative when there is expressed~~
10 ~~interest by a fraternal or civic group in the purchase of a ceramic or commemorative decanter. Upon notice, distiller~~
11 ~~representatives may present pictorial art work or renderings in solicitation and a presentation to that group. This~~
12 ~~Paragraph shall not apply to a distiller representative, supplier representative, or brokerage representative who has~~
13 ~~been granted an exemption by the Commission to make presentations of pictorial artwork or renderings of the design~~
14 ~~of the decanter and solicitation of a special order of these decanters at the request of a local ABC board and non-profit,~~
15 ~~charitable corporation related to orders and sales of commemorative bottles pursuant to Rule 14B NCAC 15A .1404.~~
16 Requests for an exception under this Paragraph shall be made in writing to the Commission.

17 (e) Relationship With Mixed Beverages Permittee. No employee or representative of any distiller, importer,
18 ~~rectifier~~rectifier, or bottler may promote or solicit orders by a mixed beverages permittee or aid the permittee in placing
19 orders for any spirituous liquor or for any other alcoholic beverages.

20 (f) Gifts and Inducements Prohibited. ~~No~~ Except as permitted pursuant to Rules .0710 and .0711 of this Subchapter,
21 no employee or representative of any ~~rectifier~~ or industry member may give or lend to any mixed beverage ~~permittee,~~
22 ~~or his permittee or the permittee's~~ employee any gift, money, services, equipment, furniture, ~~fixtue~~fixture, or other
23 thing of value.

24
25 *History Note: Authority G.S. 18B-100; 18B-207; 18B-807; 18B-1116;*
26 *Eff. January 1, 1982;*
27 *Amended Eff. April 1, 2011; July 1, 1992; May 1, 1984;*
28 *Transferred and Recodified from 04 NCAC 02T .0901 Eff. August 1, 2015;*
29 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19,*
30 *2017.*

31
32 14B NCAC 15C .1300 is proposed for adoption as follows:

33
34 **SECTION .1300 – SPECIAL EVENT PERMITS**

35
36 **14B NCAC 15C .1301 DEFINITIONS**

37 As used in G.S. 18B-1114.7 and in this Section:

1 (1) “Charitable, nonprofit organization” means a nonprofit organization that is a charitable organization
2 as defined in G.S. 1-539.11(1).

3 (2) “Local fund-raiser” means a special event sponsored or cosponsored by a local government, a local
4 charitable, nonprofit organization, or a local political organization for the purpose of raising funds
5 for a governmental, charitable or political purpose.

6 (3) “Special event” means either:

7 (a) an event in which the spirituous liquor special event permittee participates that is a trade
8 show, convention, street festival, holiday festival, agricultural festival, balloon race, local
9 fund-raisers, or other similar events approved pursuant to Rule .1302 of this Section, that
10 is for a limited duration of no more than 10 days and organized or sponsored by a person
11 other than the spirituous liquor special event permittee; or

12 (b) an event of limited duration of no more than sixty (60) days at a shopping mall that is
13 organized and sponsored by the shopping mall or an association of shopping mall
14 merchants as part of a promotion or sale for all merchants in the shopping mall.

15
16 *History Note: Authority G.S. 18B-100; 18B-207; 18B-1114.7;*

17
18 **14B NCAC 15C .1302 OTHER SIMILAR EVENTS APPROVAL**

19 For other events not specifically listed in G.S. 18B-1114.7, the holder of a spirituous liquor special event permit issued
20 pursuant to G.S. 18B-1114.7 shall obtain approval of that other similar event from the Commission prior to the permit
21 holder participating in the event. The holder of the permit shall submit a written application for approval to the
22 Commission no less than seven business days prior to the date of the event. The application, available on the
23 Commission’s website, includes:

24 (1) the permit holder’s name, business name, spirituous liquor special event permit number, email
25 address, and telephone and fax numbers;

26 (2) the name, dates, time, location, address, and county of the event;

27 (3) whether an admission fee will be charged of the attendees by the event sponsor;

28 (4) the event sponsor’s name, address, contact information, event or sponsor’s social media link or
29 webpage, and whether the event sponsor is a non-profit organization;

30 (5) whether the event sponsor holds a special one-time ABC permit pursuant to G.S. 18B-1002(a)(2) or
31 (5) and whether alcohol will otherwise be sold or given away at the event; and

32 (6) the names of other co-sponsors, supporters, vendors, or exhibitors who are expected to participate
33 in the event, and whether those persons hold ABC permits.

34 The Commission shall not approve events sponsored exclusively by the holder of the permit. Tastings of spirituous
35 liquor shall not be allowed pursuant to a spirituous liquor special event permit on the premises of a retail permittee or
36 an ABC store.

37

1 History Note: Authority G.S. 18B-100; 18B-207; 18B-1114.7;
2

3 **14B NCAC 15C .1303 TASTINGS HELD FOR CONSUMERS**

4 (a) Tasting Area Designation. Tastings permitted pursuant to a spirituous liquor special event permit shall only be
5 conducted within a designated tasting area, delineated by vertical markings no less than 24 inches in height that the
6 consumer would recognize as indicating the boundaries that physically separate the tasting area from the remainder
7 of the special event. Only tastings, sale of branded merchandise, and advertising authorized pursuant to G.S. 18B-
8 1114.7 may be conducted in the tasting area. No unrelated activities may be conducted in the designated tasting area.
9 Consumers shall not be permitted to take tasting samples outside the designated tasting area. The permittee shall
10 ensure that designated tasting area signs are displayed at the permittee's tastings serving tables and at the entrances
11 and exits to the designated tasting area, with lettering of at least 2 inches in height, informing consumers that they
12 must be 21 years of age to participate in the tastings and that no tasting samples are allowed to be taken out of the
13 designated tasting area. A designated tasting area may include one or more permittees. A special event may have
14 multiple designated tasting areas.

15 (b) Each permittee conducting a tasting may give each consumer tasting samples up to the limits set forth in G.S.
16 18B-1114.7(b)(3).

17 (c) Training. Any employee of a permittee who will be conducting or supervising any tasting conducted pursuant to
18 a spirituous liquor special event permit shall be given training, including:

- 19 (1) identification of potential underage consumers;
20 (2) recognition of fictitious identification;
21 (3) identification of consumers who are visibly intoxicated;
22 (4) service of correct sample sizes; and
23 (5) methods to ensure compliance with G.S. 18B-1114.7 in accordance with Rule .1304 of this Section.

24 (d) Consumption prohibited. The permittee, the permittee's agent, or employee shall not be in the designated tasting
25 area after consuming alcoholic beverages except under the following conditions:

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

32 (e) Limitations. Spirituous liquors provided as tastings pursuant to a spirituous liquor special event permit shall not
33 be mixed with any other alcoholic or non-alcoholic beverage. No non-alcoholic beverages, other than water, shall be
34 made available to the consumer in the designated tasting area.

35 (f) Source of spirituous liquor. All spirituous liquor used for tasting samples given in accordance with this Rule shall
36 be purchased by the permittee from an ABC store.
37

1 History Note: Authority G.S. 18B-100; 18B-207; 18B-1114.7;
2

3 **14B NCAC 15C .1304 SPECIAL EVENT COMPLIANCE PROCEDURE**

4 (a) The permittee to whom the spirituous liquor special event permit was issued must be present in the designated
5 tasting area at the time the tastings occur. A copy of the spirituous liquor special event permit shall be on display in
6 the designated tasting area and shall be made available to law enforcement agents upon request.

7 (b) For other special events approved by the Commission pursuant to Rule .1302 of this Section, a copy of the
8 Commission's approval shall be kept in the designated tasting area during the duration of the tastings and made
9 available to law enforcement upon request.

10 (c) A spirituous liquor special event permit holder shall maintain a written procedure establishing the method to be
11 used by the permit holder and the permit holder's employees or agents to ensure compliance with the requirements of
12 G.S. 18B-1114.7(b)(3), (4), and (5). A copy of the written procedure shall be available in the designated tasting area
13 to the permit holder's employees and designated agents and shall be made available in the designated tasting area to
14 law enforcement agents upon request.

15 (d) A copy of the written procedure required pursuant to Paragraph (c) of this Rule shall be:

16 (1) maintained for one year following the tasting;

17 (2) included as part of the consumer tasting record maintained in accordance with G.S. 18B-
18 1114.7(b)(10); and

19 (3) made available upon request to the Commission and law enforcement agents pursuant to G.S. 18B-
20 502.

21
22 History Note: Authority G.S. 18B-100; 18B-207; 18B-502; 18B-1114.7;
23

24 **14B NCAC 15C .1305 SPECIAL EVENT SALE OF BRANDED MERCHANDISE, POINT-OF-SALE**
25 **ADVERTISING MATERIALS AND ADVERTISING SPECIALTIES**

26 (a) In addition to the tastings permitted under this Section, a spirituous liquor special event permit holder may sell
27 branded merchandise and provide point-of-sale advertising materials and advertising specialties to consumers at
28 consumer tastings only within the designated tasting area. No other activities shall be conducted within the designated
29 tasting area.

30 (b) For purposes of this Section:

31 (1) "Point-of-sale advertising materials" means advertising that is located inside the designated tasting
32 area established in accordance with Rule .1303 of this Section where the product is displayed or
33 sampled. Advertising materials may include signs, posters, banners, and decorations that bear
34 product advertising matter. Point-of-sale advertising materials as used in this Section shall not
35 include items listed in 14B NCAC 15C .0711(c).

1 (2) “Advertising specialties” means coasters, shot glasses, bottle or can openers, cork screws, ash trays,
2 shopping bags, individual can coolers, hats, caps, visors, t-shirts (without collars or buttons), and
3 key chains.

4
5 *History Note: Authority G.S. 18B-100; 18B-207; 18B-1114.7;*

6
7 **14B NCAC 15C .1306 SPECIAL EVENT PARTICIPATION LIMITATIONS**

8 (a) For special events in shopping malls, the spirituous liquor special event permittee shall not participate in any single
9 mall more than 10 days cumulatively in any three-month period.

10 (b) A spirituous liquor special event permittee shall not participate more than 10 days cumulatively during a three-
11 month period in a special event sponsored or arranged by the same person or business.

12 (c) A spirituous liquor special event permittee shall not participate in a special event for which the permittee was the
13 only spirituous liquor special event permittee invited or allowed to participate in the special event.

14
15 *History Note: Authority G.S. 18B-100; 18B-207; 18B-1114.7; 18B-1116;*