



NOTICE OF TEXT

[Authority G.S. 150B-21.2(c)]

OAH USE ONLY

VOLUME: 35

ISSUE: 09

CHECK APPROPRIATE BOX:

- Notice with a scheduled hearing
- Notice without a scheduled hearing
- Republication of text. Complete the following cite for the volume and issue of previous publication, as well as blocks 1 - 4 and 7 - 14. If a hearing is scheduled, complete block 5.
Previous publication of text was published in Volume: Issue:

1. Rule-Making Agency: [Alcoholic Beverage Control Commission](#)

2. Link to agency website pursuant to G.S. 150B-19.1(c): <https://abc.nc.gov/>

3. Proposed Action -- Check the appropriate box(es) and list rule citation(s) beside proposed action:

ADOPTION: [14B NCAC 15A .1903-.1904](#)

AMENDMENT: [14B NCAC 15A .1405, .1802; 15B .0501](#)

REPEAL:

READOPTION with substantive changes:

READOPTION without substantive changes:

REPEAL through READOPTION:

4. Proposed effective date: [03/01/2021](#)

5. Is a public hearing planned? [Yes](#)

If yes:

Date	Time	Location
12/09/2020	10:00 a.m.	ABC Commission Hearing Room, 400 East Tryon Road, Raleigh, NC 27610

6. If no public hearing is scheduled, provide instructions on how to demand a public hearing:

7. Explain Reason For Proposed Rule(s):

To adopt a rule to define the process and conditions under which a local ABC board may deliver orders of spirituous liquor to a mixed beverage permittee using local board employees or independent contractors. This rule also establishes the process the local board shall following in establishing the fee to be charged by the local board for deliveries made by the local board to mixed beverage permittees. Additionally, to adopt a rule to define the process and conditions under which a mixed beverage permittee may hire an independent contractor to pick up the permittee's orders of spirituous liquor from the local board, and fortified wine from a wine wholesaler. 14B NCAC 15A .1405 is to be amended to require that records of local board deliveries to mixed beverage permittees be retained for three years. 14B NCAC 15A .1802 is to be amended to add mixed beverage permittee's independent contractors to the list of individuals the local board shall give a copy of the Purchase-Transportation Permit/Invoice Form to that shall accompany the transport of spirituous liquor. 14B NCAC 15B .0501 is to be amended to add the mixed beverage permittee's independent contractor to the list of individuals required to have a copy of the Purchase-Transportation Permit/Invoice Form for spirituous liquor sold to a mixed beverage permittee.

8. Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or email. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Rule(s) is automatically subject to legislative review. Cite statutory reference:

9. The person to whom written comments may be submitted on the proposed rule(s):

Name: Walker Reagan
Address: 400 East Tryon Road
Raleigh, NC 27610
Phone (optional): 919-779-8367
Fax (optional): 919-661-6765
EMail (optional) walker.reagan@abc.nc.gov

10. Comment Period Ends: 01/04/2021

11. Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

No fiscal note required

12. Rule-making Coordinator:

Name: Walker Reagan
919-779-8367
walker.reagan@abc.nc.gov

Agency contact, if any:

Name: Walker Reagan
Phone: 919-779-8367
Email: walker.reagan@abc.nc.gov

13. The Agency formally proposed the text of this rule(s) on

Date: 10/07/2020

1 14B NCAC 15A .1405 is proposed for amendment as follows:

2

3 **14B NCAC 15A .1405 RECORDS REQUIRED**

4 (a) A record of all orders, receipts, invoices, and payments shall be maintained by local boards and be available for
5 inspection by any representative of the Commission during the local board's normal business hours.

6 (b) Local boards shall retain the following records for the length of time specified in this Paragraph:

7 (1) sales report until the annual audit is completed,

8 (2) warehouse report for one year,

9 (3) daily store report until the annual audit is completed,

10 (4) stock difference report for three years,

11 (5) receiving report until the annual audit is completed,

12 (6) clerk's daily sales and cash report until the annual audit is completed,

13 (7) paid invoices for three years,

14 (8) loss and damage claim records for three years, and

15 (9) required records pursuant to 14B NCAC 15A .1903 and 14B NCAC 15B .0501 related to the sale
16 of mixed beverages for three years.

17

18 *History Note: Authority G.S. 18B-100; 18B-203(a)(4); 18B-205; 18B-207; 18B-702(s), (u);*

19 *Eff. January 1, 1982;*

20 *Amended Eff. May 1, 1984;*

21 *Transferred and Recodified from 04 NCAC 02R .1406 Eff. August 1, 2015;*

22 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22,*
23 *2015;*

24 *Amended Eff. March 1, 2021; December 1, 2019;*

1 14B NCAC 15A .1802 is proposed for amendment as follows:

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3 **14B NCAC 15A .1802 MIXED BEVERAGE~~BEVERAGES~~ PERMIT/INVOICE FORM**

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

7 (b) Contents of Form; Copies. Each Purchase-Transportation Permit/Invoice Form shall be printed in duplicate and
8 shall show on the face of the form the information required by 14B NCAC 15B .0501. The local board shall retain
9 one copy in its permanent records for a period of three years and shall give one copy of the ~~permit/invoice Form~~ to
10 the mixed beverages ~~permittee~~ permittee, or the mixed beverages permittee's designated employee or independent
11 contractor, to accompany the spirituous liquor during transport.

12

13 *History Note: Authority G.S. 18B-100; ~~18B-205~~; 18B-205(b); 18B-207; 18B-404(b); 18B-807;*

14 *Eff. January 1, 1982;*

15 *Amended Eff. November 1, 2010; May 1, 1984;*

16 *Transferred and Recodified from 04 NCAC 02R .1802 Eff. August 1, 2015;*

17 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22,*
18 *2015;*

19 *Amended Eff. _____.*

20

1 14B NCAC 15A .1903 is proposed for adoption as follows:
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3 **14B NCAC 15A .1903 DELIVERY OF MIXED BEVERAGES PERMITTEE ORDERS**

4 (a) A local board's employee or independent contractor may deliver spirituous liquor purchased by a mixed beverage
5 permittee to the permittee's licensed premises if all of the following conditions are met:

- 6 (1) The mixed beverages permittee paid the local board for the spirituous liquor prior to transportation
7 to the mixed beverage permittee.
- 8 (2) Alcoholic beverages shall be transported from the place of purchase to the permitted premises.
- 9 (3) Deliveries shall be made by 9:30 p.m. on the date of purchase.
- 10 (4) A copy of the Purchase-Transportation/Invoice Form for the alcoholic beverages being transported
11 shall be in the possession of the individual during transportation and shall be provided to the mixed
12 beverages permittee at the time of delivery.
- 13 (5) The local board's employee or independent contractor shall obtain a signed acknowledgment of
14 receipt of the alcoholic beverages delivered from the mixed beverages permittee and shall return a
15 copy of the signed acknowledgement to the local board. The local board shall retain a copy of the
16 signed acknowledgement of receipt pursuant to 14B NCAC 15A .1405(b)(9).
- 17 (6) The local board shall be liable for any damage, breakage or theft of the alcoholic beverages being
18 transported until possession is acknowledged by the mixed beverages permittee.

19 (b) A local board may contract with an independent contractor to provide delivery of spirituous liquor from an ABC
20 store or the local board's warehouse to a mixed beverages permittee if all of the following conditions are met:

- 21 (1) The local board enters into a written contract with the independent contractor.
- 22 (2) The independent contractor furnishes proof to the local board that the independent contractor is a
23 motor vehicle carrier with a surety bond in compliance with G.S. 18B-1115(d) and (e).
- 24 (3) The contract may be terminated at will by either party without cause.
- 25 (4) The independent contractor maintains in force an indemnity and fidelity insurance policy with the
26 local board named as an additional insured in an amount sufficient to insure the value of the
27 alcoholic beverages to be delivered by the independent contractor on the behalf of the local board.
- 28 (5) The independent contractor remains in compliance with this Rule.

29 (c) An independent contractor may deliver spirituous liquor to a mixed beverages permittee pursuant to a contract
30 with a local board if all of the following conditions are met:

- 31 (1) The local board issues a purchase-transportation permit to the independent contractor pursuant to
32 G.S. 18B-403 for the spirituous liquor to be delivered.
- 33 (2) The independent contractor assumes liability for any damage, breakage, or theft of the spirituous
34 liquor to be delivered from the time possession is taken by the independent contractor from the local
35 board until delivery of the spirituous liquor is acknowledged by the mixed beverages permittee that
36 purchased the spirituous liquor.

1 (d) A local board may charge a mixed beverages permittee any amount of a fee for the delivery of spirituous liquor
2 to a mixed beverages permittee by an employee of the local board. In determining the amount of the fee to be charged
3 for the delivery of spirituous liquor to a mixed beverages permittee by an employee of the local board, the local board
4 shall set the fee structure or rate at a public meeting. In setting the delivery fee structure or rate, the local board shall
5 specify what cost factors the local board considered in determining the fee structure or rate.

6 (e) If a local board uses an independent contractor to deliver spirituous liquor to a mixed beverages permittee, the
7 local board shall charge a mixed beverages permittee any amount of a fee for the delivery, provided that the amount
8 of the fee covers at a minimum the actual amount paid by the local board to the independent contractor for the delivery.
9 The fee charged pursuant to this Paragraph shall be set in accordance with Paragraph (d) of this Rule.

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11 *History Note: Authority G.S. 18B-100; 18B-207; 18B-701(a)(1) and (2); S.L. 2019-182, Sec. 25.(b);*

12 *Eff. _____.*

13

1 14B NCAC 15A .1904 is proposed for adoption as follows:
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3 **14B NCAC 15A .1904 TRANSPORT OF MIXED BEVERAGE PERMITTEE ORDERS**

4 (a) A mixed beverages permittee may contract with an independent contractor to transport alcoholic beverages
5 purchased by the mixed beverages permittee from a local board or from a wine wholesaler to the licensed premises of
6 the mixed beverages permittee if all of the following conditions are met:

7 (1) The mixed beverages permittee enters into a written contract with the independent contractor.

8 (2) The independent contractor furnishes proof to the mixed beverages permittee that the independent
9 contractor is a motor vehicle carrier with a surety bond in compliance with G.S. 18B-1115(d) and
10 (e).

11 (3) The mixed beverages permittee furnishes the local board with a copy of the mixed beverages
12 permittee's contract with the independent contractor. The mixed beverages permittee shall notify
13 the local board within two business days of the termination of any contract the mixed beverages
14 permittee previously had with an independent contractor pursuant to this Rule.

15 (4) The independent contractor remains in compliance with this Rule.

16 (b) A mixed beverages permittee may authorize an independent contractor to transport alcoholic beverages on behalf
17 of the mixed beverages permittee from a local board or a wine wholesaler if all of the following conditions are met:

18 (1) The independent contractor has in its possession a copy of the executed contract with the mixed
19 beverages permittee at the time the independent contractor receives and possesses alcoholic
20 beverages on behalf of the mixed beverages permittee from a local board or a wine wholesaler.

21 (2) The independent contractor possesses a purchase-transportation permit issued by the local board to
22 the independent contractor pursuant to G.S. 18B-403 for the alcoholic beverages to be delivered.

23 (3) The independent contractor possesses a copy of the Purchase-Transportation/Invoice Form for the
24 alcoholic beverages being transported during transportation to the mixed beverages permittee that
25 shows the independent contractor as the agent for the mixed beverages permittee.

26 (4) The mixed beverages permittee signs an acknowledgment of receipt of the spirituous liquor
27 delivered and a copy of the signed acknowledgement is returned by the mixed beverages permittee
28 to the local board within two business days of the date of the delivery for retention by the local
29 board.

30 (5) The mixed beverages permittee assumes liability for any damage, breakage, or theft of the spirituous
31 liquor to be transported from the time possession is taken by the independent contractor from the
32 local board until delivery of the spirituous liquor to the mixed beverages permittee.

33 (6) The mixed beverages permittee may by contract require the independent contractor to assume
34 liability and maintain in force an indemnity and fidelity insurance policy with the mixed beverages
35 permittee named as an additional insured in an amount sufficient to insure the value of the alcoholic
36 beverages to be delivered by the independent contractor on the behalf of the mixed beverages
37 permittee. The policy may include coverage for any damage, breakage, or theft of the alcoholic

1 beverages to be delivered from the time possession is taken by the independent contractor from the
2 local board or wine wholesaler until delivery of the alcoholic beverages is acknowledged by the
3 mixed beverages permittee that purchased the alcoholic beverages.
4

5 *History Note:* Authority G.S. 18B-100; 18B-207; 18B-701(a)(1) and (2); S.L. 2019-182, Sec. 25.(b);
6 Eff. _____.
7

1 14B NCAC 15B .0501 is proposed for amendment as follows:
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3 **SECTION .0500 - ADDITIONAL REQUIREMENTS FOR MIXED BEVERAGES PERMITTEES**
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5 **14B NCAC 15B .0501 PURCHASE TRANSPORTATION PERMIT/PURCHASE INVOICE FORM**

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

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

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

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

30 (d) The destination for the spirituous liquor being transported pursuant to a Purchase-Transportation Permit/Invoice
31 form shall be the address of the permittee's licensed premises.

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33 *History Note: Authority G.S. 18B-100; 18B-207; ~~18B-403(d)~~; 18B-404;*

34 *Eff. January 1, 1982;*

35 *Amended Eff. July 1, 1992; May 1, 1984;*

36 *Transferred and Recodified from 04 NCAC 02S .0502 Eff. August 1, 2015;*

1 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20,*
2 *2016;*
3 *Amended Eff. _____.*