



## NOTICE OF TEXT

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

**OAH USE ONLY**

VOLUME: 35

ISSUE: 06

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](#)

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

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

ADOPTION: [14B NCAC 15A .1305](#)

AMENDMENT: [14B NCAC 15A .1304, .1403](#)

REPEAL:

READOPTION with substantive changes:

READOPTION without substantive changes:

REPEAL through READOPTION:

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4. Proposed effective date: [02/01/2021](#)

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

If yes:

Date	Time	Location
<a href="#">11/04/2020</a>	<a href="#">10:00 a.m.</a>	<a href="#">ABC Commission Hearing Room, 400 East Tryon Road, Raleigh, NC 27610</a>

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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 and amend rules to implement S.L. 2019-182, Sec. 3 allowing certain orders of eligible distillery products. Rule 14B NCAC 15A .1304 is amended to implement the new law applicable to direct shipments of spirituous liquor from the supplier to a local board. Rule 14B NCAC 15A .1305 is adopted to authorize distiller, brokerage and supplier representatives to transport spirituous liquor owned by a local board to another local board that acquires the spirituous liquor. Rule 14B NCAC 15A .1403 is amended to implement G.S. 18B-800(c1) with regards to sales of single bottles of spirituous liquor off the Special Order Price List and to amend the rule with regards to requiring prepayment by the consumer before orders are placed for special order products. Paragraphs (e) through (j) of Rule 14B NCAC 15A .1403 is being recodified, as amended, as new Rule 14B NCAC 15A .1407.

**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: 11/16/2020**

**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: 08/12/2020**

1 14B NCAC 15A .1304 is proposed for amendment as follows:

2

3 **14B NCAC 15A .1304 DIRECT SHIPMENTS**

4 (a) A "direct shipment" means a shipment from the distiller or a warehouse of spirituous liquors, or from an antique  
5 spirituous liquor ~~seller of antique spirituous liquor, seller,~~ directly to a local board without passing through the State  
6 ABC warehouse.

7 (b) ~~Direct~~In addition to direct shipments authorized pursuant to G.S. 18B-800(c2), direct shipments shall be allowed  
8 by the Commission in emergency situations when the State ABC warehouse is closed ~~due to natural or other disasters~~  
9 or in a situation ~~where~~where, for transportation ~~reasons~~reasons, it is mutually advantageous to local boards, ~~the~~  
10 ~~Commission, or boards and~~ the operator of the State ABC warehouse.

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

16 (d) Upon compliance with ~~14B NCAC 15A .1403 and obtaining a transportation permit as required by G.S. 18B-403,~~  
17 14B NCAC 15A .1403, an antique spirituous liquor seller may deliver antique spirituous liquor listed in its inventory  
18 directly to the local board that placed the special order for that inventory.

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20 *History Note: Authority G.S. 18B-100; 18B-204; 18B-207; 18B-403; 18B-701(a)(1);*

21 *Eff. January 1, 1982;*

22 *Amended Eff. January 1, 2011; May 1, 1984;*

23 *Transferred and Recodified from 04 NCAC 02R .1305 Eff. August 1, 2015;*

24 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22,*  
25 *2015;*

26 *Amended Eff. January 1, 2018.*

27

1 14B NCAC 15A .1305 is proposed for adoption as follows:

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3 **14B NCAC 15A .1305 TRANSPORTATION BETWEEN ABC BOARDS**

4 (a) A local board may authorize a distiller representative, brokerage representative, or supplier representative, on its  
5 behalf, to transport spirituous liquor owned by the local board to another local board that has purchased, exchanged,  
6 or otherwise obtained the spirituous liquor pursuant to Rule 14B NCAC 15A .1301(e). The authorization shall be in  
7 writing and shall be accompanied by an invoice for the spirituous liquor being transported.

8 (b) A copy of the authorization to transport the spirituous liquor and the invoice for the spirituous liquor shall be in  
9 the possession of the distiller representative, brokerage representative, or supplier representative during the  
10 transportation.

11 (c) The transferring local board shall be responsible for any damage, breakage, or theft of the spirituous liquor being  
12 transferred until receipt of the delivery is acknowledged in writing by the receiving local board.

13 (d) A copy of the acknowledgement of receipt signed by the receiving local board shall be sent by the receiving local  
14 board to the transferring local board together with any applicable payment in accordance with Rule 14B NCAC 15A  
15 .1406.

16 (e) A distiller representative, brokerage representative, or supplier representative transporting spirituous liquor  
17 pursuant to this Rule shall be exempt from the provisions of G.S. 18B-1115 pursuant to G.S. 18B-1115(g).

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19 *History Note: Authority G.S. 18B-100; 18B-204; 18B-207, 18B-1115(g);*

20 *Eff. \_\_\_\_\_.*

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1 14B NCAC 15A .1403 is proposed for amendment as follows:

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3 **14B NCAC 15A .1403 SPECIAL ORDERS**

4 (a) Spirituous liquor products shall be approved for purchase from the Special Orders Price List as follows:

5 (1) When requested by a customer, a local board shall request that the Commission consider approval  
6 for inclusion on the Special Orders Price List any spirituous liquor brand or container size that is  
7 not otherwise approved.

8 (2) The Commission shall consider the local board's request, and approve, in accordance with 14B  
9 NCAC 15C .0203 and .0204, any brand or product for special order and the addition to the Special  
10 Orders Price List, including the special item case size requirement as ~~required~~established by the  
11 ~~vendor of at least one case~~vendor.

12 (b) When requested by a customer, a local board ~~may~~shall place an order with the Commission for any ~~products~~special  
13 item case on the Special Orders Price List. ~~All customer orders shall be prepaid by the customer prior to the order~~  
14 ~~being placed with the Commission. Any order must meet the minimum order quantity requirements set by the~~  
15 ~~Commission. A local board is not required to place an order on behalf of a customer for a quantity less than the case~~  
16 ~~size requirement established by the vendor. If a customer desires to purchase a quantity less than the special item case~~  
17 ~~size of any product, a local board may purchase any unsold bottles in the special item case for public sale. Any bottles~~  
18 ~~purchased by the local board in excess of the quantity ordered by customers shall not be eligible to be sold below the~~  
19 ~~uniform price pursuant to Rule 14B NCAC 15A .1702.~~

20 (c) All customer orders shall be prepaid by the customer prior to the order being placed with the Commission.  
21 However, a local board may waive the requirement for the customer to prepay for the order if the local board elects to  
22 purchase the portion of the special item case in excess of the quantity ordered by the customer.

23 (d) Upon receipt of the special order from the local board, the Commission shall place the order with the vendor for  
24 shipment to the State ABC warehouse for delivery to the local board by the State ABC warehouse Contractor with the  
25 Contractor's next regularly scheduled shipment to the local board.

26 (d)(e) ~~After completing the special order transaction with the customer, the local board shall report the sale of~~  
27 ~~merchandise sold pursuant to this Rule on its next monthly report to the Commission.~~

28 For purposes of this Section and implementation of G.S. 18B-800(c1), the following terms mean:

29 (1) "Special item case" means the vendor's minimum bottle case size for special item products.

30 (2) "Special item list" means Special Order Price List.

31 (3) "Special Order Price List" means the list of spirituous liquor products approved by the Commission  
32 for sale in the State that are not available through the State ABC warehouse, but are available by  
33 special order in accordance with this Rule and Rule 14B NCAC 15A .1407.

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35 *History Note: Authority G.S. 18B-100; 18B-101; 18B-207; 18B-800(c); 18B-804; 18B-807; 18B-1001; 18B-*  
36 *1002(a)(4);*  
37 *Eff. January 1, 1982;*

1 *Amended Eff. May 1, 1984;*  
2 *Transferred and Recodified from 04 NCAC 02R .1404 Eff. August 1, 2015;*  
3 *Agency did not readopt rule pursuant to G.S. 150B-21.3A by RRC established deadline of May 31,*  
4 *2017;*  
5 *Eff. January 1, 2018 (Codifier approved request from agency to reuse rule number).;*  
6 *Amended Eff. \_\_\_\_\_.*

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8  
9 **[Paragraphs (e) – (j) of 14B NCAC 15A .1403 will be recodified as 14B NCAC 15A .1407.]**

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11 **14B NCAC 15A .1407 – ANTIQUE SPIRITUOUS LIQUOR SPECIAL ORDERS**

12 ~~(e)~~(a) In addition to the provisions set forth in Paragraph (a) of ~~this Rule~~, Rule .1402 of this Section, antique spirituous  
13 liquor products shall be approved for purchase from the Special Orders Price List as follows:

- 14 (1) Upon receipt of a request for inclusion of an antique spirituous liquor on the Special Orders Price  
15 List from either a ~~local board at the request of the owner of antique spirituous liquor~~, the owner of  
16 antique spirituous liquor, a local board at the request of the owner of antique spirituous liquor, or a  
17 mixed beverages permittee, the Commission shall consider the request. ~~Any antique spirituous~~  
18 ~~liquor brand or product approved by the Commission for sale pursuant to 14B NCAC 15C .0203~~  
19 ~~and .0204 shall be added to the Special Orders Price List. The Commission shall determine the retail~~  
20 ~~price for each product based on the markup formula pursuant to G.S. 18B-804, set up each product~~  
21 ~~in its pricing system, assign code numbers for each product, and notify the local board and the State~~  
22 ~~ABC warehouse of the price and product code number of each product.~~
- 23 (2) The seller of the antique spirituous liquor shall provide to the Commission an inventory of each  
24 product to be sold, the seller's selling price per bottle, and a picture or copy of the label of each  
25 product legible to the Commission ~~sufficient~~that allows it to identify the product to be sold.
- 26 (3) Any antique spirituous liquor brand or product approved by the Commission for sale shall be added  
27 to the Special Orders Price List, listed by seller. The Commission shall determine the retail price for  
28 each product based on the markup formula pursuant to G.S. 18B-804, set up each product in its  
29 pricing system, assign code numbers for each product, and notify the local board and the State ABC  
30 warehouse of the price and product code number of each product.

31 ~~(f)~~(b) An owner of antique spirituous liquor who ~~desires~~wants to sell antique spirituous liquor shall obtain a special  
32 one-time permit pursuant to G.S. 18B-1002(a)(4) prior to the sale.

33 ~~(g)~~(c) A mixed beverages permittee who wants to order antique spirituous liquor from the Special Orders Price List  
34 from a ~~permittee authorized to sell an~~ antique spirituous liquor pursuant to G.S. 18B-1002(a)(4) ~~seller~~ shall first obtain  
35 an antique spirituous liquor permit pursuant to G.S. 18B-1001(20).

36 ~~(h)~~(d) When requested by an antique spirituous liquor permittee, a local board shall place an order from ~~the special~~  
37 ~~one-time permittee selling~~ the antique spirituous liquor seller for spirituous liquor on the Special Orders Price list. All

1 orders shall be prepaid by the antique spirituous liquor permittee to the local board prior to the order being placed with  
2 the special one-time permittee.

3 (i)(e) Upon delivery of the antique spirituous liquor to the local board by the ~~special one-time permittee~~, antique  
4 spirituous liquor seller, the local board shall pay the seller's price to the special one-time permittee and notify the  
5 antique spirituous liquor permittee the order is available for ~~pick up~~, pickup and the location where it may be picked  
6 up. The local board shall collect payment for the antique spirituous liquor from the antique spirituous liquor permittee  
7 at the time of the pickup and shall pay the seller's price to the antique spirituous liquor seller from the proceeds of the  
8 sale.

9 (j)(f) Once the local board has possession of the antique spirituous liquor to be sold, the local board shall notify the  
10 Commission and the State ABC ~~warehouse~~, warehouse and forward the invoice bill of lading for the product to the  
11 State ABC warehouse. The State ABC warehouse shall bill the local board for the bailment and bailment surcharge  
12 for the product. The local board shall pay the bailment and bailment surcharge to the Commission.

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14 *History Note: Authority G.S. 18B-100; 18B-101; 18B-207; 18B-800(c); 18B-804; 18B-807; 18B-1001; 18B-*  
15 *1002(a)(4);*  
16 *Eff. January 1, 1982;*  
17 *Amended Eff. May 1, 1984;*  
18 *Transferred and Recodified from 04 NCAC 02R .1404 Eff. August 1, 2015;*  
19 *Agency did not readopt rule pursuant to G.S. 150B-21.3A by RRC established deadline of May 31,*  
20 *2017;*  
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