

REQUEST FOR TECHNICAL CHANGE

AGENCY: ABC Commission

RULE CITATION: 14B NCAC 15A .1405

DEADLINE FOR RECEIPT: Wednesday, February 10, 2021

NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Please end (b)(1) through (8) with semi-colons, rather than periods.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: January 27, 2021

1 14B NCAC 15A .1405 is amended as published in 35:09 NCR 925 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.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: ABC Commission

RULE CITATION: 14B NCAC 15A .1802

DEADLINE FOR RECEIPT: Wednesday, February 10, 2021

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a) and (b), do you need the introductory phrases of "Providing Form." in (a) and "Contents of Form; Copies." in (b)? I note that although these Paragraph introductions are not in the other Rules filed for this month's RRC review, there is similar language in Section .1800, so you may prefer to keep it for consistency.

In (a), when would the sale of mixed beverages be lawful? Is there a cross-reference available?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: January 27, 2021

1 14B NCAC 15A .1802 is amended as published in 35:09 NCR 925 as follows:

2
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. March 1, 2021.*
20

REQUEST FOR TECHNICAL CHANGE

AGENCY: ABC Commission

RULE CITATION: 14B NCAC 15A .1903

DEADLINE FOR RECEIPT: Wednesday, February 10, 2021

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Please consider beginning (a)(1) through (6), (b)(1) through (5), and (c)(1) and (2) with lower case letters; ending (a)(1) through (5), (b)(1) through (4), and (c)(1) with semi-colons; and adding "and" at the end of (a)(5), (b)(4), and (c)(1).

Paragraph (a) is grammatically inconsistent with Paragraphs (b) and (c) in that Subparagraphs (a)(2) through (6) use "shall be" and the other Paragraphs do not. Given the context, I'm not sure that "shall" is necessary. So, for example, could you revise (a)(2) to say "alcoholic beverages ~~shall be~~ are transported..."; in (a)(3), "deliveries ~~shall be~~ are made..."; in (a)(4), "... transported ~~shall be is~~ in the possession..."; and in (a)(5) "contractor ~~shall obtain~~ obtains..."?

In (b)(5), what is meant by 'remain in compliance with this Rule'? Are you specifically referring to Paragraph (c)? If so, please say that.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: January 27, 2021

1 14B NCAC 15A .1903 is adopted as published in 35:09 NCR 925 as follows:

2
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.

10
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. March 1, 2021

REQUEST FOR TECHNICAL CHANGE

AGENCY: ABC Commission

RULE CITATION: 14B NCAC 15A .1904

DEADLINE FOR RECEIPT: Wednesday, February 10, 2021

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Please consider beginning (a)(1) through (4) and (b)(1) through (6); ending (a)(1) through (3) and (b)(1) through (5) with semi-colons; and adding "and" at the end of (a)(3) and (b)(5).

Is (a)(4) a condition to be met to enter into the contract or should this be a separate Paragraph? Also, what is meant by "this Rule"? Do you mean this Paragraph? If you mean Rule, would it be appropriate to move this to a new Paragraph (c)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: January 27, 2021

1 14B NCAC 15A .1904 is adopted with changes as published in 35:09 NCR 925 as follows as follows:

2
3 **14B NCAC 15A .1904 TRANSPORT OF MIXED ~~BEVERAGE~~ BEVERAGES 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. March 1, 2021.*
7

1 14B NCAC 15B .0501 is amended as published in 35:09 NCR 925 as follows:

2
3 **SECTION .0500 - ADDITIONAL REQUIREMENTS FOR MIXED BEVERAGES PERMITTEES**
4

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.
32

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. March 1, 2021.*