

04 NCAC 02S .0102 is amended with changes as published in 28:22 2713 through 2715 as follows:

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

(a) Forms. Application forms for all ABC permits may be obtained from the North Carolina Alcoholic Beverage Control Commission. Commission's office or web site as referenced in 04 NCAC 02R .0102.

(b) Statutory Requirements. Before the issuance of any ABC permit, an applicant shall comply with the statutory requirements of Articles 9 and 10 of Chapter 18B of the General Statutes and with the rules of the Commission.

(c) Separate Permits Required. An applicant operating separate buildings or structures not connected directly with each other or businesses with separate trade names shall obtain and hold separate permits for each building or business for which he or she wants permits, and ~~he~~ shall pay the appropriate application fees as provided in G.S. 18B-902(d). Where there are multiple buildings, and the Commission determines that the business is operated as one entity, the Commission may, in its discretion, issue one permit.

(d) Information Required on Application. An applicant for an ABC permit shall file a written application with the Commission and in the application shall state, under oath, the following information:

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

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

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

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

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

(i) Retail Sales at Public Places Restricted. The sale and delivery of alcoholic beverages by permitted retail outlets located on fair grounds, golf courses, ball parks, race tracks, and other similar public places are restricted to an enclosed establishment in a designated place. No alcoholic ~~beverages, beverages~~ shall be sold, ~~served, [served]~~ served, or delivered by these outlets outside the enclosed establishment, nor in grandstands, stadiums stadiums, or bleachers at public gatherings, gatherings, except as provided in Paragraph (1) of this Rule.

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

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

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

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

- (1) obtain a single permit for all its locations in the terminal;

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

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

(l) Professional Sporting Events. Notwithstanding Paragraph (i) of this Rule, holders of a retail permit pursuant to G.S. 18B-1001(1) may sell malt beverages for consumption in the seating areas of stadiums, ball ~~parks~~ ~~parks~~, and similar public places with a seating capacity of 3,000 or more during professional sporting events pursuant to G.S. 18B-1009, provided that:

- (1) the permittee or the permittee's employee shall not wear or display alcoholic beverage branded advertising;
- (2) the permittee or the permittee's employee shall not use branded carrying trays, ~~coolers~~ ~~coolers~~, or other equipment to transport malt beverage products;
- (3) the permittee or the permittee's employee may display the malt beverage product names and prices provided that all of the product names are displayed with the same font size and font style; and
- (4) in-stand sales shall cease, whichever is earlier, upon the cessation of other malt beverage sales or upon the commencement of:
- (A) the eighth inning during baseball ~~games, provided that if~~ ~~games; provided that if~~ a single ticket allows entry to more than one baseball game, then the eighth inning of the final game;
- (B) the fourth quarter during football and basketball games;
- (C) the sixtieth minute during soccer games;
- (D) the third period during hockey games;
- (E) the final 25 percent of the distance scheduled for automotive races; and
- (F) the final hour of the anticipated conclusion of a contest or event for all other events.

History Note: Authority 18B-100; 18B-206(a); 18B-207; 18B-900; 18B-901(d); 18B-902; 18B-903; 18B-905; 18B-1000(3); 18B-1001; 18B-1008; 18B-1009;

Eff. January 1, 1982;

Amended Eff. [~~October 1, 2014;~~] January 1, 2011; July 1, 1992; May 1, 1984;

Temporary Amendment Eff. October 25, ~~2013;~~ ~~2013;~~

Amended Eff. September 1, 2014.

04 NCAC 02T .0302 is amended **with changes** as published in 28:22 2715 as follows:

04 NCAC 02T .0302 LABELS TO BE SUBMITTED TO COMMISSION

(a) All labels for malt beverage and wine products shall be submitted in duplicate to the Commission on an "Application for Label Approval Form."

(b) Each person requesting label approval shall furnish, in the application for label approval, the names and addresses of the manufacturer, **bottler bottler**, and importer of the product.

(c) Notwithstanding Paragraphs (a) and (b), holders of retail permits pursuant to G.S. 18B-1001(1), ~~(2)~~ (2), or (16) that fill or refill growlers on demand are not required to submit the labels required by Rule .0303(b) of this Section.

History Note: Authority G.S. 18B-100; 18B-206(a); 18B-207; [~~18B-1001(1), (2) and (16);~~ 18B-1001(1); 18B-1001(2); 18B-1001(16);
Eff. January 1, 1982;
[Amended Eff. October 1, 2014;]
Temporary Amendment Eff. October 25, ~~2013;~~ 2013;
Amended Eff. September 1, 2014.

04 NCAC 02T .0303 is amended **with changes** as published in 28:22 2715 as follows:

04 NCAC 02T .0303 LABEL CONTENTS: MALT BEVERAGES

(a) Containers that are prefilled by the manufacturer shall be affixed with Malt malt beverage labels that shall contain the following information in a legible form:

- (1) brand name of product;
- (2) name and address of brewer or bottler;
- (3) class of product **(e.g., beer, ale, porter, lager, bock, stout, or other brewed or fermented beverage);**
- (4) net contents; ~~and~~
- (5) if the malt beverage is fortified with any stimulants, the amount of each (milligrams) per ~~container.~~
container; and
- (6) the alcoholic beverage health warning statement as required by the Federal Alcohol Administration Act, 27 C.F.R. Sections 16.20 through 16.22.

(b) Growlers that are filled or refilled on demand pursuant to Rule .0309 of this Subchapter shall be affixed with a label or a tag that shall contain the following information in type not smaller than 3 millimeters in height and not more than 12 characters per inch:

- (1) brand name of the product dispensed;
- (2) name of brewer or bottler;
- (3) class of product (e.g., beer, ale, porter, lager, bock, stout, or other brewed or fermented beverage);
- (4) net contents;
- (5) if the malt beverage is fortified with any stimulants from the original manufacturer, the amount of each (milligrams) per container;
- (6) name and address of business that filled or refilled the growler;
- (7) date of fill or refill;
- (8) if the malt beverage is more than six percent alcohol by volume, the amount of alcohol by volume pursuant to G.S. 18B-101(9); and
- (9) the following statement: "This product may be unfiltered and unpasteurized. Keep refrigerated at all times."

(c) Growlers that are filled or refilled on demand pursuant to Rule .0309 of this Section shall be affixed with the alcoholic beverage health warning statement as required by the Federal Alcohol Administration Act, 27 C.F.R. Sections 16.20 through 16.22.

History Note: Authority G.S. 18B-100; 18B-101(9); 18B-206(a); 18B-207; [18B-1001(1), (2) and (16); 18B-1001(1); 18B-1001(2); 18B-1001(16); 27 C.F.R. 16.20 through 16.22;
Eff. January 1, 1982;
Amended Eff. [October 1, 2014;] April 1, 2011;
Temporary Amendment Eff. October 25, 2013; 2013;
Amended Eff. September 1, 2014.

04 NCAC 02T .0308 is amended with changes as published in 28:22 2715 through 2716 as follows:

04 NCAC 02T .0308 GROWLERS

(a) As used in this Rule, a growler "growler" is a refillable rigid glass, ceramic, plastic, aluminum aluminum, or stainless steel container with a flip-top or screw-on lid that is no larger than 2 liters (0.5283 gallons) into which a malt beverage is poured prefilled, filled filled, or refilled for off-premises consumption.

(b) Holders of only a brewery permit ~~that have retail permits pursuant to G.S. 18B-1001(2), may sell growlers filled~~ may sell, deliver, and ship growlers prefilled with the brewery's malt beverage for off-premises consumption provided a label is affixed to the growler that accurately provides the information as required by ~~04 NCAC 02T .0303~~ Rules .0303(a) and .0305, .0305 of this Section.

(c) Holders of retail permits pursuant to G.S. 18B-1001(1), ~~(2)~~ (2), or ~~(46)~~ (16) who do not hold a brewery ~~permit~~ permit shall not prefill growlers with malt beverage.

(d) Holders of a brewery permit ~~that~~ who also have retail permits pursuant to G.S. ~~18B-1001(1)~~ 18B-1001(1) may fill or refill growlers on demand with the brewery's malt beverage for off-premises ~~consumption~~ consumption, provided the label as required by Rules .0303(b) and .0305 of this Section is affixed to the growler.

(e) Holders of retail permits pursuant to G.S. 18B-1001(1), ~~(2)~~ (2), or ~~(46)~~ (16) may fill or refill growlers on demand with draft malt beverage for off-premises ~~consumption~~ consumption, provided the label as required by Rules .0303(b) and .0305 of this Section is affixed to the growler.

~~(e) Holders of a brewery permit that have retail permits pursuant to G.S. 18B-1001(2), may refill customer's growlers provided a label is affixed to the growler that accurately provides the information as required by 04 NCAC 02T .0303 and .0305.~~

~~(d) Breweries that refill growlers sold by other breweries shall relabel the growler prior to filling it with malt beverage.~~

~~(e) Breweries that refill growlers sold by other breweries shall remove, deface or cover any permanent or non permanent labels prior to affixing a new label.~~

(f) Holders of retail permits pursuant to G.S. 18B-1001(1), ~~(2)~~ (2), or ~~(46)~~ (16) shall affix a label as required by Rules .0303(b) and .0305 of this Section to the growler when filling or refilling a growler.

(g) Holders of retail permits pursuant to G.S. 18B-1001(1), ~~(2)~~ (2), or (16), may, in their discretion, refuse to fill or refill a growler, except in matters of discrimination pursuant to G.S. 18B-305(c).

History Note: Authority G.S. 18B-100; 18B-206(a); 18B-207; 18B-305; 18B-1001(1), (2) and (46); 18B-1001(1); 18B-1001(2); 18B-1001(16);

Eff. April 1, 2011;

[Amended Eff. October 1, 2014;]

Temporary Amendment Eff. October 25, 2013, 2013;

Amended Eff. September 1, 2014.

04 NCAC 02T .0309 is adopted with changes as published in 28:22 2716 through 2717 as follows:

04 NCAC 02T .0309 GROWLERS: CLEANING, SANITIZING, FILLING AND SEALING

(a) Filling and refilling growlers ~~will~~ shall only occur on demand by a customer.

(b) Growlers shall only be filled or refilled by a permittee or the permittee's employee.

(c) Prior to filling or refilling a growler, the growler and its cap shall be cleaned and sanitized by the permittee or the permittee's employee using one of the following methods:

(1) Manual washing in a three compartment sink:

(A) Prior to starting, clean sinks and work area to remove any chemicals, ~~oils~~ oils, or grease from other cleaning activities;

(B) Empty residual liquid from the growler to a drain. Growlers shall not be emptied into the cleaning water;

(C) Clean the growler and cap in water and detergent. Water temperature shall be at a minimum 110°F or the temperature specified on the cleaning agent manufacturer's label instructions. Detergent shall not be fat or oil ~~based~~ based;

(D) Remove any residues on the interior and exterior of the growler and cap;

(E) Rinse the growler and cap in the middle compartment with water. Rinsing may be from the spigot with a spray arm, from a ~~spigot~~ spigot, or from the tub as long as the water for rinsing shall not be stagnant but shall be continually refreshed;

(F) Sanitize the growler and cap in the third compartment. Chemical sanitizer shall be used in accordance with the EPA-registered label use instructions and shall meet the minimum water temperature requirements of that chemical; and

(G) A test kit or other device that accurately measures the concentration in MG/L of chemical sanitizing solutions shall be provided and be readily accessible for use; or

(2) Mechanical washing and sanitizing machine:

(A) Mechanical washing and sanitizing machines shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer and shall be used according to the machine's design and operation specifications;

(B) Mechanical washing and sanitizing machines shall be equipped with chemical or hot water sanitization;

(C) Concentration of the sanitizing solution or the water temperature shall be accurately determined by using a test kit or other device; and

(D) The machine shall be regularly serviced based upon the manufacturer's or installer's ~~guidelines~~ guidelines;

(d) Notwithstanding Paragraph ~~(b)~~, (c), a growler may be filled or refilled without cleaning and sanitizing the growler as follows:

(1) Filling or refilling a growler with a tube as referenced by Paragraph (e):

- 1 (A) Food grade sanitizer shall be used in accordance with the EPA-registered label use instructions;
- 2 (B) A container of liquid food grade sanitizer shall be maintained for no more than 10 malt beverage
- 3 taps that will be used for filling and refilling growlers;
- 4 (C) Each container shall contain no ~~less~~ fewer than five tubes that will be used only for filling and
- 5 refilling growlers;
- 6 (D) The growler is inspected visually for contamination;
- 7 (E) The growler is filled or refilled with a tube as described in Paragraph (e);
- 8 (F) After each filling or refilling of a growler, the tube shall be immersed in the container with the
- 9 liquid food grade sanitizer; and
- 10 (G) A different tube from the container shall be used for each fill or refill of a growler; or
- 11 (2) Filling a growler with a contamination-free process:
- 12 (A) The growler ~~is~~ shall be inspected visually for ~~contamination; contamination; and~~
- 13 ~~(B) The growler shall only be filled or refilled by a permittee or the permittee's employee; and~~
- 14 ~~(C) (B) Is~~ Shall be otherwise in compliance with the FDA Food Code 2009, Section 3-304.17(c).
- 15 (e) Growlers shall be filled or refilled from the bottom of the growler to the top with a tube that is attached to the malt
- 16 beverage faucet and extends to the bottom of the growler or with a commercial filling machine.
- 17 (f) When not in use, tubes to fill or refill growlers shall be immersed and stored in a container with liquid food grade
- 18 sanitizer.
- 19 (g) After filling or refilling a growler, the growler shall be sealed with a cap.

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21 *History Note: Authority G.S. 18B-100; 18B-206(a); 18B-207; ~~18B-1001(1), (2) and (16); 18B-1001(1); 18B-1001(2);~~*

22 *18B-1001(16); FDA Food Code 2009, Section 3-304.17(c) and Section 4-204.13(a), (b) and (d);*

23 *Amended Eff. October 1, 2014;*

24 *Temporary Adoption Eff. October 25, ~~2013;~~ 2013;*

25 *Amended Eff. September 1, 2014.*