

G.S. 150B-21.3A Report for 04 NCAC Subchapter 02R, ORGANIZATIONAL RULES: POLICIES AND PROCEDURES								
Agency - Alcoholic Beverage Control Commission								
Comment Period - January 7, 2015 - March 8, 2015								
Date Submitted to APO -								
Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Implements or Conforms to Federal Regulation [150B-21.3A(d1)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]
SECTION .0100 - GENERAL PROVISIONS	04 NCAC 02R .0101	PURPOSE	Amended Eff. May 1, 1984	Unnecessary	No		Yes	Necessary without substantive public interest
	04 NCAC 02R .0102	LOCATION AND ADDRESS	Amended Eff. December 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .0103	DEFINITIONS	Amended Eff. November 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
SECTION .0200 - STRUCTURE	04 NCAC 02R .0201	COMMISSION	Amended Eff. May 1, 1984	Unnecessary	No		Yes	Necessary without substantive public interest
	04 NCAC 02R .0202	COMMISSION MEETINGS	Amended Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .0204	ADMINISTRATIVE FUNCTIONS	Amended Eff. July 1, 1992	Unnecessary	No		Yes	Necessary without substantive public interest
	04 NCAC 02R .0205	LEGAL FUNCTIONS	Amended Eff. July 1, 1992	Unnecessary	No		Yes	Necessary without substantive public interest
SECTION .0300 - PUBLICATIONS: RECORDS: COPIES	04 NCAC 02R .0303	DISTRIBUTION, INSPECTION AND COPIES OF ABC LAWS	Amended Eff. November 1, 2010	Unnecessary	No		Yes	Necessary without substantive public interest
	04 NCAC 02R .0304	FEE FOR COMPUTER SERVICES	Amended Eff. November 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
SECTION .0400 - RULE-MAKING	04 NCAC 02R .0402	PETITION FOR ADOPTION OF RULES	Amended Eff. August 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .0403	ADMINISTRATIVE ACTION	Amended Eff. May 1, 1984	Unnecessary	No		Yes	Necessary without substantive public interest
	04 NCAC 02R .0404	NOTICE OF RULE-MAKING HEARINGS; MAILING LIST	Amended Eff. July 1, 1992	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .0405	RULE-MAKING HEARING	Amended Eff. July 1, 1992	Necessary without substantive public interest	No		No	Necessary without substantive public interest
SECTION .0500 - EMERGENCY RULES	04 NCAC 02R .0502	REVOCATION OR SUSPENSION OF PERMIT	Amended Eff. May 1, 1984	Unnecessary	No		Yes	Necessary without substantive public interest
SECTION .0600 - DECLARATORY RULINGS	04 NCAC 02R .0602	ISSUANCE: GROUNDS	Amended Eff. May 1, 1984	Unnecessary	No		Yes	Necessary without substantive public interest
	04 NCAC 02R .0603	REQUEST FOR DECLARATORY RULING	Amended Eff. November 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .0604	GROUNDS FOR DENIAL OF RULING ON VALIDITY	Amended Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .0606	GROUNDS FOR DENIAL: PENDING CONTROVERSY	Eff. January 1, 1982	Unnecessary	No		No	Unnecessary

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	04 NCAC 02R .0607	WITHDRAWAL OF REQUEST FOR DECLARATORY RULING	Eff. January 1, 1982	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .0610	EFFECT OF DECLARATORY RULING	Amended Eff. May 1, 1984	Unnecessary	No		Yes	Necessary without substantive public interest
	04 NCAC 02R .0611	ALTERATION OF DECLARATORY RULING	Amended Eff. May 1, 1984	Unnecessary	No		Yes	Necessary without substantive public interest
	04 NCAC 02R .0612	JUDICIAL REVIEW OF DECLARATORY RULINGS	Amended Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest
SECTION .0700 - PERSONNEL POLICIES: COMMISSION	04 NCAC 02R .0702	DISCIPLINARY ACTION OF EMPLOYEE	Amended Eff. July 6, 1992	Necessary without substantive public interest	No		No	Necessary without substantive public interest
SECTION .0800 - ADJUDICATION: CONTESTED CASES	04 NCAC 02R .0802	NOTICE OF ALLEGED VIOLATION	Amended Eff. February 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .0820	FINAL ADMINISTRATIVE DECISION: HEARING	Amended Eff. July 1, 1992	Unnecessary	No		No	Unnecessary
	04 NCAC 02R .0821	ARTICLE 12 HEARINGS; PETITION AND NOTICE	Eff. July 1, 1992	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .0822	ARTICLE 12 HEARINGS; EVIDENCE	Eff. July 1, 1992	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .0823	FINAL ADMINISTRATIVE DECISION; ORDER	Eff. July 1, 1992	Necessary without substantive public interest	No		No	Necessary without substantive public interest
SECTION .0900 - FISCAL RULES FOR LOCAL BOARDS	04 NCAC 02R .0901	BORROWING MONEY	Amended Eff. July 1, 1992	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .0902	MAINTENANCE OF WORKING CAPITAL	Amended Eff. November 1, 2011	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .0903	DEPOSITS	Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .0904	INVESTMENTS	Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .0905	DAILY DEPOSITS	Amended Eff. November 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .0906	FINANCE OFFICER: DUTIES	Amended Eff. July 1, 1992	Unnecessary	No		No	Unnecessary
	04 NCAC 02R .0907	ANNUAL INDEPENDENT FINANCIAL AUDIT	Amended Eff. November 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .0908	ACCOUNTING SYSTEM	Eff. May 1, 1984	Unnecessary	No		No	Unnecessary
	04 NCAC 02R .0909	TRAVEL POLICIES	Eff. July 1, 1992	Unnecessary	No		No	Unnecessary
SECTION .1000 - LOCAL ABC BOARD: PERSONNEL POLICIES	04 NCAC 02R .1002	USE OF ABC PROPERTY	Amended Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest

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	04 NCAC 02R .1003	CONSUMPTION OF ALCOHOLIC BEVERAGES	Amended Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1004	EMPLOYMENT AGE REQUIREMENT	Amended Eff. February 1, 1986	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1005	WAREHOUSE: PRESENCE OF UNAUTHORIZED PERSON PROHIBITED	Amended Eff. November 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1006	EMPLOYMENT: REMOVAL: OF LOCAL BOARD MEMBER OR EMPLOYEE	Amended Eff. May 1, 1984	Unnecessary	No		No	Unnecessary
	04 NCAC 02R .1009	PERSONNEL MANUAL	Eff. July 1, 1992	Necessary without substantive public interest	No		No	Necessary without substantive public interest
SECTION .1100 - LOCAL ABC BOARDS: RELATIONSHIP WITH STATE COMMISSION	04 NCAC 02R .1101	COMMON INTEREST	Amended Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1102	LOCAL RULES	Amended Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1104	COST OF AUDIT	Eff. January 1, 1982	Necessary without substantive public interest	No		No	Necessary without substantive public interest
SECTION .1200 - OPENING AND DISCONTINUANCE OF STORES	04 NCAC 02R .1201	COMMISSION PROHIBITED FROM ENTERTAINING COMPLAINT	Eff. January 1, 1982	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1202	COMMISSION TO CONSIDER OBJECTIONS	Eff. January 1, 1982	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1203	APPROVAL OF NEW STORES	Amended Eff. November 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1204	NEW STORES PROHIBITED IN CERTAIN AREAS	Eff. January 1, 1982	Unnecessary	No		No	Necessary without substantive public interest
SECTION .1300 - STORAGE AND DISTRIBUTION OF SPIRITUOUS LIQUORS: COMMERCIAL TRANSPORTATION	04 NCAC 02R .1302	STORAGE: DELIVERIES: SECURITY	Amended Eff. January 1, 2011	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1303	COMMERCIAL TRANSPORTATION: PERMIT AND BOND REQUIRED	Amended Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1304	TRANSPORTATION FROM STATE ABC WAREHOUSE	Amended Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest

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	04 NCAC 02R .1305	DIRECT SHIPMENTS	Amended Eff. January 1, 2011	Necessary without substantive public interest	No		No	Necessary without substantive public interest
SECTION .1400 - PURCHASE OF ALCOHOLIC BEVERAGES BY LOCAL BOARDS	04 NCAC 02R .1401	PURCHASE LIMITED TO APPROVED BRANDS	Amended Eff. July 1, 1992	Unnecessary	No		No	Unnecessary
	04 NCAC 02R .1402	PERMIT REQUIRED TO SELL ALCOHOLIC BEVERAGES	Amended Eff. July 1, 1992	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1404	SPECIAL ORDERS	Amended Eff. May 1, 1984	Necessary without substantive public interest	No		Yes	Necessary with substantive public interest
	04 NCAC 02R .1405	COMMEMORATIVE BOTTLES	Amended Eff. November 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1406	RECORDS REQUIRED	Amended Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1407	PAYMENT	Amended Eff. November 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
SECTION .1500 - PRICING OF SPIRITUOUS LIQUOR	04 NCAC 02R .1501	PRICE INCREASES	Amended Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1502	MARKUP FORMULA	Amended Eff. November 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1503	SPECIAL PURCHASE ALLOWANCES; POST OFFS; PASS THROUGHs	Eff. July 1, 1992	Necessary without substantive public interest	No		No	Necessary without substantive public interest
SECTION .1600 - WAREHOUSE STORAGE OF SPIRITUOUS LIQUORS	04 NCAC 02R .1601	PERMIT REQUIRED	Amended Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1602	INSPECTION UPON APPLICATION	Amended Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1603	REQUIREMENTS FOR STORAGE	Amended Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1604	PROHIBITED PRACTICES	Amended Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1605	INSPECTION OF PREMISES AND RECORDS	Amended Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1606	SUSPENSION OF PERMIT	Amended Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest
SECTION .1700 - RETAIL SALES OF ALCOHOLIC BEVERAGES	04 NCAC 02R .1701	REMOVAL OF BEVERAGES FROM ABC STORES	Amended Eff. January 1, 2011	Necessary without substantive public interest	No		No	Necessary without substantive public interest

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	04 NCAC 02R .1702	SALE OF CERTAIN BEVERAGES BELOW RETAIL PRICE	Amended Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1703	STORES: APPEARANCE AND STATE LIST	Amended Eff. November 1, 2011	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1705	HOURS OF SALE	Amended Eff. May 1, 1984	Unnecessary	No		Yes	Necessary without substantive public interest
	04 NCAC 02R .1706	CUSTOMER SERVICE	Amended Eff. November 1, 2011	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1708	PURCHASE-TRANSPORTATION PERMITS	Amended Eff. November 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1709	ALCOHOL REHABILITATION COLLECTIONS PERMITTED	Eff. May 1, 1984	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1711	SHELF MANAGEMENT	Eff. December 1, 2011	Necessary without substantive public interest	No		No	Necessary without substantive public interest
SECTION .1800 - PURCHASE-TRANSPORTATION PERMITS FOR INDIVIDUALS AND MIXED BEVERAGES PERMITTEES	04 NCAC 02R .1801	PURCHASE-TRANSPORTATION PERMITS: WINE: LIQUOR:	Amended Eff. November 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1802	MIXED BEVERAGE PERMIT/INVOICE FORM	Amended Eff. November 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1803	CABINET PERMITTEES; PURCHASE-TRANSPORTATION PERMITS	Amended Eff. November 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1804	TAX STAMP PROCEDURES FOR GUEST ROOM CABINET PERMITTEES	Eff. July 1, 1992	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1805	LOCAL RULES REQUIRED FOR GUEST ROOM CABINET SALES	Eff. July 1, 1992	Necessary without substantive public interest	No		No	Necessary without substantive public interest
SECTION .1900 - SALES OF LIQUOR TO MIXED BEVERAGES PERMITTEES	04 NCAC 02R .1901	MIXED BEVERAGES TAX STAMP	Amended Eff. January 1, 2011	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .1903	LOCAL BOARD PRODUCT IDENTIFICATION	Amended Eff. September 1, 1993	Unnecessary	No		No	Unnecessary
SECTION .2000 – LOCAL BOARD TRAINING	04 NCAC 02R .2001	LOCAL BOARD MEMBERS AND EMPLOYEES	Eff. August 1, 2011	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	04 NCAC 02R .2002	LOCAL BOARD TRAINING COURSES	Eff. August 1, 2011	Necessary without substantive public interest	No		No	Necessary without substantive public interest

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	04 NCAC 02R .2003	PARTICIPATION STANDARDS AND ATTENDANCE REQUIREMENTS	Eff. August 1, 2011	Necessary without substantive public interest	No		No	Necessary without substantive public interest
				Select One	Select One		Select One	Select One

Officers:

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Chairman
Leigh Jeffreys Fanning, Greenville
Treasurer
Dean Proctor, Hickory
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Randy Truitt, Hickory
NBWA Board of Directors

February 28, 2015

K. Renee Cowick, Esq.
Chief Counsel
North Carolina ABC Commission
400 East Tryon Road
Raleigh, NC 27610

Dear Renee,

Attached are the comments from our Association concerning the mandatory rules review of Subchapter 2R, the organizational rules of the N.C. ABC Commission.

Please let me or Kris Gardner know if you should have questions concerning any of our comments to these proposed rules changes.

Thank you for your consideration.

Sincerely,

Timothy D. Kent, CAE
Executive Director

Cc: Kristopher B. Gardner, Association General Counsel
Robert Hamilton, Chief Administrator, N.C. ABC Commission
James Gardner, Chairman, N.C. ABC Commission

NCBWWA
Comments to Subchapter 2R Rules Review

2.25.15

Citation	Rule Name	Agency Determination	NCBWWA Comment
04 NCAC 02R .0101	Purpose	Unnecessary	We believe this rule is necessary. Although the spirit of the rule is similar to the philosophy of the ABC system outlined in G.S. 18B-100, the language is not identical. We believe it is very important for all commissions and agencies to have a stated purpose and philosophy of the rules governing the industry they regulate. We believe this is especially true for beverage alcohol. Statements of purpose are helpful to the extent a rule is deemed unclear or ambiguous by a court or administrative law judge.
04 NCAC 02R .0201	Commission	Unnecessary	We believe this rule is necessary. Although most of the text of this rule mirrors G.S. 18B-200, the second sentence of this rule is <u>not</u> included in the statute ("The chairman shall have the powers and perform the duties prescribed by the Commission including the authority to appoint, promote, demote, and discharge all subordinate officers and employees of the Commission."). We believe that it is important for the Chairman to maintain this authority. G.S. 18B-200(d) provides that the Commission <i>may</i> authorize the Chairman to perform these functions. We believe this rule is the Commission's authorization for the Chairman to "employ, discharge, and otherwise supervise subordinate personnel of the Commission." Without this rule the Chairman would appear to lack that authority.
04 NCAC 02R .0204	Administrative Functions	Unnecessary	We believe this rule is necessary. This rule establishes the Administrator of the ABC Commission. G.S. 18B-200(d) provides that the Commission <i>may</i> authorize the Chairman to oversee general personnel matters, and we believe this rule is the Commission's enabling authority for the Administrator. For clarity we believe it is advisable to keep this rule to confirm that the Administrator coordinates the day-to-day operations of the ABC system.
04 NCAC 02R .0205	Legal	Unnecessary	We believe this rule is necessary. This rule establishes the Legal

	Functions		Division of the ABC Commission. G.S. 18B-200(d) provides that the Commission may authorize the Chairman to oversee general personnel matters, and we believe this rule is the Commission's enabling authority for the Legal Division. For clarity we believe it is advisable to keep this rule to confirm the role of the Legal Division.
04 NCAC 02R .0303	Distribution, Inspection, and Copies of ABC Laws	Unnecessary	We believe this rule is important because it clarifies those who may receive a copy of the relevant ABC laws at no cost. It also clarifies the appropriate circumstances in which the ABC Commission can charge for copies and the fee that may be collected. We acknowledge this rule is not absolutely necessary in the ordinary sense because the ABC laws are also posted on the Commission's website.
04 NCAC 02R .0403	Administrative Action	Unnecessary	We believe this rule is necessary. This rule provides an important "filtering" process that enables the Commission to disregard rulemaking petitions that may be frivolous or which serve no public interest. If the Commission has the discretion to determine whether to initiate a rulemaking proceeding (see, 4 NCAC 2R.0404), we believe this rule is necessary because it outlines the criteria upon which that determination may be made. Without this rule an argument could be made that the Commission would always have to initiate rulemaking when requested.
04 NCAC 02R .0502	Revocation or Suspension of Permit	Unnecessary	We believe this rule is necessary. This rule confirms that the Commission retains the authority to revoke or suspend an ABC permit for any permittee who sells beverage alcohol in violation of a declared state of emergency. Maintaining this rule confirms that a permittee's disregard of a declared state of emergency is still within the scope of the Commission's enforcement authority even though the violation itself falls under Chapter 14 of the General Statutes (e.g. outside of the ABC laws). We believe this rule could be codified in another location other than the section entitled "Emergency Rules".
04 NCAC 02R .0602	Issuance: Grounds	Unnecessary	We believe this rule is necessary. This rule provides an important "filtering" process that enables the Commission to disregard petitions for a declaratory ruling that may be frivolous or which are otherwise undesirable. If the Commission has the discretion to determine whether to make a declaratory ruling (see, 4 NCAC

			2R.0603), we believe this rule is necessary because it outlines the criteria upon which that determination may be made. See also G.S. 150B-4 ("The agency shall prescribe in its rules the procedure for requesting a declaratory ruling and the circumstances in which rulings shall or shall not be issued."). Without this rule an argument could be made that the Commission would <i>always</i> have to issue a declaratory ruling when requested.
04 NCAC 02R .0610	Effect of Declaratory Ruling	Unnecessary	We believe this rule is necessary. This rule outlines the extent to which a declaratory ruling is binding upon the permittee who requested the ruling. It also outlines the extent to which the declaratory ruling may apply to other permittees.
04 NCAC 02R .0611	Alteration of Declaratory Ruling	Unnecessary	We believe this rule is necessary. This rule outlines the extent to which the Commission may change or modify a declaratory ruling.

1194392

Cowick, Renee

From: Jon Carr <JCarr@jordanprice.com>
Sent: Friday, March 06, 2015 4:22 PM
To: Cowick, Renee
Subject: Re: Inquiry re Determination of (One!) Unnecessary Rule

Thanks Renee. We will NOT be sending you any formal request to retain this rule. Jon

Jon P. Carr
Attorney at Law
Partner
Certified Mediator
Jordan Price Wall Gray Jones & Carlton
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Raleigh NC 27605-0669
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On Mar 4, 2015, at 3:59 PM, "Cowick, Renee" <Renee.Cowick@abc.nc.gov> wrote:

Paragraphs 2 - 4 are redundant to 18B-802

Heading to my meeting so we can discuss later if you still have questions.

K. Renee Cowick
Chief Counsel
Legal Division Director
NC Alcoholic Beverage Control Commission

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Location: 400 East Tryon Road, Raleigh, NC 27610

E-mail correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: Jon Carr [<mailto:JCarr@jordanprice.com>]
Sent: Wednesday, March 04, 2015 3:54 PM
To: Cowick, Renee
Cc: Jon Carr
Subject: Inquiry re Determination of (One!) Unnecessary Rule

Renee:

This is the one rule I wanted to discuss with you. The Commission has deemed it unnecessary.

04 NCAC 02R .1705 -- Hours of Sale – The rule prohibits sales after a store is closed, and prohibits an employee from entering a store if it is not open except with authorization from the manager. This rule seems to address a situation where the store is closed at 8:30 pm, but a sale is made between then and 9 pm, by prohibiting those sales. If so, it seems this rule may be necessary?

I would appreciate any information you can provide as to why the Commission deemed it unnecessary. I am happy to discuss by phone. I am in the office this afternoon.

Thanks, Jon Carr, lobbyist, NC Association of ABC Boards
Cell 919 270 2906

Jon P. Carr
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Cowick, Renee

From: John W <johnw7@suddenlink.net>
Sent: Saturday, February 07, 2015 10:33 AM
To: Cowick, Renee
Subject: RE: abc.nc.gov Contact Us - Question
Attachments: Distilled_Spirits_Industry_Briefing_Feb_3_2015_Final.pdf

Mrs.(Miss?) Cowick,

Thank you for your response and please forgive my apparent lack of reading skills: I overlooked the link entirely, I'm afraid.

NCABC's willingness to accept public comments is very much appreciated. My comments are regarding the current special order process. The current law reads as follows:

04 NCAC 02R .1404 SPECIAL ORDERS

The Commission will approve special orders when a local board has a request from a customer for one or more cases of merchandise not on the approved list, including container sizes not on the approved list, provided the following steps are taken:

- (1) The local board requests that the Commission obtain the price from the vendor, including freight, bailment surcharge and bailment; the Commission determines the retail price and advises the local board making the request;
- (2) The local board advises the customer of the retail price for the particular case of merchandise. If the customer places an order, the entire purchase price is at that time paid to the local board, and the Commission is advised that the local board has a bona fide order;
- (3) The Commission places the order with the proper vendor and the merchandise is shipped to the state ABC warehouse for delivery to the local board with the next regularly scheduled shipment to the local board; and
- (4) The local board reports the sale of each case of merchandise sold on its monthly report to the Commission.

History Note: Authority G.S. 18B-207; 18B-800(c); 18B-807;
Eff. January 1, 1982; Amended Eff. May 1, 1984.

Note the last date amended is May 1, 1984. The process probably worked very well in 1984, and for some years after, but the special order process is now very much outdated.

Currently, many distillers around the world periodically produce limited release spirits, sometimes on a recurring annual basis, other times the production is a one-time only release. Due to the outdated special order process, it is virtually impossible for North Carolina residents to purchase any of these limited release items.

A few examples: Pappy Van Winkle bourbons – annual release, very high demand in the US, but not available in NC. The annual release of William Larue Weller, usually in autumn, also not available. They are produced at the same distillery that makes Blanton's, which is available in NC. Older Elijah Craig bottlings from Heaven Hill are not available. There are many more bourbon examples, but I do not wish this note to become too lengthy.

Single Malt Scotch Whisky likewise suffers. I have personally tried to special order The Balvenie's Tun 1509, a November-December release, only to be frustrated by NC's special order requirement that I buy the entire case. One bottle of Tun 1509 will sell for \$359, case of 3, making the case price more than \$1000, which I hope you can see is cost prohibitive. When I tried to inquire about Tun 1509 in my local store, I never got a response. I tracked down the distributor myself, and emailed them. They were kind enough to respond, but told me due to NC law, I would have to buy the aforementioned \$1000 case. I declined. I'm in contact with friends/relatives in other states, and hope to buy it that way, but I'm probably too late. It sells out that fast.

Although my interest is primarily with whiskies, I suspect the issue is equally present in other types of distilled spirits.

And if you think the higher end whisk(e)y market is too small to be bothered with, I refer you to the 2015 Distilled Spirits Industry Briefing (attached). I hope you'll peruse the entire document, but in particular please note pages 18 & 19. NC does a good job of stocking products from the Value and Premium segments. By volume (p.18) those two segments represent about 78% of the market, with High End and Super Premium holding only about 22%.

But look at p.19. You'll see that High End and Super Premium net almost 50% of the gross revenue! Unfortunately, NC's special order process is killing the NC market before it can even start! Most high end enthusiasts do what I do: buy out of state. We don't have a choice, if we want to buy the products. We buy while travelling, or get a friend/relative to bring it to us when visiting. That is revenue North Carolina is missing, and I have demonstrated that although the volume is not all that high, the revenue generated is substantial.

NCABC should centrally buy these high demand, limited release products, and market the availability of those products to its stores statewide. Stock centrally, market the availability, and allow customers to order a single bottle.

I would like to discuss further, but hope I've provided enough to stimulate thought. I look forward to hearing from you.

Best regards,
John Willard
252-671-3858
johnw7@suddenlink.net

From: Cowick, Renee [mailto:Renee.Cowick@abc.nc.gov]
Sent: Thursday, February 05, 2015 10:29 AM
To: johnw7@suddenlink.net
Subject: FW: abc.nc.gov Contact Us - Question

Mr. Willard,

The contact information is listed under the *Legal* tab, *Mandatory Rules Review*. Since it happens to be me, I won't make you go through the steps on the website.

Please send your comments in writing via email, fax, or US Mail. All my contact information is listed below my name (or on the website).

Thank you for your interest in this process.

K. Renee Cowick

Chief Counsel

Legal Division Director

NC Alcoholic Beverage Control Commission

Phone: (919) 779-8331

Fax: (919) 661-6165

Email: renee.cowick@abc.nc.gov

Mail: 4307 Mail Service Center, Raleigh, NC 27699-4307

Location: 400 East Tryon Road, Raleigh, NC 27610

E-mail correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: SVC_ABC.Contact

Sent: Thursday, February 05, 2015 10:04 AM

To: Cowick, Renee

Subject: FW: abc.nc.gov Contact Us - Question

From: johnw7@suddenlink.net [<mailto:johnw7@suddenlink.net>]

Sent: Wednesday, February 04, 2015 12:47 PM

To: SVC_ABC.Contact

Subject: abc.nc.gov Contact Us - Question

Regarding: **Question**

From: **John Willard**

E-mail: johnw7@suddenlink.net

Comments: I read that there is a Public Comment Period - January 7, 2015 - March 8, 2015. How does a member of the public make a comment? Is there a document or official form? I would like to comment on the special order requirements.

Cowick, Renee

From: John W <johnw7@suddenlink.net>
Sent: Saturday, February 07, 2015 3:16 PM
To: Cowick, Renee
Subject: Follow up to abc.nc.gov Contact Us - Question

In my earlier email, about 2/3 through, I wrote this:

... I refer you to the 2015 Distilled Spirits Industry Briefing (attached). I hope you'll peruse the entire document, but in particular please note pages 18 & 19. NC does a good job of stocking products from the Value and Premium segments. By volume (p.18) those two segments represent about 78% of the market, with High End and Super Premium holding only about 22%.

I'm sure when you look at the chart on p. 18, you'll see my error. I transposed the numbers a bit. It should have read as follows:

... I refer you to the 2015 Distilled Spirits Industry Briefing (attached). I hope you'll peruse the entire document, but in particular please note pages 18 & 19. NC does a good job of stocking products from the Value and Premium segments. By volume (p.18) those two segments represent **about 72%** of the market, with High End and Super Premium holding only **about 28%**.

Thank you and best regards,

John Willard
252-671-3858
Johnw7@suddenlink.net



State of North Carolina
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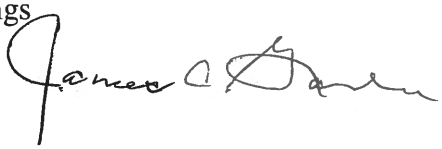
COMMISSION MEMBERS:

JOEL L. KEITH
WAKE FOREST

KEVIN M. GREEN
GREENSBORO

MEMORANDUM

TO: Rules Review Commission
Office of Administrative Hearings

FROM: James C. Gardner, Chairman 

DATE: June 9, 2015

RE: Existing Rules Report for 04 NCAC 02R
Response to Public Comments

At its meeting on May 6, 2015, the ABC Commission reviewed the public comments received during the comment period. Most comments objected to the initial classification of a rule as "unnecessary." After discussion with ABC staff, the ABC Commission agreed with the recommendation to move 12 rules from "unnecessary" to "necessary without substantive public interest" and one rule from "necessary without substantive public interest" to "necessary with substantive public interest."

Thank you.