



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Alcoholic Beverage Control Commission
2. Rule citation & name: 14B NCAC 15B .0217 – Fill or Refill Original Containers
3. Action: <input type="checkbox"/> Adoption <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Repeal
4. Was this an Emergency Rule: <input type="checkbox"/> Yes                      Effective date: <input checked="" type="checkbox"/> No
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: September 13, 2017 b. Proposed Temporary Rule published on the OAH website: September 20, 2017 c. Public Hearing date: October 11, 2017 d. Comment Period: September 20, 2017 – October 20, 2017 e. Notice pursuant to G.S. 150B-21.1(a3)(2): September 13, 2017 f. Adoption by agency on: October 26, 2017 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.  <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: S.L. 2017-87, Section 5 Effective date: June 30, 2017 <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:
Explain: The General Assembly amended the law regulating the sale of malt beverages and wine in containers filled by retail establishments holding certain ABC permits. Section 5(b) of S.L. 2017-87 directed the ABC Commission to adopt rules to implement the provisions of Section 5 no later than 120 days after the act became law, which occurred on June 30, 2017. Section 5(b) says that the ABC Commission may adopt temporary rules to comply with the deadline set forth in this subsection. The temporary rules being proposed for adoption are required to comply with Section 5(b) of S.L. 2017-87.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The General Assembly directed the ABC Commission to adopt rules to implement the provisions of Section 5 of S.L. 2017-87 no later than 120 days after the act became law on June 30, 2017. Adoption of the rules needed as permanent rules could not be done by the ABC Commission within the 120 days deadline set by the General Assembly. The ABC Commission rulemaking emailing list has been engaged in this temporary rulemaking process since August 9, 2017 by reviewing rule drafts in two separate emailings prior to proposal by the ABC Commission on September 13, 2017. Comments were received during this period and changes to address concerns raised were incorporated. Since this rule has been proposed by the ABC Commission, no negative comments or suggested changes have been received concerning this rule either in writing or at the public hearing.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

No

9. Rule-making Coordinator: Walker Reagan

Phone: 919-779-8367

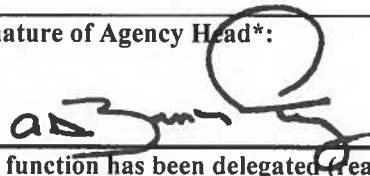
E-Mail: walker.reagan@abc.nc.gov

Agency contact, if any: Walker Reagan

Phone: 919-779-8367

E-Mail: walker.reagan@abc.nc.gov

10. Signature of Agency Head\*:



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: A.D. "Zander" Guy, Jr.

Title: Chairman

E-Mail: Zander.Guy@abc.nc.gov

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

Date returned to agency:

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017**

**SESSION LAW 2017-87  
SENATE BILL 155**

AN ACT TO MAKE VARIOUS CHANGES TO THE ALCOHOLIC BEVERAGE  
CONTROL COMMISSION LAWS.

The General Assembly of North Carolina enacts:

**DISTILLERY PERMIT AMENDMENTS**

**SECTION 1.(a)** G.S. 18B-1105 reads as rewritten:

**"§ 18B-1105. Authorization of distillery permit.**

- (a) Authorized Acts. – The holder of a distillery permit may do any of the following:
- (1) Manufacture, purchase, import, possess and transport ingredients and equipment used in the distillation of spirituous liquor.
  - (2) Sell, deliver and ship spirituous liquor in closed containers at wholesale to exporters and local boards within the State, and, subject to the laws of other jurisdictions, at wholesale or retail to private or public agencies or establishments of other states or nations.
  - (3) Transport into or out of the distillery the maximum amount of liquor allowed under federal law, if the transportation is related to the distilling process.
  - (4) Sell spirituous liquor distilled at the distillery in closed containers to visitors who tour the distillery for consumption off the premises. Sales under this subdivision are allowed only in a county where the establishment of a county or municipal ABC store has been approved pursuant to G.S. 18B-602(g) and are subject to the time and day restrictions in G.S. 18B-802. Spirituous liquor sold under this subdivision shall (i) be listed as a code item for sale in the State, (ii) be sold at the price set by the Commission for the code item pursuant to G.S. 18B-804(b), and (iii) have affixed to its bottle a sticker that bears the words "North Carolina Distillery Tour Commemorative Spirit" in addition to any other labeling requirements set by law. Consumers purchasing spirituous liquor under this subdivision are limited to purchasing, and the selling distillery is limited to selling to each consumer, no more than ~~one bottle~~ five bottles of spirituous liquor per 12 month period. The distillery shall use a commonly adopted standard point of sale system to maintain searchable electronic records captured at the point of sale, to include the purchaser's name, drivers license number, and date of birth for at least 12 months from the date of purchase. The Commission shall adopt rules regulating the retail sale of spirituous liquor under this subdivision.
  - (5) Conduct consumer tastings in accordance with G.S. 18B-1114.7.
- (b) Distilleries for Fuel Alcohol. – Any person in possession of a Federal Operating Permit pursuant to Title 27, Code of Federal Regulations, Part 19 (April 1, 2010 Edition), shall obtain a fuel alcohol permit before manufacturing any alcohol. The permit shall entitle the permittee to perform only those acts allowed by the Federal Operating Permit, and all conditions of the Federal Operating Permit shall apply to the State permit."

**SECTION 1.(b)** G.S. 18B-804 is amended by adding a new subsection to read:



(b) Conditions of Permit. – A permit issued under this section is valid only for the auction specified in the permit. Any sales under this permit are subject to the purchase restrictions in G.S. 18B-303.

(c) Administrative Procedure. – Denial or revocation of a permit under this section does not entitle the applicant or permittee to a hearing under Chapter 150B of the General Statutes."

**SECTION 3.(d)** This section becomes effective October 1, 2017.

## **ALLOW THE SALE OF ALCOHOLIC BEVERAGES BEFORE NOON ON SUNDAYS, SUBJECT TO LOCAL GOVERNMENT APPROVAL**

**SECTION 4.(a)** G.S. 18B-1004(c) reads as rewritten:

**"§ 18B-1004. Hours for sale and consumption.**

...  
(c) Sunday Hours. – ~~Except as authorized pursuant to G.S. 18B-112(b1), 153A-145.7, or 160A-205.3, it shall be unlawful to sell or consume alcoholic beverages on any licensed premises from the time at which sale or consumption must cease on Sunday morning until 12:00 Noon on that day."~~

**SECTION 4.(b)** Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read:

**"§ 153A-145.7. Hours of certain alcohol sales.**

In accordance with G.S. 18B-1004(c), a county may adopt an ordinance allowing for the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages beginning at 10:00 A.M. on Sunday pursuant to the licensed premises' permit issued under G.S. 18B-1001."

**SECTION 4.(c)** Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read:

**"§ 160A-205.3. Hours of certain alcohol sales.**

In accordance with G.S. 18B-1004(c), a city may adopt an ordinance allowing for the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages beginning at 10:00 A.M. on Sunday pursuant to the licensed premises' permit issued under G.S. 18B-1001."

**SECTION 4.(d)** G.S. 18B-112 is amended by adding a new subsection to read:

"(b1) In accordance with G.S. 18B-1004(c), the Eastern Band of Cherokee Indians tribe may adopt an ordinance allowing for the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages beginning at 10:00 A.M. on Sunday pursuant to the licensed premises' permit issued under the authority of G.S. 18B-112(d)."

## **AUTHORIZE SALE OF CROWLERS BY RETAIL PERMITTEES**

**SECTION 5.(a)** G.S. 18B-1001 reads as rewritten:

**"§ 18B-1001. Kinds of ABC permits; places eligible.**

When the issuance of the permit is lawful in the jurisdiction in which the premises are located, the Commission may issue the following kinds of permits:

- (1) On-Premises Malt Beverage Permit. – An on-premises malt beverage permit authorizes (i) the retail sale of malt beverages for consumption on the premises, (ii) the retail sale of malt beverages in the manufacturer's original container for consumption off the premises, and (iii) the retail sale of malt beverages in a ~~cleaned, sanitized, resealable~~ cleaned and sanitized container that is filled or refilled and sealed for consumption off the premises and that identifies the permittee and the date the container was filled or refilled. It also authorizes the holder of the permit to ship malt beverages in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:

- a. ~~Restaurants;~~ Restaurants.
- b. ~~Hotels;~~ Hotels.

- c. ~~Eating establishments;~~establishments.
  - d. ~~Food businesses;~~businesses.
  - e. ~~Retail businesses;~~businesses.
  - f. ~~Private clubs;~~clubs.
  - g. ~~Convention centers;~~centers.
  - h. ~~Community theatres;~~theatres.
  - i. Breweries as authorized by G.S. 18B-1104(7) and (8).
- (2) Off-Premises Malt Beverage Permit. – An off-premises malt beverage permit authorizes (i) the retail sale of malt beverages in the manufacturer's original container for consumption off the premises, (ii) the retail sale of malt beverages in a ~~cleaned, sanitized, resealable~~ cleaned and sanitized container that is filled or refilled and sealed for consumption off the premises and that identifies the permittee and the date the container was filled or refilled, and (iii) the holder of the permit to ship malt beverages in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:
- a. Restaurants.
  - b. Hotels.
  - c. Eating establishments.
  - d. Food businesses.
  - e. Retail businesses.
  - f. The holder of a brewing, distillation, and fermentation course authorization under G.S. 18B-1114.6. A school obtaining a permit under this subdivision is authorized to sell malt beverages manufactured during its brewing, distillation, and fermentation program at one noncampus location in a county where the permittee holds and offers classes on a regular full-time basis in a facility owned by the permittee.
- (3) On-Premises Unfortified Wine Permit. – An on-premises unfortified wine permit authorizes (i) the retail sale of unfortified wine for consumption on the premises, either alone or mixed with other beverages, (ii) the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises, and (iii) the retail sale of unfortified wine dispensed from a tap connected to a pressurized container utilizing carbon dioxide or similar gas into a ~~cleaned, sanitized, resealable~~ cleaned and sanitized container that is filled or refilled and sealed for consumption off the premises and that identifies the permittee and the date the container was filled or refilled. The permit also authorizes the permittee to transfer unfortified wine, not more than four times per calendar year, to another on-premises unfortified wine permittee that is under common ownership or control as the transferor. Except as authorized by this subdivision, transfers of wine by on-premises unfortified wine permittees, purchases of wine by a retail permittee from another retail permittee for the purpose of resale, and sale of wine by a retail permittee to another retail permittee for the purpose of resale are unlawful. In addition, a particular brand of wine may be transferred only if both the transferor and transferee are located within the territory designated between the winery and the wholesaler on file with the Commission. Prior to or contemporaneous with any such transfer, the transferor shall notify each wholesaler who distributes the transferred product of the transfer. The notice shall be in writing or verifiable electronic format and shall identify the transferor and transferee, the date of the transfer, quantity, and items

transferred. The holder of the permit is authorized to ship unfortified wine in closed containers to individual purchasers inside and outside the State. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision. The permit may be issued for any of the following:

- a. ~~Restaurants;~~Restaurants.
  - b. ~~Hotels;~~Hotels.
  - c. ~~Eating establishments;~~Eating establishments.
  - d. ~~Private clubs;~~Private clubs.
  - e. ~~Convention centers;~~Convention centers.
  - f. ~~Cooking schools;~~Cooking schools.
  - g. ~~Community theatres;~~Community theatres.
  - h. ~~Wineries;~~Wineries.
  - i. Wine producers.
- (4) Off-Premises Unfortified Wine Permit. – An off-premises unfortified wine permit authorizes (i) the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises, (ii) the retail sale of unfortified wine dispensed from a tap connected to a pressurized container utilizing carbon dioxide or similar gas into a ~~cleaned, sanitized, resealable~~ cleaned and sanitized container that is filled or refilled and sealed for consumption off the premises and that identifies the permittee and the date the container was filled or refilled, and (iii) the holder of the permit to ship unfortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses. The permit also authorizes the permittee to transfer unfortified wine, not more than four times per calendar year, to another off-premises unfortified wine permittee that is under common ownership or control as the transferor. Except as authorized by this subdivision, transfers of wine by off-premises unfortified wine permittees, purchases of wine by a retail permittee from another retail permittee for the purpose of resale, and sale of wine by a retail permittee to another retail permittee for the purpose of resale are unlawful. In addition, a particular brand of wine may be transferred only if both the transferor and transferee are located within the territory designated between the winery and the wholesaler on file with the Commission. Prior to or contemporaneous with any such transfer, the transferor shall notify each wholesaler who distributes the transferred product of the transfer. The notice shall be in writing or verifiable electronic format and shall identify the transferor and transferee, the date of the transfer, quantity, and items transferred. The permit may also be issued to the holder of a viticulture/enology course authorization under G.S. 18B-1114.4. A school obtaining a permit under this subdivision is authorized to sell wines manufactured during its viticulture/enology program at one non-campus location in a county where the permittee holds and offers classes on a regular full-time basis in a facility owned by the permittee. The permit may also be issued for a winery or a wine producer for sale of its own unfortified wine during hours when the winery or wine producer's premises is open to the public, subject to any local ordinance adopted pursuant to G.S. 18B-1004(d) concerning hours for the retail sale of unfortified wine. A winery obtaining a permit under this subdivision is authorized to sell wine manufactured by the winery at one additional location in the county under the same conditions specified in

G.S. 18B-1101(5) for the sale of wine at the winery; provided, however, that no other alcohol sales shall be authorized at the additional location. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision.

- ...
- (16) Wine Shop Permit. – A wine shop permit authorizes (i) the retail sale of malt beverages, unfortified wine, and fortified wine in the manufacturer's original container for consumption off the premises, (ii) the retail sale of malt beverages or unfortified wine dispensed from a tap connected to a pressurized container utilizing carbon dioxide or similar gas in a ~~cleaned, sanitized, resealable~~ cleaned and sanitized container that is filled or refilled and sealed for consumption off the premises and that identifies the permittee and the date the container was filled or refilled, and (iii) wine tastings on the premises conducted and supervised by the permittee in accordance with subdivision (15) of this section. It also authorizes the holder of the permit to ship malt beverages, unfortified wine, and fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses whose primary purpose is selling malt beverages and wine for consumption off the premises and regularly and customarily educating consumers through tastings, classes, and seminars about the selection, serving, and storing of wine. The holder of the permit is authorized to sell unfortified wine for consumption on the premises, provided that the sale of wine for consumption on the premises does not exceed forty percent (40%) of the establishment's total sales for any 30-day period. The holder of a wine-tasting permit not engaged in the preparation or sale of food on the premises is not subject to Part 6 of Article 8 of Chapter 130A of the General Statutes.

....."

**SECTION 5.(b)** The Alcoholic Beverage Control (ABC) Commission shall adopt rules to implement the provisions of this section by no later than 120 days after this act becomes law. The ABC Commission may adopt temporary rules to comply with the deadline set in this subsection. Any temporary rules adopted in accordance with this subsection shall remain in effect until permanent rules that replace the temporary rules become effective.

#### **AUTHORIZE OFF-SITE STORAGE LOCATION FOR BREWERIES, WINERIES, AND DISTILLERIES**

**SECTION 6.** Article 11 of Chapter 18B of the General Statutes is amended by adding a new section to read:

**"§ 18B-1120. Noncontiguous storage locations.**

A brewery, winery, or distillery may store any alcoholic beverages it manufactures pursuant to a permit issued under this Article at a noncontiguous storage location approved by the Alcohol and Tobacco Tax and Trade Bureau. The permittee must notify the Commission of any storage location used pursuant to this section. Any storage location used pursuant to this section shall be considered part of the premises of the brewery, winery, or distillery manufacturing the alcoholic beverages."

#### **AUTHORIZE SALE OF UNFORTIFIED WINE ON PREMISES BY RETAIL BUSINESSES**

**SECTION 7.** G.S. 18B-1001(3), as amended by Section 5 of this act, reads as rewritten:

(a) Issuance, Qualifications. – Each person who receives an ABC permit shall obtain the corresponding local license, if any, under this Article. All local licenses are issued by the city or county where the establishment for which the license is sought is located. ~~The information required to be provided and the qualifications for a local license are the same as the information and qualifications required for the corresponding ABC permit. Upon proper application and payment of the prescribed tax, issuance of a local license is mandatory if the applicant holds the corresponding ABC permit. No documentation shall be required of the applicant except as provided in this section.~~ Issuance of a local license is mandatory if the applicant holds the corresponding ABC permit and provides all of the following: (i) a copy of the most recently completed State application form for an ABC permit exclusive of any attachments, (ii) the ABC permit for visual inspection, and (iii) payment of the prescribed tax. No local license may be issued under this Article until the applicant has received from the ABC Commission the applicable permit for that activity, and no county license may be issued for an establishment located in a city in that county until the applicant has received from the city the applicable license for that activity.

(b) Duration. – All licenses issued under this section are annual licenses for the period from May 1 to April 30.

(c) Transfer. – A license may not be transferred from one person to another or from one location to another.

(d) License Exclusive. – A local government may not require a license for activities related to the manufacture or sale of alcoholic beverages other than the licenses stated in this Article."

## **CLARIFY WINERY SPECIAL EVENT LOCATIONS**

**SECTION 18.** G.S. 18B-1114.1 reads as rewritten:

### **"§ 18B-1114.1. Authorization of winery special event permit.**

(a) Authorization. – The holder of an unfortified winery permit, a limited winery permit, a viticulture/enology course authorization, or a wine producer permit may obtain a winery special permit allowing the winery or wine producer to give free tastings of its wine, and to sell its wine by the glass or in closed containers, at trade shows, conventions, shopping malls, wine festivals, street festivals, holiday festivals, agricultural festivals, balloon races, local fund-raisers, farmers markets, and other similar events approved by the Commission.

(b) Limitation. – A winery special event permit is valid only in a jurisdiction that has approved the establishment of ABC stores or has approved the sale of unfortified wine."

## **RULES**

**SECTION 19.(a)** Except as otherwise provided, the Alcoholic Beverage Control (ABC) Commission shall adopt temporary rules to implement the provisions of this act. Temporary rules adopted in accordance with this section shall remain in effect until permanent rules that replace the temporary rules become effective.

**SECTION 19.(b)** Any rule or policy adopted by the ABC Commission that does not comply with the provisions of this act shall be null, void, and without effect.

## **EFFECT OF HEADINGS**

**SECTION 20.** The headings to the sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

## **EFFECTIVE DATE**



**SECTION 21.** Except as otherwise provided, this act is effective when it becomes law.  
In the General Assembly read three times and ratified this the 29<sup>th</sup> day of June, 2017.

s/ Daniel J. Forest  
President of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

s/ Roy Cooper  
Governor

Approved 3:17 p.m. this 30<sup>th</sup> day of June, 2017

1 14B NCAC 15B .0217 is amended under temporary procedures as follows:

2

3 **14B NCAC 15B .0217    FILL OR REFILL ORIGINAL CONTAINERS**

4 No permittee ~~except a bottler or manufacturer~~ shall fill or refill in whole or in part any original container of alcoholic  
5 beverages with the same or any other kind of alcoholic ~~beverage~~beverage, except a bottler, manufacturer, or permittee  
6 authorized pursuant to G.S. 18B-1001(1), (2), (3), (4), or (16).

7

8 *History Note:    Authority G.S. 18B-206(a); 18B-207; 18B-1001;*

9 *Eff. January 1, 1982;*

10 *Amended Eff. May 1, 1984;*

11 *Transferred and Recodified from 04 NCAC 02S .0224 Eff. August 1, 2015;*

12 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20,*  
13 *2016;*

14 *Temporary Amendment Eff. November 28, 2017.*



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Alcoholic Beverage Control Commission	
2. Rule citation & name: 14B NCAC 15B .0220 – Dispensing Alcoholic Beverages: Product Identificaton	
3. Action:	<input type="checkbox"/> Adoption <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Repeal
4. Was this an Emergency Rule:	<input type="checkbox"/> Yes                      Effective date: <input checked="" type="checkbox"/> No
5. Provide dates for the following actions as applicable:	
a. Proposed Temporary Rule submitted to OAH: September 13, 2017	
b. Proposed Temporary Rule published on the OAH website: September 20, 2017	
c. Public Hearing date: October 11, 2017	
d. Comment Period: September 20, 2017 – October 20, 2017	
e. Notice pursuant to G.S. 150B-21.1(a3)(2): September 13, 2017	
f. Adoption by agency on: October 26, 2017	
g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:	
h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.	
<input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare.	
<input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: S.L. 2017-87, Section 5 Effective date: June 30, 2017	
<input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change:	
<input type="checkbox"/> A recent federal regulation. Cite: Effective date:	
<input type="checkbox"/> A recent court order. Cite order:	
<input type="checkbox"/> State Medical Facilities Plan.	
<input type="checkbox"/> Other:	
Explain: The General Assembly amended the law regulating the sale of malt beverages and wine in containers filled by retail establishments holding certain ABC permits. Section 5(b) of S.L. 2017-87 directed the ABC Commission to adopt rules to implement the provisions of Section 5 no later than 120 days after the act became law, which occurred on June 30, 2017. Section 5(b) says that the ABC Commission may adopt temporary rules to comply with the deadline set forth in this subsection. The temporary rules being proposed for adoption are required to comply with Section 5(b) of S.L. 2017-87.	

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The General Assembly directed the ABC Commission to adopt rules to implement the provisions of Section 5 of S.L. 2017-87 no later than 120 days after the act became law on June 30, 2017. Adoption of the rules needed as permanent rules could not be done by the ABC Commission within the 120 days deadline set by the General Assembly. The ABC Commission rulemaking emailing list has been engaged in this temporary rulemaking process since August 9, 2017 by reviewing rule drafts in two separate emailings prior to proposal by the ABC Commission on September 13, 2017. Comments were received during this period and changes to address concerns raised were incorporated. Since this rule has been proposed by the ABC Commission, no negative comments or suggested changes have been received concerning this rule either in writing or at the public hearing.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes

Agency submitted request for consultation on:  
Consultation not required. Cite authority:

No

9. Rule-making Coordinator: Walker Reagan

Phone: 919-779-8367

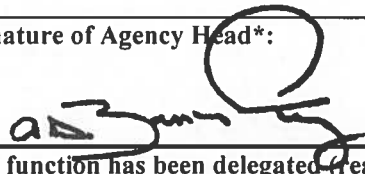
E-Mail: walker.reagan@abc.nc.gov

Agency contact, if any: Walker Reagan

Phone: 919-779-8367

E-Mail: walker.reagan@abc.nc.gov

10. Signature of Agency Head\*:



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: A.D. "Zander" Guy, Jr.

Title: Chairman

E-Mail: Zander.Guy@abc.nc.gov

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

Date returned to agency:

TEMPORARY RULES  
REQUEST FOR TECHNICAL CHANGE

AGENCY: Alcoholic Beverage Control Commission

RULE CITATION: 14B NCAC 15B .0220

**DEADLINE FOR RECEIPT: Thursday, November 9, 2017**

***NOTE WELL:*** *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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*In (g), line 28, you do not need the lead-in language "Incorporated by Reference." If you feel a compelling need to state something here, consider "Incorporation by Reference."*

*On lines 28-31, why not state "The 2009 FDA Food Code, as established by the US Department of Health and Human Services, Food and Drug Administration, is hereby incorporated by reference, excluding subsequent amendments and editions and may be accessed at no cost at [url]."*

*If you don't want to do that:*

*There is no need to refer to 2009 twice on line 28.*

*On line 31, delete "from the internet" and just state "may be accessed at no cost at [url]."*

*You do not need to include the information regarding contacting the Department of Commerce or DPH in this Rule and I recommend not including it here. If you strongly feel you need to retain it, please give the contact information for DPH.*

*In (g), I cannot find the document at the url you provided. I did find it here:*

<https://www.fda.gov/food/guidanceregulation/retailfoodprotection/foodcode/ucm2019396.htm>

*Is this the correct url?*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 1, 2017

1 14B NCAC 15B .0220 is amended under temporary procedures as follows:

2  
3 **14B NCAC 15B .0220 DISPENSING ALCOHOLIC BEVERAGES: PRODUCT IDENTIFICATION**

4 (a) Malt Beverages, On-Premises. Malt beverages may be sold by persons holding on-premise permits in the original  
5 containers, by the glass, by the mug, by the ~~pitcher~~pitcher, or a single-service and single-use container as defined by  
6 FDA Food Code 2009, 1-201.10(B). The brand name of draught malt beverages dispensed in retail outlets shall be  
7 shown on the knobs of draught faucets. Covers for these faucets bearing a brand name may be used if the brand name  
8 appearing on the cover corresponds with the brand name on the knob of the faucets that are to be used for that brand.

9 (b) Malt Beverages, Off-Premises. Malt beverages may be sold by persons holding ~~a retail~~an off-premise permit  
10 only in the unopened original container that was filled by the product ~~manufacturer~~manufacturer, except as permitted  
11 pursuant to G.S. 18B-1001.

12 (c) Wine, On-Premises. A person holding an on-premises wine permit may sell wine in the unopened original  
13 container, by the carafe, by the ~~glass~~glass, or a single-service and single-use container. A person holding an on-  
14 premises wine permit may sell wine mixed with non-alcoholic beverages by the carafe, by the ~~glass~~glass, or a single-  
15 service and single-use container. Wine served in carafes, by the ~~glass~~glass, or single-service and single-use containers  
16 may be dispensed under pressure from nitrogen from sealed bulk containers provided the containers and dispensing  
17 systems have been approved by the Commission and the Commission for Public Health. The vintner, ~~brand~~brand,  
18 and type of wine dispensed by the carafe, ~~glass~~glass, or single-service and single-use container, except for the house  
19 wine, shall appear on the wine list. Where the wine is dispensed from bulk containers, the vintner, ~~brand~~brand, and  
20 type shall be shown on the knobs of draught faucets.

21 (d) Use of Siphons. The use of siphons or pressurized dispensers is allowed if the malt beverage or wine contents are  
22 dispensed directly from the original containers.

23 (e) Mixed Beverages. A person holding a mixed beverages permit may sell mixed beverages in a glass, in a  
24 ~~pitcher~~pitcher, or in a single-service and single-use container.

25 (f) Multi-Use Containers. All multi-use containers used by permittees to serve any alcoholic beverages shall meet  
26 the requirements as referenced by FDA Food Code 2009, 3-304.11(a). Multi-use containers include glassware, mugs,  
27 ~~pitchers~~pitchers, and carafes.

28 (g) Incorporated by Reference. The sections of the FDA Food Code 2009 referenced in this Chapter are to the 2009  
29 Food Code, not including subsequent amendments and editions, established by the U.S. Department of Health and  
30 Human Services, Food and Drug Administration (hereinafter referred to as the "Food Code") and are incorporated by  
31 reference. The Food Code may be accessed from the internet at  
32 [www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/default.htm](http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/default.htm), or a copy can be obtained by contacting  
33 the U.S. Department of Commerce, National Technical Information Service, at (703) 605-6040, and is also available  
34 for inspection at the Division of Public Health, N.C. Department of Health and Human Services.

35  
36 *History Note: Authority G.S. 18B-100; 18B-206; 18B-207; 18B-1001; 130A-248(a); FDA Food Code 2009, 1-*  
37 *201.10(B), 3-304.11(a);*

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*Eff. January 1, 1982;*  
*Amended Eff. June 1, 2013; May 1, 1984;*  
*Transferred and Recodified from 04 NCAC 02S .0228 Eff. August 1, 2015;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20,*  
*2016.*  
*Temporary Amendment Eff. November 28, 2017.*



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Alcoholic Beverage Control Commission
2. Rule citation & name: 14B NCAC 15C .0302 – Labels To Be Submitted To Commission
3. Action: <input type="checkbox"/> Adoption <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Repeal
4. Was this an Emergency Rule: <input type="checkbox"/> Yes                      Effective date: <input checked="" type="checkbox"/> No
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: September 13, 2017 b. Proposed Temporary Rule published on the OAH website: September 20, 2017 c. Public Hearing date: October 11, 2017 d. Comment Period: September 20, 2017 – October 20, 2017 e. Notice pursuant to G.S. 150B-21.1(a3)(2): September 13, 2017 f. Adoption by agency on: October 26, 2017 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: S.L. 2017-87, Section 5 Effective date: June 30, 2017 <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:
Explain: The General Assembly amended the law regulating the sale of malt beverages and wine in containers filled by retail establishments holding certain ABC permits. Section 5(b) of S.L. 2017-87 directed the ABC Commission to adopt rules to implement the provisions of Section 5 no later than 120 days after the act became law, which occurred on June 30, 2017. Section 5(b) says that the ABC Commission may adopt temporary rules to comply with the deadline set forth in this subsection. The temporary rules being proposed for adoption are required to comply with Section 5(b) of S.L. 2017-87.



7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The General Assembly directed the ABC Commission to adopt rules to implement the provisions of Section 5 of S.L. 2017-87 no later than 120 days after the act became law on June 30, 2017. Adoption of the rules needed as permanent rules could not be done by the ABC Commission within the 120 days deadline set by the General Assembly. The ABC Commission rulemaking emailing list has been engaged in this temporary rulemaking process since August 9, 2017 by reviewing rule drafts in two separate emailings prior to proposal by the ABC Commission on September 13, 2017. Comments were received during this period and changes to address concerns raised were incorporated. Since this rule has been proposed by the ABC Commission, no negative comments or suggested changes have been received concerning this rule either in writing or at the public hearing.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes

Agency submitted request for consultation on:  
Consultation not required. Cite authority:

No

9. Rule-making Coordinator: Walker Reagan

Phone: 919-779-8367

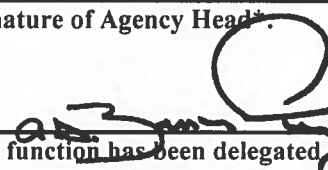
E-Mail: walker.reagan@abc.nc.gov

Agency contact, if any: Walker Reagan

Phone: 919-779-8367

E-Mail: walker.reagan@abc.nc.gov

10. Signature of Agency Head\*



\* If this function has been delegated (or assigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: A.D. "Zander" Guy, Jr.

Title: Chairman

E-Mail: Zander.Guy@abc.nc.gov

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

Date returned to agency:

TEMPORARY RULES  
REQUEST FOR TECHNICAL CHANGE

AGENCY: Alcoholic Beverage Control Commission

RULE CITATION: 14B NCAC 15C .0302

**DEADLINE FOR RECEIPT: Thursday, November 9, 2017**

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*In (a), line 5, please insert a comma after "Form," (inside the quotation marks)*

*In (c), line 9, should this still refer to "growlers" and not another term? Or does "growlers" remain the best term, given the amendment to Rule .0307?*

*On line 10, either state "Rules .0303(b) or (c) or .0304(d) or (e) of this Section." Or "Rule .0303(b) or (c) or Rule .0304(d) or (e) of this Section."*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 1, 2017

1 14B NCAC 15C .0302 is amended under temporary procedures as follows:

2

3 **14B NCAC 15C .0302 LABELS TO BE SUBMITTED TO COMMISSION**

4 (a) All labels for malt beverage and wine products shall be submitted in duplicate to the Commission on an  
5 "Application for Label Approval ~~Form.~~"Form" as required by Rule .0201 or .0202 of this Subchapter.

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

8 (c) Notwithstanding Paragraphs (a) and (b) of this Rule, holders of retail permits pursuant to G.S. 18B-1001(1), (2),  
9 ~~(3), (4),~~ or (16) that fill or refill growlers on demand ~~are not~~ shall not be required to submit the labels required by  
10 ~~Rule~~ Rules .0303(b) or (c), or Rules .0304(d) or (e), of this Section.

11

12 *History Note: Authority G.S. 18B-100; 18B-206(a); 18B-207; ~~18B-1001(1); 18B-1001(2); 18B-1001(16); 18B-~~*  
13 *1001;*

14 *Eff. January 1, 1982;*

15 *Temporary Amendment Eff. October 25, 2013;*

16 *Amended Eff. September 1, 2014;*

17 *Transferred and Recodified from 04 NCAC 02T .0302 Eff. August 1, 2015.*

18 *Temporary Amendment Eff. November 28, 2017.*



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Alcoholic Beverage Control Commission	
2. Rule citation & name: 14B NCAC 15C .0303 – Label Contents: Malt Beverages	
3. Action: <input type="checkbox"/> Adoption <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input type="checkbox"/> Yes                      Effective date: <input checked="" type="checkbox"/> No	
5. Provide dates for the following actions as applicable:	
a. Proposed Temporary Rule submitted to OAH: September 13, 2017	
b. Proposed Temporary Rule published on the OAH website: September 20, 2017	
c. Public Hearing date: October 11, 2017	
d. Comment Period: September 20, 2017 – October 20, 2017	
e. Notice pursuant to G.S. 150B-21.1(a3)(2): September 13, 2017	
f. Adoption by agency on: October 26, 2017	
g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:	
h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.	
<input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: S.L. 2017-87, Section 5 Effective date: June 30, 2017 <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:	
<p>Explain: The General Assembly amended the law regulating the sale of malt beverages and wine in containers filled by retail establishments holding certain ABC permits. Section 5(b) of S.L. 2017-87 directed the ABC Commission to adopt rules to implement the provisions of Section 5 no later than 120 days after the act became law, which occurred on June 30, 2017. Section 5(b) says that the ABC Commission may adopt temporary rules to comply with the deadline set forth in this subsection. The temporary rules being proposed for adoption are required to comply with Section 5(b) of S.L. 2017-87.</p>	

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The General Assembly directed the ABC Commission to adopt rules to implement the provisions of Section 5 of S.L. 2017-87 no later than 120 days after the act became law on June 30, 2017. Adoption of the rules needed as permanent rules could not be done by the ABC Commission within the 120 days deadline set by the General Assembly. The ABC Commission rulemaking emailing list has been engaged in this temporary rulemaking process since August 9, 2017 by reviewing rule drafts in two separate emailings prior to proposal by the ABC Commission on September 13, 2017. Comments were received during this period and changes to address concerns raised were incorporated. Since this rule has been proposed by the ABC Commission, no negative comments or suggested changes have been received concerning this rule either in writing or at the public hearing.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes

Agency submitted request for consultation on:  
Consultation not required. Cite authority:

No

9. Rule-making Coordinator: Walker Reagan

Phone: 919-779-8367

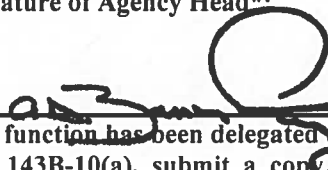
E-Mail: walker.reagan@abc.nc.gov

Agency contact, if any: Walker Reagan

Phone: 919-779-8367

E-Mail: walker.reagan@abc.nc.gov

10. Signature of Agency Head\*:



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: A.D. "Zander" Guy, Jr.

Title: Chairman

E-Mail: Zander.Guy@abc.nc.gov

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

Date returned to agency:

TEMPORARY RULES  
REQUEST FOR TECHNICAL CHANGE

AGENCY: Alcoholic Beverage Control Commission

RULE CITATION: 14B NCAC 15C .0303

**DEADLINE FOR RECEIPT: Thursday, November 9, 2017**

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*Why are you amending this Rule under temporary measures? Is the addition of "with malt beverages" necessary in (b) due to the recent statutory changes?*

*In (c), line 32, do you wish to include subsequent amendments and editions?*

*On lines 32-33, do not refer to Rule .0401. Instead, simply state "and may be accessed for free at [url]." G.S. 150B-21.6 requires the agency to have all incorporated materials available for inspection and copying, so it's not necessary to refer to it here.*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 1, 2017

1 14B NCAC 15C .0303 is amended under temporary procedures as follows:

2  
3 **14B NCAC 15C .0303 LABEL CONTENTS: MALT BEVERAGES**

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

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

14 (b) Growlers that are filled or refilled on demand with malt beverages pursuant to Rule .0308 of this  
15 ~~Subchapter~~Section shall be affixed with a label or a tag that shall contain the following information in type not smaller  
16 than 3 millimeters in height and not more than 12 characters per inch:

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

29 (c) Growlers that are filled or refilled on demand pursuant to Rule .0308 of this Section shall be affixed with the  
30 alcoholic beverage health warning statement as required by the Federal Alcohol Administration Act, 27 C.F.R.  
31 Sections 16.20 through 16.22. The provisions of 27 C.F.R. Sections 16.20 through 16.22 referenced in this Section  
32 are incorporated by reference. Copies of these regulations are available for inspection and copying as provided in Rule  
33 .0401 of this Subchapter.

34  
35 *History Note:* Authority G.S. 18B-100; 18B-101(9); 18B-206(a); 18B-207; ~~18B-1001(1); 18B-1001(2); 18B-~~  
36 ~~1001(16); 27 C.F.R. 16.20 through 16.22; 18B-1001;~~  
37 *Eff. January 1, 1982;*

1                    *Amended Eff. April 1, 2011;*  
2                    *Temporary Amendment Eff. October 25, 2013;*  
3                    *Amended Eff. September 1, 2014;*  
4                    *Transferred and Recodified from 04 NCAC 02T .0303 Eff. August 1, 2015.*  
5                    *Temporary Amendment Eff. November 28, 2017.*





# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Alcoholic Beverage Control Commission
2. Rule citation & name: 14B NCAC 15C .0304 – Label Contents: Wine
3. Action: <input type="checkbox"/> Adoption <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Repeal
4. Was this an Emergency Rule: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Effective date:
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: September 13, 2017 b. Proposed Temporary Rule published on the OAH website: September 20, 2017 c. Public Hearing date: October 11, 2017 d. Comment Period: September 20, 2017 – October 20, 2017 e. Notice pursuant to G.S. 150B-21.1(a3)(2): September 13, 2017 f. Adoption by agency on: October 26, 2017 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: S.L. 2017-87, Section 5 Effective date: June 30, 2017 <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:
Explain: The General Assembly amended the law regulating the sale of malt beverages and wine in containers filled by retail establishments holding certain ABC permits. Section 5(b) of S.L. 2017-87 directed the ABC Commission to adopt rules to implement the provisions of Section 5 no later than 120 days after the act became law, which occurred on June 30, 2017. Section 5(b) says that the ABC Commission may adopt temporary rules to comply with the deadline set forth in this subsection. The temporary rules being proposed for adoption are required to comply with Section 5(b) of S.L. 2017-87.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The General Assembly directed the ABC Commission to adopt rules to implement the provisions of Section 5 of S.L. 2017-87 no later than 120 days after the act became law on June 30, 2017. Adoption of the rules needed as permanent rules could not be done by the ABC Commission within the 120 days deadline set by the General Assembly. The ABC Commission rulemaking emailing list has been engaged in this temporary rulemaking process since August 9, 2017 by reviewing rule drafts in two separate emailings prior to proposal by the ABC Commission on September 13, 2017. Comments were received during this period and changes to address concerns raised were incorporated. Since this rule has been proposed by the ABC Commission, no negative comments or suggested changes have been received concerning this rule either in writing or at the public hearing.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes

Agency submitted request for consultation on:  
Consultation not required. Cite authority:

No

9. Rule-making Coordinator: Walker Reagan

Phone: 919-779-8367

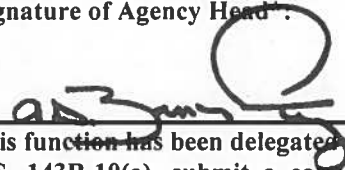
E-Mail: walker.reagan@abc.nc.gov

Agency contact, if any: Walker Reagan

Phone: 919-779-8367

E-Mail: walker.reagan@abc.nc.gov

10. Signature of Agency Head:

  
\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: A.D. "Zander" Guy, Jr.

Title: Chairman

E-Mail: Zander.Guy@abc.nc.gov

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

Date returned to agency:

TEMPORARY RULES  
REQUEST FOR TECHNICAL CHANGE

AGENCY: Alcoholic Beverage Control Commission

RULE CITATION: 14B NCAC 15C .0304

**DEADLINE FOR RECEIPT: Thursday, November 9, 2017**

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*In (a), line 4, define "legible" Is this known to your regulated public?*

*In (a)(5), line 10, and (b), line 16, what is "permanently"? Does your regulated public know?*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 1, 2017

1 14B NCAC 15C .0304 is amended under temporary procedures as follows:

2  
3 **14B NCAC 15C .0304 LABEL CONTENTS: WINE**

4 (a) All wine labels shall contain the following information, in a legible form:

- 5 (1) brand name of product;
- 6 (2) class and type, in conformity with Section .0400 of this Subchapter;
- 7 (3) name and address of manufacturer, or bottler, except as otherwise provided in these Rules;
- 8 (4) on blends consisting of foreign and domestic wine, if any reference is made to the presence of  
9 foreign wine, the exact percentage by volume the foreign wine; and
- 10 (5) net contents (unless blown or otherwise permanently inscribed in the container).

11 (b) Exception for Retailer's Private Brand. In the case of wine bottles packaged for a retailer or other person under  
12 ~~his~~the person's private brand, the name and address of the bottler ~~need not be stated on the brand label but~~ may be  
13 stated on another label affixed to the container, if the name and address of the person for whom the wine was bottled  
14 or packed appears on the label. The net contents shall be stated on the brand label or on a separate label affixed ~~in~~  
15 ~~immediate proximity~~ thereto on the same side of the container in ~~readily~~ legible form, unless blown or otherwise  
16 permanently inscribed in the container.

17 (c) Imported Wines. The name and address of the importer of a foreign wine need not be stated on the brand label if  
18 it is stated upon another label affixed to the container.

19 (d) Growlers that are filled or refilled on demand with unfortified wine pursuant to Rule .0308 of this Section shall  
20 be affixed with a label or a tag containing the following information in type not smaller than 3 millimeters in height  
21 and not more than 12 characters per inch:

- 22 (1) brand name of the product dispensed;
- 23 (2) name of manufacturer or bottler;
- 24 (3) class and type of product;
- 25 (4) net contents;
- 26 (5) name and address of business that filled or refilled the growler;
- 27 (6) date of fill or refill; and
- 28 (7) the following statement: "This product may be unfiltered and unpasteurized. Keep refrigerated at  
29 all times."

30 (e) Growlers that are filled or refilled on demand pursuant to Rule .0308 of this Section shall be affixed with the  
31 alcoholic beverage health warning statement as required by the Federal Alcohol Administration Act, 27 C.F.R.  
32 Sections 16.20 through 16.22.

33  
34 *History Note: Authority G.S. 18B-206(a); 18A-207; 18B-1001;*  
35 *Eff. January 1, 1982;*  
36 *Amended Eff. May 1, 1984;*  
37 *Transferred and Recodified from 04 NCAC 02T .0304 Eff. August 1, 2015.*





# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Alcoholic Beverage Control Commission
2. Rule citation & name: 14B NCAC 15C .0307 - Growlers
3. Action: <input type="checkbox"/> Adoption <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Repeal
4. Was this an Emergency Rule: <input type="checkbox"/> Yes                      Effective date: <input checked="" type="checkbox"/> No
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: September 13, 2017 b. Proposed Temporary Rule published on the OAH website: September 20, 2017 c. Public Hearing date: October 11, 2017 d. Comment Period: September 20, 2017 – October 20, 2017 e. Notice pursuant to G.S. 150B-21.1(a3)(2): September 13, 2017 f. Adoption by agency on: October 26, 2017 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.  <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: S.L. 2017-87, Section 5 Effective date: June 30, 2017 <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:
Explain: The General Assembly amended the law regulating the sale of malt beverages and wine in containers filled by retail establishments holding certain ABC permits. Section 5(b) of S.L. 2017-87 directed the ABC Commission to adopt rules to implement the provisions of Section 5 no later than 120 days after the act became law, which occurred on June 30, 2017. Section 5(b) says that the ABC Commission may adopt temporary rules to comply with the deadline set forth in this subsection. The temporary rules being proposed for adoption are required to comply with Section 5(b) of S.L. 2017-87.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The General Assembly directed the ABC Commission to adopt rules to implement the provisions of Section 5 of S.L. 2017-87 no later than 120 days after the act became law on June 30, 2017. Adoption of the rules needed as permanent rules could not be done by the ABC Commission within the 120 days deadline set by the General Assembly. The ABC Commission rulemaking emailing list has been engaged in this temporary rulemaking process since August 9, 2017 by reviewing rule drafts in two separate emailings prior to proposal by the ABC Commission on September 13, 2017. Comments were received during this period and changes to address concerns raised were incorporated. Since this rule has been proposed by the ABC Commission, no negative comments or suggested changes have been received concerning this rule either in writing or at the public hearing.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes

Agency submitted request for consultation on:  
Consultation not required. Cite authority:

No

9. Rule-making Coordinator: Walker Reagan

Phone: 919-779-8367

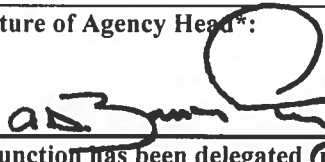
E-Mail: walker.reagan@abc.nc.gov

Agency contact, if any: Walker Reagan

Phone: 919-779-8367

E-Mail: walker.reagan@abc.nc.gov

10. Signature of Agency Head\*:



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: A.D. "Zander" Guy, Jr.

Title: Chairman

E-Mail: Zander.Guy@abc.nc.gov

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

Date returned to agency:

TEMPORARY RULES  
REQUEST FOR TECHNICAL CHANGE

AGENCY: Alcoholic Beverage Control Commission

RULE CITATION: 14B NCAC 15C .0307

**DEADLINE FOR RECEIPT: Thursday, November 9, 2017**

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*In (b)(1), line 9, and (c)(1), line 23, define or delete "accurately"*

*In (b)(3), line 15, either state "Rules .0303(b) and (c) and .0305" or "Rule .0303(b) and (c) and Rule .0305" Please note this change for lines 19, 23, 29, 32, and 35, as well.*

*On lines 15 and 19, should the cross reference now be to Rule .0303(d)?*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 1, 2017



1 14B NCAC 15C .0307 is amended under temporary procedures as follows:

2  
3 **14B NCAC 15C .0307 GROWLERS**

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

7 (b) Malt beverages may be sold in growlers as follows:

8 (1) Holders of only a brewery permit may sell, deliver, and ship growlers prefilled with the brewery's  
9 malt beverage for off-premises consumption provided a label is affixed to the growler that accurately  
10 provides the information as required by Rules .0303(a) and .0305 of this Section.

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

13 ~~(d)(3)~~ Holders of a brewery permit who also have retail permits pursuant to G.S. 18B-1001(1) may fill or  
14 refill growlers on demand with the brewery's malt beverage for off-premises consumption, provided  
15 the label as required by Rules .0303(b) and ~~(e)(c)~~, and ~~.0305~~ Rule .0305 of this Section is affixed to  
16 the growler.

17 ~~(e)(4)~~ Holders of retail permits pursuant to G.S. 18B-1001(1), (2), or (16) may fill or refill growlers on  
18 demand with draft malt beverage for off-premises consumption, provided the label as required by  
19 Rules .0303(b) and (c), and ~~.0305~~ Rule .0305 of this Section is affixed to the growler.

20 (c) Unfortified wine may be sold in growlers as follows:

21 (1) Holders of only an unfortified winery permit may sell, deliver, and ship growlers prefilled with the  
22 winery's unfortified wine for off-premises consumption provided a label is affixed to the growler  
23 that accurately provides the information as required by Rules .0304(a), (b) and (c), and Rule .0305  
24 of this Section.

25 (2) Holders of retail permits pursuant to G.S. 18B-1001(3), (4), or (16) who do not hold an unfortified  
26 winery permit shall not prefill growlers with unfortified wine.

27 (3) Holders of an unfortified winery permit who also have retail permits pursuant to G.S. 18B-1001(3)  
28 may fill or refill growlers on demand with the winery's unfortified wine for off-premises  
29 consumption, provided the label as required by Rules .0304(d) and (e), and Rule .0305 of this  
30 Section is affixed to the growler.

31 (4) Holders of retail permits pursuant to G.S. 18B-1001(3), (4), or (16) may fill or refill growlers on  
32 demand with unfortified wine for off-premises consumption, provided the label as required by Rules  
33 .0304(d) and (e), and Rule .0305 of this Section is affixed to the growler.

34 ~~(d)~~ Holders of retail permits pursuant to G.S. 18B-1001(1), (2), ~~(3), (4),~~ or (16) shall affix a label as required by  
35 Rules .0303(b) and (c), Rules .0304(d) and (e), and Rule .0305 of this Section to the growler when filling or refilling  
36 a growler.

1 ~~(g)(e)~~ Holders of retail permits pursuant to G.S. 18B-1001(1), (2), ~~(3), (4)~~, or (16), may, in their discretion, refuse to  
2 fill or refill a growler, except in matters of discrimination pursuant to G.S. 18B-305(c).

3

4 *History Note: Authority G.S. 18B-100; 18B-206(a); 18B-207; 18B-305; ~~18B-1001(1); 18B-1001(2); 18B-~~*  
5 *~~1001(16); 18B-1001;~~*

6 *Eff. April 1, 2011;*

7 *Temporary Amendment Eff. October 25, 2013;*

8 *Amended Eff. September 1, 2014;*

9 *Transferred and Recodified from 04 NCAC 02T .0308 Eff. August 1, 2015.*

10 *Temporary Amendment Eff. November 28, 2017.*



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Alcoholic Beverage Control Commission
2. Rule citation & name: 14B NCAC 15C .0308 – Growlers: Cleaning, Sanitizing, Filling and Sealing
3. Action: <input type="checkbox"/> Adoption <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Repeal
4. Was this an Emergency Rule: <input type="checkbox"/> Yes                      Effective date: <input checked="" type="checkbox"/> No
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: September 13, 2017 b. Proposed Temporary Rule published on the OAH website: September 20, 2017 c. Public Hearing date: October 11, 2017 d. Comment Period: September 20, 2017 – October 20, 2017 e. Notice pursuant to G.S. 150B-21.1(a3)(2): September 13, 2017 f. Adoption by agency on: October 26, 2017 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.  <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: S.L. 2017-87, Section 5 Effective date: June 30, 2017 <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:
Explain: The General Assembly amended the law regulating the sale of malt beverages and wine in containers filled by retail establishments holding certain ABC permits. Section 5(b) of S.L. 2017-87 directed the ABC Commission to adopt rules to implement the provisions of Section 5 no later than 120 days after the act became law, which occurred on June 30, 2017. Section 5(b) says that the ABC Commission may adopt temporary rules to comply with the deadline set forth in this subsection. The temporary rules being proposed for adoption are required to comply with Section 5(b) of S.L. 2017-87.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The General Assembly directed the ABC Commission to adopt rules to implement the provisions of Section 5 of S.L. 2017-87 no later than 120 days after the act became law on June 30, 2017. Adoption of the rules needed as permanent rules could not be done by the ABC Commission within the 120 days deadline set by the General Assembly. The ABC Commission rulemaking emailing list has been engaged in this temporary rulemaking process since August 9, 2017 by reviewing rule drafts in two separate emailings prior to proposal by the ABC Commission on September 13, 2017. Comments were received during this period and changes to address concerns raised were incorporated. Since this rule has been proposed by the ABC Commission, no negative comments or suggested changes have been received concerning this rule either in writing or at the public hearing.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes  
Agency submitted request for consultation on:  
Consultation not required. Cite authority:

No

9. Rule-making Coordinator: Walker Reagan

Phone: 919-779-8367

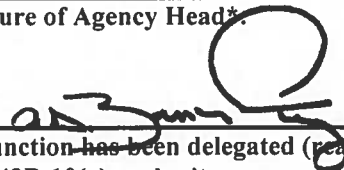
E-Mail: walker.reagan@abc.nc.gov

Agency contact, if any: Walker Reagan

Phone: 919-779-8367

E-Mail: walker.reagan@abc.nc.gov

10. Signature of Agency Head\*



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: A.D. "Zander" Guy, Jr.

Title: Chairman

E-Mail: Zander.Guy@abc.nc.gov

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

Date returned to agency:

TEMPORARY RULES  
REQUEST FOR TECHNICAL CHANGE

AGENCY: Alcoholic Beverage Control Commission

RULE CITATION: 14B NCAC 15C .0308

**DEADLINE FOR RECEIPT: Thursday, November 9, 2017**

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*In (c)(1)(E), consider stating on line 20 "rinsing is not stagnant and continually refreshed"*

*Also on line 20, what is "continually"? I take it this is known to your regulated public?*

*In (c)(1)(G), line 24, and (c)(2)(C), line 33, I take it "accurately" is known to your regulated public?*

*In (c)(2)(A), is "easily accessible and readable" known to your regulated public?*

*In (d), line 36, delete the comma after "filled" and "growler" since I assume that you are saying any growler can be filled or refilled without cleaning, rather than allowing only refills without cleaning and sanitizing.*

*In (d)(1)(E), Page 2, line 9, is this language necessary in light of the language on line 1?*

*In (d)(2)(C), line 18, please state "Sections"*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 1, 2017

1 14B NCAC 15C .0308 is amended under temporary procedures as follows:

2  
3 **14B NCAC 15C .0308 GROWLERS: CLEANING, SANITIZING, FILLING AND SEALING**

4 (a) ~~Filling~~ Except as permitted pursuant to Rules .0307(b) and (c) of this Section, filling and refilling growlers shall  
5 only occur on demand by a ~~customer~~ consumer.

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

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

9 (1) Manual washing in a three compartment sink:

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

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

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

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

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

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

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

26 (2) Mechanical washing and sanitizing machine:

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

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

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

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

36 (d) Notwithstanding Paragraph (c) of this Rule, a growler may be ~~filled~~ filled, or refilled without cleaning and  
37 sanitizing the ~~growler~~ growler, as follows:

- 1 (1) Filling or refilling a growler with a tube as referenced by Paragraph (e) of this Rule:  
 2 (A) ~~Food~~ food grade sanitizer shall be used in accordance with the EPA-registered label use  
 3 instructions;  
 4 (B) ~~A~~ container of liquid food grade sanitizer shall be maintained for no more than 10 malt  
 5 beverage taps that will be used for filling and refilling growlers;  
 6 (C) ~~Each~~ each container shall contain no fewer than five tubes that will be used only for filling  
 7 and refilling growlers;  
 8 (D) ~~The~~ the growler is inspected visually for contamination;  
 9 (E) ~~The~~ the growler is filled or refilled with a tube as described in Paragraph (e) of this Rule;  
 10 (F) ~~After~~ after each filling or refilling of a growler, the tube shall be immersed in the container  
 11 with the liquid food grade sanitizer; and  
 12 (G) ~~A~~ different tube from the container shall be used for each fill or refill of a growler; or  
 13 (2) Filling a growler with a contamination-free process:  
 14 (A) ~~The~~ the growler shall be inspected visually for contamination; ~~and~~  
 15 (B) ~~Shall for growlers that can be refilled, the process shall~~ be otherwise in compliance with  
 16 the FDA Food Code 2009, ~~Section 3-304.17(e).~~ Section 3-304.17(C); and  
 17 (C) ~~for growlers that are for single use, the process shall be otherwise in compliance with the~~  
 18 FDA Food Code 2009, Section 4-903.11 and 4-903.12.

19 (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  
 20 beverage or unfortified wine faucet and extends to the bottom of the growler or with a commercial filling machine.

21 (f) When not in use, tubes to fill or refill growlers shall be immersed and stored in a container with liquid food grade  
 22 sanitizer.

23 (g) After filling or refilling a growler, the growler shall be sealed with a closure or cap.  
 24

25 *History Note: Authority G.S. 18B-100; 18B-206(a); 18B-207; ~~18B-1001(1); 18B-1001(2); 18B-1001(16); FDA~~*  
 26 *~~Food Code 2009, Section 3-304.17(e) and Section 4-204.13(a),(b) and (d); 18B-1001;~~*  
 27 *Temporary Adoption Eff. October 25, 2013;*  
 28 *Eff. September 1, 2014;*  
 29 *Transferred and Recodified from 04 NCAC 02T .0309 Eff. August 1, 2015.*  
 30 *Temporary Amendment Eff. November 28, 2017.*



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Alcoholic Beverage Control Commission
2. Rule citation & name: 14B NCAC 15C .0403 - Containers
3. Action: <input type="checkbox"/> Adoption <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Repeal
4. Was this an Emergency Rule: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Effective date:
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: September 13, 2017 b. Proposed Temporary Rule published on the OAH website: September 20, 2017 c. Public Hearing date: October 11, 2017 d. Comment Period: September 20, 2017 – October 20, 2017 e. Notice pursuant to G.S. 150B-21.1(a3)(2): September 13, 2017 f. Adoption by agency on: October 26, 2017 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: S.L. 2017-87, Section 5 Effective date: June 30, 2017 <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:
Explain: The General Assembly amended the law regulating the sale of malt beverages and wine in containers filled by retail establishments holding certain ABC permits. Section 5(b) of S.L. 2017-87 directed the ABC Commission to adopt rules to implement the provisions of Section 5 no later than 120 days after the act became law, which occurred on June 30, 2017. Section 5(b) says that the ABC Commission may adopt temporary rules to comply with the deadline set forth in this subsection. The temporary rules being proposed for adoption are required to comply with Section 5(b) of S.L. 2017-87.



7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The General Assembly directed the ABC Commission to adopt rules to implement the provisions of Section 5 of S.L. 2017-87 no later than 120 days after the act became law on June 30, 2017. Adoption of the rules needed as permanent rules could not be done by the ABC Commission within the 120 days deadline set by the General Assembly. The ABC Commission rulemaking emailing list has been engaged in this temporary rulemaking process since August 9, 2017 by reviewing rule drafts in two separate emailings prior to proposal by the ABC Commission on September 13, 2017. Comments were received during this period and changes to address concerns raised were incorporated. Since this rule has been proposed by the ABC Commission, no negative comments or suggested changes have been received concerning this rule either in writing or at the public hearing.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes  
Agency submitted request for consultation on:  
Consultation not required. Cite authority:

No

9. Rule-making Coordinator: Walker Reagan

Phone: 919-779-8367

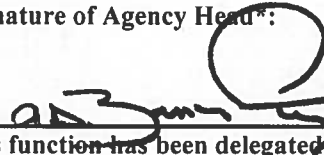
E-Mail: walker.reagan@abc.nc.gov

Agency contact, if any: Walker Reagan

Phone: 919-779-8367

E-Mail: walker.reagan@abc.nc.gov

10. Signature of Agency Head\*:



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: A.D. "Zander" Guy, Jr.

Title: Chairman

E-Mail: Zander.Guy@abc.nc.gov

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

Date returned to agency:

TEMPORARY RULES  
REQUEST FOR TECHNICAL CHANGE

AGENCY: Alcoholic Beverage Control Commission

RULE CITATION: 14B NCAC 15C .0403

**DEADLINE FOR RECEIPT: Thursday, November 9, 2017**

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*In (a), lines 6-7, what would tend to mislead the consumer as to the nature of the contents”?*

*In (b), line 11, consider inserting a comma after “wholesaler”*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 1, 2017

1 14B NCAC 15C .0403 is amended under temporary procedures as follows:

2

3 **14B NCAC 15C .0403 CONTAINERS**

4 (a) Unsealed Container Prohibited. ~~The~~ Except as permitted by Rule .0307 of this Subchapter, the sale of wine in any  
5 unsealed ~~container or~~ container, any container originally designed for a product other than ~~wine~~wine, or in any  
6 container the design or shape of which would tend to mislead the consumer as to the nature of the contents is  
7 prohibited. ~~All wine containers shall be made of glass or other nonmetallic materials except for bulk on premises~~  
8 ~~containers approved by the Commission.~~

9 (b) Distinguishing Mark Different from Retailer. The sale of wine in containers that have the blown, ~~branded~~branded,  
10 or burned name or other distinguishing mark of any person engaged in business as a wine producer, importer,  
11 wholesaler or bottler or any other person different from the person whose name is required to appear on the brand  
12 label by Rule .0304 of this Subchapter is prohibited.

13

14 *History Note: Authority G.S. 18B-206; 18B-207; 18B-1001;*

15 *Eff. January 1, 1982;*

16 *Amended Eff. June 1, 1986; May 1, 1984;*

17 *Transferred and Recodified from 04 NCAC 02T .0410 Eff. August 1, 2015.*

18 *Temporary Amendment Eff. November 28, 2017.*