

**SUBCHAPTER 2T - INDUSTRY MEMBERS: RETAIL/INDUSTRY MEMBER
RELATIONSHIPS:SHIP CHANDLERS: AIR CARRIERS: FUEL ALCOHOL**

SECTION .0100 - DEFINITIONS: APPLICATION PROCEDURES

04 NCAC 02T .0101 DEFINITIONS

The following terms shall have the following meanings when used in this Chapter:

- (1) "Brand," in relation to wines, means the name under which a wine is produced and shall include trade names or trademarks. A brand shall not be construed to mean a class or type of wine, but all classes and types of wines sold under the same brand label shall be considered a single brand. Differences in packaging such as a different style, type or size of container are not considered different brands.
- (2) "Industry member" means any wholesaler, salesman, brewery, winery, bottler, importer, distiller, rectifier, nonresident vendor, vendor representative, or affiliate thereof, that sells or solicits orders for alcoholic beverages, whether or not licensed in this state.
- (3) "Retail permittee" or "retailer" means any permittee holding a retail alcoholic beverage permit issued pursuant to the authority of G.S. 18B-1001, but shall not include a non-profit or political organization that has been issued a Special One-Time permit pursuant to the provisions of G.S. 18B-1002(a)(2) or (5).
- (4) "Representative" means any vendor representative, as that term is defined in G. S. 18B-1112, or any other person selling or soliciting orders for alcoholic beverages on behalf of a manufacturer, bottler, vendor, or importer.
- (5) "Vendor" means any nonresident malt beverage vendor or nonresident wine vendor, as those terms are defined in G.S. 18B-1113 and 18B-1114.
- (6) "Wine" means both fortified wine and unfortified wine, as those terms are defined in G.S. 18B-101(7) and (15).

*History Note: Authority G.S. 18B-101; 18B-207; 18B-1112; 18B-1113; 18B-1114;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02T .0102 APPLICATION PROCEDURES

(a) Before any winery, brewery, distiller, wholesaler, importer, bottler, representative, distiller representative, salesman, or vendor sells, solicits orders for, or manufactures, bottles or imports any alcoholic beverage in this State, that person shall first file written application for the appropriate permit and pay the required fees, as described in G.S. 18B-902.

(b) Who Files. Application for permits shall be filed by those individuals listed in G.S. 18B-900(c). Each person shall provide in the application, under oath, the following information:

- (1) name, address, and residence of applicant;
- (2) address of location of business for which permit is desired, and county and state in which business is located;
- (3) corporate or partnership name;
- (4) trade name of business;
- (5) name and address of owner of premises;
- (6) applicant's date and place of birth;
- (7) if a corporation, the name and address of agent or employee authorized to serve as process agent;
- (8) if a nonresident, intending to operate a business in the State of North Carolina, the name and address of person appointed as attorney-in-fact by virtue of a duly executed and registered power of attorney; and
- (9) if the application is for a vendor representative permit, authorization from the commercial permittee to represent it.

In addition the applicant shall certify, under oath, that he has not been convicted of a felony within three years, an alcohol or drug law violation within two years, nor had any permit authorizing the sale, importation or manufacture of alcoholic beverages revoked by this State, any other state, or the federal government revoked within the past three years.

(c) Salesmen, Representatives, Vendors To State Companies. All salesmen, representatives, distiller representatives, and vendors shall further state on the permit application the name of every manufacturer, importer, wholesaler, or vendor that the applicant will represent in the State of North Carolina.

(d) Resident Wholesalers. In addition to the requirements set forth in Paragraphs (a) and (b) of this Rule, every applicant for a permit to sell malt beverages or wine at wholesale shall submit with the permit application a distribution agreement specifying the brands authorized to be sold by the wholesaler and the specific territory in which the product may be sold.

*History Note: Authority G.S. 18B-207; 18B-900; 18B-902; 18B-1109(b);
18B-1200 through 18B-1216;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02T .0103 BEER FRANCHISE LAW; "BRAND" DEFINED

For purposes of Article 13 of Chapter 18B, the Beer Franchise Law, a distribution agreement between a supplier and wholesaler applies to all products distributed by the supplier under the same brand name. Different categories of products manufactured and marketed under a common identifying trade name are considered to be the same brand; e.g., the "Old Faithful" brand manufactured by Yellowstone Brewery Co. would include "Old Faithful", "Old Faithful Light", "Old Faithful Draft", "Old Faithful Dry" and other products identified principally by and relying upon the "Old Faithful" name, but would not include "Old Teton" which was also manufactured by Yellowstone Brewery Co. Determination of a product's

brand shall be made at the time the product is approved for sale in North Carolina and shall not be affected by later changes in the manufacturer's advertising strategy or labeling. Differences in packaging, such as different style, type or size of container, do not establish different brands.

*History Note: Authority G.S. 18B-207; 18B-1303(a);
Eff. November 1, 1994.*

SECTION .0200 - PRODUCT APPROVALS: LISTING PROCEDURES: PRODUCT LISTS

04 NCAC 02T .0201 MALT BEVERAGE PRODUCT APPROVALS: LISTING IN STATE

- (a) All malt beverage products offered for sale shall first be approved by the Commission. Thereafter, any approved malt beverage product sold in this State shall conform to the analysis of the samples submitted.
- (b) Samples. Any industry member who submits to the Commission a malt beverage product for approval for sale in the State shall furnish, without cost to the Commission, a sample of the product in a marketable container.
- (c) Procedure for Listing. To receive consideration by the Commission for a new malt beverage product, an industry member shall comply with the following procedures:
- (1) All items shall be submitted in duplicate with a list of all container sizes being offered;
 - (2) All labels shall be submitted in duplicate and attached to the application form;
 - (3) A copy of the Federal Label Approval Form shall be submitted;
 - (4) Payment of a non-refundable analysis fee in the amount of twenty-five dollars (\$25.00) shall accompany the application of each new item submitted; except if the industry member submits a certified laboratory analysis of the product, payment of a non-refundable administrative fee in the amount of ten dollars (\$10.00) shall be submitted.
- (d) If an analysis of a product is submitted it shall provide at least the following information in English:
- (1) alcohol by volume (maximum six percent),
 - (2) total sulphur dioxide content (maximum 25 ppm),
 - (3) gallo-tannins (maximum 100 ppm),
 - (4) calories per 360 milliliters (12 ounces), and
 - (5) specific gravity.
- (e) All forms required for the listing, analysis and approval of any malt beverage product shall be stapled together and forwarded to the ABC Commission, 3322 Garner Road, P.O. Box 26687, Raleigh, North Carolina 27611-6687.

*History Note: Authority G.S. 18B-203(a)(5); 18B-206; 18B-207;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02T .0202 WINE APPROVALS: LISTING IN STATE

- (a) Except as provided for special orders, before any wine is offered for sale in this State, it and the label used upon the container shall first be approved by the Commission. The Commission shall provide blank Wine Analysis forms upon request. Thereafter, any approved wine sold shall conform to the analysis of the samples submitted.
- (b) Sample of Wine Required. An industry member shall submit, without cost to the Commission, a sample of any wine that is the subject of application for listing for inspection and analysis.
- (c) The steps required to receive consideration by the Commission for a new wine listing are:
- (1) submit all items on the form in duplicate, fortified and unfortified wines listed on separate forms;
 - (2) submit all labels in duplicate attached to the form;
 - (3) submit a 500 milliliter (or a larger size if 500 milliliter is not available) bottle of each product offered for examination;
 - (4) list all sizes being offered on the form;
 - (5) submit a copy of the Federal Label Approval;
 - (6) submit a check in the amount of twenty-five dollars (\$25.00) for each new item submitted, except if a verified laboratory analysis of the product is submitted, a check in the amount of ten dollars (\$10.00);
 - (7) staple together all forms submitted with each item and forward to the North Carolina Alcoholic Beverage Control Commission, 3322 Garner Road, P.O. Box 26687, Raleigh, North Carolina 27611-6687.
- (d) If an analysis of a product is submitted, it shall provide at least the following information in English:
- (1) alcohol by volume (percent);
 - (2) total acidity (g/100 cc as tartaric acid);
 - (3) total sulphur dioxide content (ppm);
 - (4) volatile acidity, exclusive of sulphur dioxide (g/100 cc as acetic acid);
 - (5) alcohol-free soluble solids (degrees/Brix degrees/Balling); and
 - (6) identity and quantity of any added chemical preservative.

*History Note: Authority G.S. 18B-203(a)(5); 18B-206; 18B-207;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02T .0203 SPIRITUOUS LIQUOR PRODUCT APPROVALS

- (a) All brands of spirituous liquor sold in this State shall have first been approved for listing and resale by the Commission.
- (b) Listing Policy. In view of the fact that North Carolina is a monopoly state, the Commission is responsible for maintaining a wide range of spirituous liquor products and prices and a balanced selection between the various types of products. It is the Commission's responsibility to ensure that the various types of products, including specialty items and imports, are available to the North Carolina consumer, as well as the more popular products. To this end, the Commission shall, at least once a year, consider new spirituous liquor products for

placement on the state's approved list. Listings shall be in the discretion of the Commission after considering sales trends of the type of product, sales trends of the product in other states, and the need for the product in the North Carolina market. The Commission shall also, at least once a year, consider delisting items from the approved list. Items maintaining adequate sales histories for type and price range will not be considered for delisting unless the delisting is part of a penalty invoked after hearing, pursuant to this Chapter.

(c) Items shall be submitted to the Commission for consideration for listing, and will be considered only if they are offered on the prescribed forms by the distiller, rectifier, bottler or importer.

*History Note: Authority G.S. 18B-203(a)(5); 18B-206; 18B-207;
Eff. January 1, 1982;
Amended Eff. July 1, 1992.*

04 NCAC 02T .0204 SPIRITUOUS LIQUOR PRODUCT LISTS

The Commission prints a list of all brands of spirituous liquor that have been approved for sale in the state. The list, which includes container sizes and prices of all liquor products, is printed four times each year, on February 1, May 1, August 1 and November 1, and is available at no cost.

*History Note: Authority G.S. 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02T .0205 SAMPLES REQUIRED ON REQUEST

Every industry member shall, upon demand of the Commission, furnish samples at no cost to the Commission of any alcoholic beverage products manufactured, sold, or offered for sale in this State, for the purpose of analysis.

*History Note: Authority G.S. 18B-206(c); 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02T .0206 NEW FILING REQUIRED UPON TRANSFER OF BRAND

When any malt beverage or wine brand or product is transferred from one nonresident vendor, manufacturer or importer to another, the new vendor, manufacturer or importer shall, within 30 days of the acquisition of the brand or product, submit the following items to the Commission:

- (1) label approval application forms (BWL008) in duplicate, with labels attached;
- (2) copies of Federal Label Approval forms in duplicate;
- (3) a certified laboratory analysis of the product, in English, showing alcohol content by volume, with a check in the amount of ten dollars (\$10.00); and
- (4) the wholesaler territorial designations for the brand and product that were in effect on the date the product was acquired by the vendor, manufacturer or importer.

Compliance with this Rule is mandatory notwithstanding the fact that the product has been previously approved by the Commission.

*History Note: Authority G.S. 18B-203(a); 18B-206; 18B-1203; 18B-1303(a); 18B-1305(d);
Eff. July 1, 1992.*

SECTION .0300 - PACKAGING AND LABELING OF MALT BEVERAGES AND WINE

04 NCAC 02T .0301 PACKAGING REQUIREMENTS

No wine or malt beverages shall be sold, offered for sale, or possessed for the purpose of sale in this State unless:

- (1) The alcoholic beverage product is packaged, marked, branded, sealed and labeled in conformity with these Rules; and
- (2) The label on each product truthfully describes the contents of the container in accordance with standards of identity, and the industry member responsible for labeling or product approval furnishes the Commission with adequate proof that a valid certificate of label approval for the label has been obtained from the Bureau of Alcohol, Tobacco and Firearms, U.S. Treasury Department.

*History Note: Authority G.S. 18B-206(a); 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

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

- (a) All labels for malt beverage and wine products shall be submitted in duplicate to the Commission on an "Application for Label Approval Form."
- (b) Each person requesting label approval shall furnish, in the application for label approval, the names and addresses of the manufacturer, bottler and importer of the product.

*History Note: Authority G.S. 18B-206(a); 18B-207;
Eff. January 1, 1982.*

04 NCAC 02T .0303 LABEL CONTENTS: MALT BEVERAGES

Malt beverage labels shall contain the following information in a legible form:

- (1) Brand name of product;
- (2) Name and address of brewer or bottler;
- (3) Class of product (e.g., beer, ale, porter, lager, bock, stout, or other brewed or fermented beverage); and

- (4) Net Contents.

*History Note: Authority G.S. 18B-206(a); 18B-207;
Eff. January 1, 1982.*

04 NCAC 02T .0304 LABEL CONTENTS: WINE

- (a) All wine labels shall contain the following information, in a legible form:
- (1) brand name of product;
 - (2) class and type, in conformity with Section .0400 of this Subchapter;
 - (3) name and address of manufacturer, or bottler, except as otherwise provided in these Rules;
 - (4) on blends consisting of foreign and domestic wine, if any reference is made to the presence of foreign wine, the exact percentage by volume of the foreign wine; and
 - (5) net contents (unless blown or otherwise permanently inscribed in the container).
- (b) Exception for Retailer's Private Brand. In the case of wine bottles packaged for a retailer or other person under his private brand, the name and address of the bottler need not be stated on the brand label but may be stated on another label affixed to the container, if the name and address of the person for whom bottled or packed appears on the label. The net contents shall be stated on the brand label or on a separate label affixed in immediate proximity thereto on the same side of the container in readily legible form, unless blown or otherwise permanently inscribed in the container.
- (c) Imported Wines. The name and address of the importer of a foreign wine need not be stated on the brand label if it is stated upon another label affixed to the container.

*History Note: Authority G.S. 18B-206(a); 18A-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02T .0305 ALL CONTAINERS TO HAVE LABEL

Every container of wine or malt beverages, including bottles, barrels, casks, kegs, cans or other closed receptacles, irrespective of size or of the material from which made, that is sold or offered for sale in this State or that is used for the transportation, importation or sale of malt beverages or wine shall bear a brand label (or a brand label and other permitted labels) containing the information required by Rules .0303 and .0304 of this Section.

*History Note: Authority G.S. 18B-206(a); 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02T .0306 LABEL ALTERATION

No permittee nor his employee shall alter, mutilate, destroy, obliterate or remove any mark, brand or label on wine or malt beverages kept for sale in this State, except for additional labeling or relabeling to comply with the requirements of this Section or of federal or state laws and regulations.

*History Note: Authority G.S. 18B-206(a); 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02T .0307 PROHIBITED STATEMENTS: FALSE OR MISLEADING LABELS

*History Note: Authority G.S. 18B-206(a); 18B-207;
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.*

SECTION .0400 - STANDARDS OF IDENTITY FOR WINE: CONTAINERS

04 NCAC 02T .0401 APPLICATION OF STANDARDS

All wines produced, imported, bottled, or offered for sale in this State shall meet the standards of identity prescribed as of April 1, 1986, in Subpart C, Part 4, Chapter 1, Title 27 of the Code of Federal Regulations which is incorporated herein by reference and includes subsequent amendments.

The Commission has a copy of those regulations available for inspection at the address in this Rule. Copies are available at a cost of twenty-five cents (\$.25) per page.

North Carolina ABC Commission
3322 Garner Road
Raleigh, N. C. 27611-6687
MAILING ADDRESS: 4307 Mail Service Center, Raleigh, NC 27699-4307

*History Note: Authority G.S. 18B-206(a); 18B-207; 27 C.F.R. 4.20 through 4.27;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02T .0402 GRAPE WINE

04 NCAC 02T .0403 SPARKLING WINE

04 NCAC 02T .0404 FRUIT WINE

04 NCAC 02T .0405 CARBONATED WINE

04 NCAC 02T .0406 SAKE

04 NCAC 02T .0407 GRAPE TYPE DESIGNATIONS

04 NCAC 02T .0408 APPELLATION OF ORIGIN

*History Note: Authority G.S. 18B-206(a); 18B-207;
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.*

04 NCAC 02T .0409 PROHIBITED PRACTICES

(a) The production, importation or sale within this State of any product as or under the designation of wine that fails to conform to the standards prescribed in these Rules, or of any imitation or substandard wine is prohibited.

(b) Imitation Wine. Imitation wine includes:

- (1) any wine containing synthetic materials;
- (2) any wine made from a mixture of water with residues remaining after thorough pressing of grapes, fruit or other agricultural products;
- (3) any class or type of wine, the taste, aroma, color or other characteristics of which have been acquired in whole or in part by treatment with methods or materials of any kind, if the taste, aroma, color or other characteristics of normal wines of any such class or type are acquired without that treatment; or
- (4) any wine made from must concentrated at any time to more than 80 degrees (Balling).

(c) Substandard wine includes:

- (1) any wine having a volatile acidity in excess of the maximum prescribed therefor in these Rules;
- (2) any wine for which no maximum volatile acidity is prescribed in these Rules having a volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, in excess of 0.14 gram per 100 cubic centimeters (20 degrees Centigrade);
- (3) any wine for which a standard of identity is prescribed in these Rules that through disease, decomposition or otherwise fails to have the composition, color and clean vinous taste and aroma of normal wines conforming to that standard;
- (4) wine of any class or type containing added water or a sugar and water solution in excess of the quantities expressly authorized for standard wine made from the same kind or kinds of materials as prescribed in these Rules;
- (5) any wine containing monochloroacetic acid or any other substance or preservative prohibited by the United States Food and Drug Administration or the Federal Alcoholic Tax Unit; or
- (6) any wine containing deleterious, harmful or impure substances or elements or an improper balance of elements.

(d) Coined Names

- (1) Mixture of Wines. The sale in this State of wines identified on labels or in advertisements by a type or brand designation that implies mixtures of wines for which standards of identity are established in these Rules, or which identifying type or brand designation resembles an established wine type name such as "Angelica," "Madeira," "Muscatel," "Claret," "Burgundy," etc., is prohibited.

- (2) Combinations of Alcoholic Beverages. The sale in this State of wines or combinations of wine and other alcoholic beverages that contain on the labels statements such as "whiskey wine," "rum and wine," "gin and wine," "beer and wine" or similar combinations is prohibited.

*History Note: Authority G.S. 18B-206(a); 18B-207;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02T .0410 CONTAINERS

(a) Unsealed Container Prohibited. The sale of wine in any unsealed container or any container originally designed for a product other than wine or in any container the design or shape of which would tend to mislead the consumer as to the nature of the contents is prohibited. All wine containers shall be made of glass or other nonmetallic materials except for bulk on-premises containers approved by the Commission.

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

*History Note: Authority G.S. 18B-206; 18B-207;
Eff. January 1, 1982;
Amended Eff. June 1, 1986; May 1, 1984.*

04 NCAC 02T .0411 SEIZURE OF SUBSTANDARD WINE

Imitation, substandard or misbranded wine offered for sale in violation of the ABC laws may be seized and disposed of.

*History Note: Authority G.S. 18B-206(a); 18B-207; 18B-503;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

SECTION .0500 - INDUSTRY MEMBERS: GENERAL PROVISIONS

04 NCAC 02T .0501 INSPECTION OF PREMISES

Any storage facility, warehouse or office area where malt beverages or wine are stored or manufactured or where records of purchases, sales or deliveries are maintained shall be considered the licensed premises and shall be made available for inspection as provided in G.S. 18B-502.

History Note: Authority G.S. 18B-207; 18B-502;

Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02T .0502 RECORD KEEPING REQUIREMENTS: SALES TICKETS

(a) In addition to records required to be kept by the North Carolina Department of Revenue, all industry members shall maintain on the licensed premises a copy of every original sales ticket or receipt that relates to sales of alcoholic beverage products, equipment, advertising specialty items, or advertising novelties.

(b) Sales Ticket Required. Wholesalers or their salesmen shall, at the time of each sale and delivery of malt beverages or wine to a retailer, provide on every retail sales ticket the following information:

- (1) date of sale;
- (2) name of establishment;
- (3) location;
- (4) quantity of each brand of malt beverages or wine sold;
- (5) unit price;
- (6) total price;
- (7) amount received;
- (8) invoice number; and
- (9) route, if applicable.

All sales tickets shall be endorsed at the time of sale by the retailer or authorized agent and by the wholesaler with the usual signature of each.

All sales tickets shall be retained by the wholesaler for a period of three years and shall be filed alphabetically, by sales route, or chronologically by date of sale.

History Note: Authority G.S. 18B-207;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02T .0503 SANITATION

All industry members shall maintain the premises and surroundings in an orderly, sanitary manner.

History Note: Authority G.S. 18B-206(a); 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.

04 NCAC 02T .0504 OPERATION OF LICENSED PREMISES: EMPLOYEES

No industry member shall do any of the following:

- (1) employ a person under the age of 18 years or permit or allow such a person to work in, about or in connection with the premises unless it has been approved by the Commission;
- (2) permit intoxicated persons to loiter or be employed on the licensed premises;
- (3) fail to keep the premises clean, well-lighted and in an orderly manner; or
- (4) operate any establishment where there are living quarters connected directly thereto.

*History Note: Authority G.S. 18B-207; 18B-1003; 18B-1005;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02T .0505 FILL OR REFILL OF ORIGINAL CONTAINER

04 NCAC 02T .0506 ADULTERATION OF MALT BEVERAGES OR WINE PROHIBITED

04 NCAC 02T .0507 WINE SPECIAL ORDERS

04 NCAC 02T .0508 CHANGE OF MALT BEVERAGE WHOLESALER

*History Note: Authority G.S. 18B-206(a); 18B-207; 18B-1006(c); 18B-1117(b);
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.*

SECTION .0600 - SALES AND DELIVERIES OF MALT BEVERAGES AND WINE

04 NCAC 02T .0601 APPROVED BRANDS ONLY

Except as provided in Subchapter 2S, Rule .0223, no wholesaler shall sell any product that has not been approved by the Commission for sale in this State.

*History Note: Authority G.S. 18B-207; 18B-1005;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02T .0602 SALES AND PURCHASE RESTRICTIONS: RECORDS

- (a) No wholesaler of malt beverages shall sell malt beverages to any person who does not hold a retail or wholesale Malt Beverage permit, and no wholesaler of wine shall sell any fortified wine or unfortified wine to any person who does not hold the appropriate retail or wholesale Fortified or Unfortified Wine Permit; except, that a wholesaler may furnish or sell wine or malt beverages to his employees for the sole use of the employees.
- (b) No retail malt beverage or wine permittee shall purchase those alcoholic beverages from anyone other than a licensed wholesaler.

(c) No malt beverage wholesaler shall sell, ship, or distribute any brand of malt beverages to any retail permittee located outside the territory described in that wholesaler's distribution agreement for the product filed pursuant to G.S. 18B-1303(a).

(d) All persons holding retail Malt Beverage or Wine Permits shall keep the sales tickets and delivery receipts furnished by the wholesaler, pursuant to Rule .0502 of this Subchapter, as well as all other records of purchases of malt beverages and wine, filed separate and apart from all other records.

(e) Delivery receipts shall set forth terms of sale for each separate transaction between the retailer and the wholesaler and shall include for each separate sale:

- (1) date of sale;
- (2) trade name of retail establishment;
- (3) location;
- (4) quantity of each brand of alcoholic beverage sold;
- (5) unit price;
- (6) total price;
- (7) amount paid; and
- (8) invoice or receipt number.

(e) The retailer shall retain for inspection copies of all tickets and receipts on the premises for three years.

(f) A retail permittee who operates multiple locations may maintain beer and wine invoices at one central location upon written application to and approval by the Commission.

*History Note: Authority G.S. 18B-207; 18B-1107; 18B-1109; 18B-1303(a);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02T .0603 HOLDING OF CHECKS PROHIBITED

No wholesaler or his agents or employee shall enter into an agreement or understanding with a retailer to retain checks issued to the wholesaler for alcoholic beverages delivered to the retailer. Checks issued by the retailer to the wholesaler for payment of alcoholic beverages received shall be deposited by the wholesaler promptly in the ordinary course of business. A check issued to the wholesaler by the retailer and returned by the bank due to non-sufficient funds shall be redeposited promptly for collection by the wholesaler. If the check is returned to the wholesaler a second time due to non-sufficient funds, the wholesaler shall report the matter to the Commission within 10 days.

*History Note: Authority G.S. 18B-207; 18B-1116(a)(3);
Eff. January 1, 1982;*

Amended Eff. May 1, 1984.

04 NCAC 02T .0604 COLLECTION OF AMOUNT OF SALE

(a) Each wholesaler shall collect the full amount of the sale price in cash or bona fide check at the time of or prior to delivery of alcoholic beverages to a retailer except as provided in this Rule. No wholesaler shall extend credit for any period of time to any retailer who purchases malt beverages or wine from him.

Note: For purposes of this Section, the term "check" shall include the electronic transfer of funds from a retailer to a wholesaler. Prior to an electronic fund transfer, the retailer shall enter into a written agreement with the wholesaler specifying the terms and conditions for the electronic fund transfer as payment for alcoholic beverages. All such agreements shall provide that the wholesaler may initiate the electronic fund transfer at any time after delivery of alcoholic beverages. The electronic fund transfer must be initiated before the end of the business day following delivery. Any agreement authorizing electronic fund transfers shall be voluntary on the part of all parties. The wholesaler may not bear any share of the retailer's cost related to electronic fund transfers, including costs of information generated by third parties related to such transfers. Nothing in this Rule shall operate to suspend any of the requirements concerning sales tickets and record keeping as provided in Rule .0502 of this Subchapter.

(b) Collections for sales and deliveries upon military reservations, however, shall not be required at the time of the transaction.

(c) A route salesman may accept one payment for all deliveries made by him on the same day to the same permittee if deliveries are made to two or more of the permittee's retail premises on the same route. Payment in such cases shall be collected by the salesman for all such deliveries no later than at the last store account on the route. Nothing in this Rule shall be construed to authorize a route salesman to collect payment from a permittee at an office location unless the office is located on the premises where a delivery is made.

*History Note: Authority G.S. 18B-207; 18B-1116;
Eff. January 1, 1982;
Amended Eff. June 1, 1996; July 1, 1992; May 1, 1984.*

04 NCAC 02T .0605 RESTRICTED HOURS ON SALES OR DELIVERIES

*History Note: Authority G.S. 18B-207; 18B-1004;
Eff. January 1, 1982;
Amended Eff. May 1, 1984;
Repealed Eff. July 1, 1992.*

04 NCAC 02T .0606 PLATFORM SALES

Wholesalers may sell malt beverages or wine to any person holding the appropriate retail permits at the wholesaler's place of business. Such a transaction shall be known as a platform sale.

*History Note: Authority G.S. 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02T .0607 DRAUGHT MALT BEVERAGE SALES: ACCESSORIES: DELIVERIES

- (a) Delivery to Retailer; Consumer. For each sale of draught beer, the wholesaler shall transport the beer to the premises of a licensed retailer. There the wholesaler shall collect for the sale, and the retailer shall complete and sign his sales ticket, writing on it the name of the purchaser and the address to which the beer is to be delivered. If the purchaser of the draught beer can not transport the beer or does not know how to set up and tap the beer, he may request that the wholesaler assist him. Upon receiving such a request, the wholesaler may deliver the beer from the retailer's premises to the person and place designated and may set it up.
- (b) Assisting Consumer. Upon arrival at the designated place of delivery, the wholesaler may set up the equipment, tap the keg and test to see that it is working properly. The wholesaler may pick up his kegs and equipment at any time.
- (c) Tapping Accessories. Hand pumps, carbon dioxide cylinders, related gauges, tubs, ice and cups may be delivered with the kegs by a wholesaler to a consumer. Such accessories may be left with a retailer only upon the filling of an order from a retailer who has a specific and current order from a consumer, and the kegs and accessories are to be delivered by the retailer or picked up by the consumer. Nothing in this Rule shall be construed to allow a wholesaler to loan or rent tubs or tapping accessories to a retailer for any period of time.
- (d) Keg Deposits. Any deposit charged by a brewer to a wholesaler for a draught malt beverage keg shall be charged to and collected from the retailer upon delivery of the keg to the retailer.

*History Note: Authority G.S. 18B-207; 18B-1116;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02T .0608 DRAUGHT MALT BEVERAGE EQUIPMENT SALES: TERMS OF SALE

*History Note: Authority G.S. 18B-207; 18B-1116;
Eff. January 1, 1982;
Amended Eff. May 1, 1984;
Repealed Eff. July 1, 1992.*

04 NCAC 02T .0609 MALT BEVERAGE AND WINE SHIPMENTS TO MILITARY BASES

No industry member except a wholesaler shall ship malt beverages or wine directly to a United States military or naval reservation within North Carolina. All malt beverages and wine intended for that purpose shall be shipped

to wholesalers and these beverages shall come to rest upon the warehouse floor of the wholesalers who may then deliver them to United States military or naval reservations within North Carolina.

*History Note: Authority G.S. 18B-109(b); 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02T .0610 REFUSAL TO SELL; PRICING; SERVICING ACCOUNTS

(a) Refusal to Sell to Retailer. A wholesaler of malt beverages or wine may refuse to sell alcoholic beverages to a retailer for legitimate business reasons so long as the decision not to sell is not related to the size of the account, the distance of the retailer's premises from the wholesaler's warehouse, or the sex, race, age, religion or national origin of the permittee.

(b) Pricing. As used in G.S. 18B-1303(b), the term "service" shall not be construed to prohibit a malt beverage wholesaler from reducing the price of a product in a portion of his assigned territory if the price reduction is made in order to meet a competitor's lower prices offered on similar categories of malt beverage products (e.g. "premium" or "low end" products) in that same portion of the territory.

*History Note: Authority G.S. 18B-207; 18B-1303(b);
Eff. July 1, 1992.*

SECTION .0700 - ALCOHOLIC BEVERAGES: RETAILER/INDUSTRY MEMBER RELATIONSHIP: TRADE PRACTICES

04 NCAC 02T .0701 GENERAL

*History Note: Authority G.S. 18B-207; 18B-1116;
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.*

04 NCAC 02T .0702 DEFINITIONS

For the purposes of this Section, the following definitions shall apply:

- (1) "Equipment" shall include draft beer boxes, wine dispensing machines, refrigeration devices, sinks, dishwashers, dispensing trucks, trailers, caddies, and any other item useful or suitable for the preparation, serving, dispensing or cleaning of food or beverages or food and beverage containers.

- (2) "Point-of-Sale advertising" shall mean advertising material such as signs, posters, banners, and decorations that bears conspicuous and substantial product advertising matter, that has no secondary value to the retailer, and that is designed and intended to be used inside a retailer's licensed premises where alcoholic beverage products are displayed and sold.
- (3) "Promotion" shall include any advertising publicity or sponsorship activity in connection with any special event, function or holiday that is outside the scope of routine sales and marketing, and shall include fundraisers, concerts, sporting events, festivals, celebrations, anniversaries, ceremonies, operations, observances, sweepstakes or contests.

*History Note: Authority G.S. 18B-207; 18B-1116;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02T .0703 MALT BEVERAGES: ALLOWANCES FOR DAMAGE

No allowance shall be made by any malt beverage industry member to any retailer for flat beer or chipped or broken bottles, except in instances where the retailer returns the tops of the bottles with glass attached to the industry member. No refund shall be made by any industry member on canned malt beverages that have been opened by can opener or pull tab. Refunds may be made on canned malt beverages if it is obvious the malt beverages have been damaged in shipment to the wholesaler or retailer.

*History Note: Authority G.S. 18B-207; 18B-1116;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02T .0704 REMOVAL OR DISTURBANCE OF OTHER BRANDS PROHIBITED

No wholesaler shall remove from a retailer's premises any bottles, cartons or kegs bearing brand identification except brands that are distributed by that wholesaler. No wholesaler shall remove, rearrange or otherwise disturb any malt beverages or wine displayed on a retail licensed premises by another wholesaler, except:

- (1) to return merchandise to its properly assigned shelf space when it has been inadvertently placed in the wholesaler's assigned space; or
- (2) to remove a competitor's product from a promotional display area that has been assigned to the wholesaler, and the competitor's personnel are not available to move their own product from the area at the time the wholesaler's product is scheduled to go on promotion.

*History Note: Authority G.S. 18B-207; 18B-1116(b);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02T .0705 QUANTITY DISCOUNTS PROHIBITED

No wholesaler or his employee shall give any retailer a quantity discount on the price of malt beverages or wine, nor shall a retailer require a wholesaler to provide these quantity discounts.

*History Note: Authority G.S. 18B-207; 18B-1116(a);
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02T .0706 EXCLUSIVE OUTLETS

No industry member shall require, by agreement or otherwise, directly or indirectly, that any retailer engaged in the sale of malt beverages, wine or mixed beverages purchase any alcoholic beverages from that person pursuant to any of the following practices:

- (1) written or unwritten contractual purchase agreements;
- (2) threat of loss of supply;
- (3) purchases made as a prerequisite for the purchase of short supply items; or
- (4) any form of coercion by the industry member, including threats of physical or economic harm.

*History Note: Authority G.S. 18B-207; 18B-1116(a);
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02T .0707 INDUCEMENTS (TIED HOUSE)

No industry member shall:

- (1) acquire or hold any interest in any license or permit with respect to the premises of a retail permittee;
- (2) acquire any interest in real or personal property owned, occupied, or used by a retail permittee in the conduct of his business;
- (3) furnish, give, rent, lend, or sell to a retail permittee any equipment, fixtures, signs, supplies, money, services, or other things of value except as otherwise provided in these Rules;
- (4) pay or credit a retail permittee for any advertising, display, or distribution service;
- (5) guarantee any loan or the repayment of any financial obligation of a retail permittee;
- (6) extend credit to a retail permittee, except as otherwise provided in these Rules;
- (7) require a retail permittee to take and dispose of a certain quota of any alcoholic beverages;
- (8) acquire any interest in a mortgage or deed of trust on the retailer's business or property;
- (9) pay for the display of advertising on any signs or scorecards manufactured by a third party for a retailer;
- (10) furnish free warehousing by delaying delivery of alcoholic beverage product or by providing refrigerated vehicles for a retailer; or

- (11) purchase advertising on signs, scoreboards and programs at ballparks, racetracks, and coliseums from the retail concessionaire, unless the retailer is a city or county, and an exemption has been granted pursuant to G.S. 18B-1116(b).

*History Note: Authority G.S. 18B-207; 18B-1116(a);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02T .0708 COMMERCIAL BRIBERY

(a) No industry member shall make secret gifts or payoffs to purchasing agents, clerks, bartenders, salesmen or other employees of retail permittees.

(b) No industry member shall give any bonus, premium or compensation to any retailer or an officer, employee or agent of the retailer. Prohibited acts include:

- (1) monetary inducements ("push money") given to retailers or their employees;
- (2) total or partial payment of a retailer's employee's salary;
- (3) sales promotion contests in which a retailer's employees are offered or awarded prizes, such as trips abroad, cash, or automobiles that are totally or partially financed by an industry member;
- (4) payments or gratuities to groups or associations of retailer's employees;
- (5) other gifts such as trips, appliances, or other items given to retail corporate officers; or
- (6) participation in a retailer's sales or management meetings, conventions or outings by sponsoring or underwriting any events in connection with the meeting, convention or outing, unless such participation is limited to the providing of a hospitality suite with light hors d'oeuvres and beverages, and the price paid for the suite is not greater than that paid by any other participant in the meeting, convention or outing.

*History Note: Authority G.S. 18B-207; 18B-1116(a);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02T .0709 CONSIGNMENT SALES: CONDITIONAL SALES: RETURNS

(a) Consignment Sales Prohibited. No industry member shall sell, offer for sale, or contract to sell to any retail permittee, nor shall any retail permittee purchase, offer to purchase, or contract to purchase from any industry member any alcoholic beverages on consignment or under conditional sale, or with the privilege of return, or on any basis other than a bona fide cash sale. For the purposes of this Rule, a consignment sale is any transaction in which title to the merchandise is not transferred at the time of shipment or delivery and which does not involve some form of full cash settlement. No industry member shall contract or agree with a retailer to retain title to alcoholic beverages until those products are sold.

(b) Privilege of Return. No industry member and retailer shall enter into any agreement whereby the retailer has an expressed or implied right to return alcoholic beverages that he cannot sell. Any acceptance of returned

merchandise will be considered a strong indication that the "privilege of return" existed at the time of sale, and a repeated practice of accepting returned merchandise from a retailer would establish an implied privilege of return, even though no formal agreement has been made.

(c) Sales Conditioned on the Acquisition of Other Merchandise. No industry member shall make any agreement with any retailer to accept as an agreement incident to present or future sales other alcoholic beverages that the retailer wants to remove from his inventory. The exchange of alcoholic beverages for equal quantities of the same type and brand in containers of another size and style is not considered an acquisition of "other" alcoholic beverages and, therefore, is not prohibited where the return is otherwise permissible.

(d) Exceptions. This Rule shall not apply to the following transactions:

- (1) returns of malt beverages or wine for ordinary and usual commercial reasons arising after the alcoholic beverages have been sold, such as mutilated or damaged labels or containers, error in delivery, product deterioration, or a bona fide discontinuance of the retailer's business;
- (2) exchanges of malt beverage products for equal quantities of the same brand, type, size and container style, so long as the manufacturer's code date on the products will expire within 14 calendar days of the date of exchange, and the quantity exchanged does not exceed 20 cases of each brand per 14 day period. For the purposes of this Rule, the term "exchange" means to replace product for product and does not authorize the wholesaler to accept returned malt beverage products for cash or credit;
- (3) returns of wine or malt beverage products from a seasonal retailer who is open only a portion of the year if the products are likely to spoil during the off-season. For purposes of this Rule, a "seasonal retailer" is defined as one that closes its business completely for a period of at least eight weeks during the summer or winter months. Returns from a seasonal retailer may be for cash or credit.

Note: The return or exchange of wine products is governed by this Rule and the regulations under the Federal Alcohol Administration Act found in Title 27 of the United States Code of Federal Regulations, Part 11 (27 CFR Sec. 11.1 through 11.46), and nothing in these Rules shall be construed to authorize the return or exchange of wine products if the transaction is prohibited by federal law.

*History Note: Authority G.S. 18B-207; 18B-1116; 27 C.F.R. 11.1 through 11.46;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02T .0710 EXCEPTIONS: ACCEPTED TRADE PRACTICES

*History Note: Authority G.S. 18B-207; 18B-1116(b);
Eff. January 1, 1982;
Amended Eff. May 1, 1984;
Repealed Eff. July 1, 1992.*

04 NCAC 02T .0711 PROHIBITED TRADE PRACTICES

(a) General. It shall be a violation of these Rules for any industry member, whether or not licensed in this state, or any officer, director, employee or affiliate, to either directly or indirectly lend, give, furnish or offer to any retail permittee or his employee, or to the owner of the premises on which the business of a retailer is conducted, or for any retail permittee, employee, or owner to demand, require or accept from any industry member, any money, services, furniture, fixture, equipment, sign, glasses, barware, supplies or other thing of value, except as provided in these Rules.

(b) Prohibited Services. By way of illustration, but not limitation, the following services shall not be furnished, given, provided or made available to a retail permittee by an industry member, even if the retailer is charged or billed for the services for their market value:

- (1) installing, repairing or maintaining equipment, outdoor signs or other fixtures;
- (2) promoting a retailer in advertising;
- (3) reconciling inventory for a retailer;
- (4) breaking down empty boxes, cases or cartons;
- (5) providing labor or employees to assist a retailer in the retailer's promotional events;
- (6) loaning or renting aerial displays or outdoor inflatables to a retailer for use, whether on or off the retailer's licensed premises;
- (7) pricing or repricing a product without the retailer's consent;
- (8) warehousing, by:
 - (A) making refrigerated vehicles available to the retailer; or
 - (B) delaying delivery from a manufacturer, importer, nonresident vendor or warehouse in order to enable the retailer to take advantage of promotional prices or for any other reason;
- (9) providing shelving schematics that are customized for an individual retailer or group of retailers, whether based on total beer or wine sales records from one store or a group of stores, but an industry member may use its own sales statistics and records to develop a suggested shelf plan for alcoholic beverage products;
- (10) affixing special retailer stamps or stickers to beer or wine packaging, but a wholesaler may affix signs, stickers, stamps, or tags indicating the product's price to a container, shelf or display of its products;
- (11) entering delivery data on a retailer's in-store computer;
- (12) providing data processing services;
- (13) sponsoring sports leagues that are also sponsored by a retailer, or that use the facilities of a retailer for sporting events;
- (14) guaranteeing the loan of a retailer;
- (15) extending credit to a retailer;
- (16) failing to require a deposit equal to that charged by the supplier on kegs and returnable bottles;
or
- (17) negotiating special prices for or financing of equipment.

(c) Prohibited Things of Value. By way of illustration, but not limitation, the following things of value shall not be furnished, given, loaned, rented or sold to a retail permittee by any industry member:

- (1) aerial displays or tethered inflatables;

- (2) parties given for retailers or groups of retailers' employees, unless otherwise allowed by the rules of the Commission;
- (3) prizes at retailer conventions;
- (4) advertising in a retailer periodical or advertising in a retailer publication designed for distribution to consumers;
- (5) outside signs;
- (6) cooperative advertising, including, but not limited to:
 - (A) providing or assisting retailer promotions, whether on or off the retailer's premises;
 - (B) participation with a retailer in the advertising of alcoholic beverages, the retailer's business or special events unless specifically approved by the Commission in the case of fundraisers for non-profit charitable organizations;
 - (C) underwriting the cost of T-markers, scorecards or scoreboards by the purchase of advertising from a third party; or
 - (D) customizing point-of-sale advertising materials, novelties, glassware, consumer specialties or product displays by printing or having printed the retailer's name, slogan or logo on the item, unless otherwise specifically allowed in the rules of the Commission;
- (7) making discounts, rebates or refunds to a retailer on the condition that the retailer use the discount, rebate or refund to pay off a loan;
- (8) equipment, fixtures or furnishings; or
- (9) clothing, except as provided in Rule .0713 of this Section.

*History Note: Authority G.S. 18B-207; 18B-1116(a)(3),(b);
Eff. July 1, 1992.*

04 NCAC 02T .0712 ACCEPTED TRADE PRACTICES; SERVICES

The following service activities are specifically allowed in transactions between industry members and retailers:

- (1) Shelving; Pricing. In retail outlets where wholesalers have been assigned specific space, these wholesalers may price or reprice their stock as designated by the retailer and rearrange and place their brand or brands in their assigned shelf space so as to properly rotate their stock and keep their assigned space clean and neat. This Rule authorizes a wholesaler to rearrange or reset a retailer's alcoholic beverage shelf space, display area, or department pursuant to that retailer's plan and direction, but that wholesaler shall not move or disturb brands sold by other wholesalers.
- (2) Coil Cleaning Service. A wholesaler of wine or malt beverages may render coil cleaning services to a retailer who has draught equipment.
- (3) Generalized Schematics; Restrictions. General alcoholic beverage product schematics and shelving diagrams may be utilized by an industry member for sales presentations so long as:
 - (a) the diagram utilizes generally available national, state or regional market research or the industry member's own sales data;

- (b) the industry member does not solicit or receive individual sales figures or data from an individual retailer or group of retailers; and
 - (c) the schematic or diagram is not customized for an individual retailer or group of retailers who are similarly situated.
- (4) Participation in Retailer Association Activities. An industry member may participate in retailer association activities by:
 - (a) displaying product at association conventions or trade shows;
 - (b) renting display or booth space so long as the rental fee is not excessive and is the same as the fee paid by all exhibitors;
 - (c) providing hospitality events which are independent from association sponsored activities;
 - (d) purchasing tickets to functions and paying registration fees if such fees are not excessive and are the same as paid by all exhibitors; and
 - (e) making payments for advertisements in programs or brochures at association shows within the dollar limits established by 27 C.F.R. 6.100 and the Bureau of Alcohol, Tobacco and Firearms which is incorporated herein by reference. Cost adjustment increases authorized by 27 C.F.R. 6.82 are also incorporated herein by reference but subsequent amendments to 27 C.F.R. 6.100 are not incorporated. Copies of these regulations are available for inspection and copying as provided in Rule .0401 of this Subchapter.
- (5) Educational Seminars. An industry member may provide or sponsor seminars for retailers and their employees in the following areas:
 - (a) the proper use of equipment;
 - (b) the proper storage, handling and service of alcoholic beverages;
 - (c) safe driving programs;
 - (d) recognizing underage and intoxicated customers; and
 - (e) the history or aspects of a product's manufacturing process.

Seminars may be conducted at the premises of either the retailer or industry member. Nothing in this Rule shall be construed to authorize an industry member to pay the retailer's expenses in attending the seminar.

- (6) Tastings. Beer and wine tastings may be conducted in accordance with 4 NCAC 2S .0901 and .0902 of this Chapter.
- (7) Labor for Displays. An industry member may provide personnel to construct a promotional product display on the premises of a retailer, and may move other products from the display area in accordance with Rule .0704 of this Section.
- (8) Installations. The following items may be installed by an industry member at no charge to a retailer:
 - (a) point of sale advertising materials; and
 - (b) tapping accessories;
- (9) Bar Spending. An industry member may visit the premises of an on-premise retail account for the purpose of promoting its brands so long as:
 - (a) the visit is unannounced and not advertised; and
 - (b) a patron who refuses the industry member's offer to consume a product is offered a comparable beverage of his choice, either alcoholic or non-alcoholic.

- (10) Non-alcoholic Beverages. A malt beverage wholesaler who is also engaged in the business of selling non-alcoholic beverage products may engage in the accepted trade practices of the soft drink and snack food industries, so long as the sales and practices surrounding the non-alcoholic beverage merchandise are not used as an unlawful inducement to purchase malt beverages.

Note: Wine wholesalers selling non-alcoholic beverage merchandise are governed by the provisions of 27 C.F.R. 6.101.

*History Note: Authority G.S. 18B-203(b); 18B-207; 18B-1116(b); 27 C.F.R. 6.100; 27 C.F.R. 6.101 (1986);
Eff. July 1, 1992.*

04 NCAC 02T .0713 ACCEPTED TRADE PRACTICES; THINGS OF VALUE

(a) Items That Must Be Sold. The following things of value shall not be given, loaned or rented by any industry member to a retailer, but may be sold to the retailer at the price paid for the item by the first industry member who acquires the item:

- (1) novelties, such as coolers, umbrellas, ice chests, beach towels, towels, and sports equipment, so long as the novelty item has not been customized for a retailer with the retailer's name or logo;
- (2) glassware and cups, so long as the items have not been customized for a retailer with the retailer's name or logo;
- (3) carbon dioxide;
- (4) ice; and
- (5) beer tapping accessories, including faucets, rods, vents, taps, hoses, washers, couplings, gas gauges, vent tongues, shanks, and check valves.

(b) Items That May Be Provided at No Charge. The following things of value may be given, furnished, loaned, rented or sold by an industry member to a retailer:

- (1) samples of malt beverage and wine products in the following quantities:
 - (A) no more than three gallons of any brand of malt beverages; and
 - (B) no more than three liters of any brand of wine.

Samples may be given only to a retailer who has not previously purchased the brand from that industry member. If a particular product is not available in a size within the quantity limitations of this Subparagraph, an industry member may furnish the next larger size.
- (2) recipes, booklets and brochures for cooking with wine or malt beverages, as described in 4 NCAC 2S .1014 of this Chapter;
- (3) wine and beer lists, in accordance with 4 NCAC 2S .1008(a)(3) of this Chapter;
- (4) combination packaging, as provided in 27 C.F.R. 6.93;
- (5) consumer specialty items such as bottle or can openers, cork screws, ash trays, shopping bags, individual can coolers, hats, caps, visors, t-shirts (without collars or buttons), or key chains. Such items may be given to retailers for distribution to consumers, or may be provided by

industry member personnel at the retailer's place of business during unannounced and unadvertised visits. Consumer specialty items shall not be customized for a retailer with the retailer's name or logo;

- (6) product displays, to include wine racks, bins, barrels, casks and shelving from which beer or wine are displayed and sold, so long as:
 - (A) each display bears conspicuous and substantial advertising matter; and
 - (B) the dollar limitations per brand do not exceed one hundred sixty dollars (\$160.00);
- (7) point of sale advertising materials which have value only as advertising, so long as the pieces have not been customized for any individual retailer; and
- (8) retailer advertising specialty items as described in 4 NCAC 2S .1008(a)(4) of this Chapter, so long as the items have not been customized for an individual retailer, and so long as the dollar limitations per brand do not exceed seventy eight dollars (\$78.00).

(c) Point-Of-Sale Advertising Materials. Notwithstanding having a secondary value, the following items are considered to be point-of-sale materials and need not be submitted by an industry member for approval prior to use, so long as the items bear conspicuous and substantial advertising matter:

- (1) clocks;
- (2) lamps;
- (3) lighted displays;
- (4) blackboards;
- (5) bulletin boards;
- (6) dart board backgrounds;
- (7) menu and price boards;
- (8) tap standards;
- (9) calendars; and
- (10) mirrors.

(d) The provisions of 27 C.F.R. 6.93 referenced in this Rule are incorporated by reference, but such incorporation does not include subsequent amendments. Copies of this regulation is available for inspection and copying as provided in Rule .0401 of this Subchapter.

*History Note: Authority G.S. 18B-207; 18B-1116(b); 27 C.F.R. 6.83; 27 C.F.R. 6.85; 27 C.F.R. 6.91; 27 C.F.R. 6.93 (1986);
Eff. July 1, 1992.*

04 NCAC 02T .0714 TRANSACTIONS WITH GOVERNMENT AND SPECIAL ONE-TIME PERMITTEES

(a) Permitted Activities. Notwithstanding the restrictions contained in Rule .0711 of this Section, the following activities by industry members are specifically allowed, as described in this Rule, in transactions with cities, counties, the state, or in transactions with nonprofit or political organizations that have obtained a Special One-Time permit under the provisions of G.S. 18B-1002(a)(2) or (5), or nonprofit organizations that do not hold an ABC permit:

- (1) sponsorships of festivals, concerts, fundraisers or special events cosponsored by the local government, the state or nonprofit or political organizations, including payments of advertising fees;
 - (2) loaning or renting portable equipment to a local government, the state or a nonprofit or political organization so long as the equipment loaned or rented is for a single event of limited duration;
 - (3) contracts to provide payment for permanent advertising on signs or scoreboards when the industry member has submitted a request for and received an exemption pursuant to G.S. 18B-1116(b);
 - (4) providing labor or employees to assist in the setting up or changing of draft beer kegs and equipment which has been loaned or rented pursuant to Subparagraph (a)(2) of this Rule;
 - (5) loaning or renting previously approved aerial displays or outdoor inflatables for the duration of a special event, unless the event is held on the premises of a retailer;
 - (6) loaning or allowing the use of refrigerated vehicles, unless the event is held in conjunction with or on the premises of a cosponsoring retailer;
 - (7) providing novelties, prizes or prize money to nonprofit organizations that have obtained a Special One-Time Permit;
 - (8) making cash contributions to nonprofit organizations;
 - (9) participation with a local government or the state in the advertising of events cosponsored by the local government or state;
 - (10) accepting the return of alcoholic beverages not sold, for cash or credit, after the event is over.
- (b) Sponsorship/Advertising Agreements Restricted. No sponsorship agreement or advertising contract between an industry member and a city, county, the state, or a Special One-Time permittee shall contain any agreement, either express or implied, that the industry member's products will be sold to the exclusion, in whole or in part, of other brands of alcoholic beverages offered by competitors.
- (c) Cosponsorship with Retail Permittee. In any promotion by an industry member with a local government, the state, or a nonprofit organization in which there is cosponsorship by a retailer other than the local government or the state, the industry member shall obtain prior written approval from the Commission as provided in Rule .0717 of this Section.

*History Note: Authority G.S. 18B-207; 18B-1116(b);
Eff. July 1, 1992.*

04 NCAC 02T .0715 TOURNAMENTS

(a) General. Sponsorship by an industry member of a regional, statewide or national sports tournament, when the tournament is held on the property or premises of a retail permittee, is permissible only if all of the following conditions are met:

- (1) The tournament is promoted or sanctioned by the official governing body of the sport, or is promoted and sponsored by a bona fide nonprofit organization for the purpose of raising funds for a civic, scientific, charitable or educational cause;
- (2) No brand identified outdoor signs, banners, aerial displays or inflatables are displayed on the exterior of the retailer's premises;

- (3) No money, novelty items or other prohibited services or things of value are given, rented or loaned by an industry member to the retailer; and
- (4) All sponsorship money or fees and other things of value from the industry member are given to the official governing body of the sport or the nonprofit organization.
- (b) Advertising. An industry member may advertise via mass media or pay for the advertising of a tournament when the primary theme of the advertisement is the tournament and its purpose. The naming of the retailer's premises as the location of a tournament shall not be construed to be cooperative advertising in violation of 4 NCAC 2S .1007 of this Chapter when the retailer's tradename is stated in substantially smaller typeface.
- (c) Sponsorship/Advertising Agreements Restricted. No industry member agreeing to sponsor a tournament shall enter into any agreement or contract, either express or implied, that a retailer or special one-time permittee will sell that industry member's products to the exclusion, in whole or in part, of other brands of alcoholic beverages offered by competitors.
- (d) Joint Sponsorships. An industry member shall not agree to cosponsor any tournament with any retail permittee unless the proceeds from the tournament are paid to a nonprofit civic, scientific, charitable or educational organization.
- (e) Prohibited Sponsorships. An industry member shall not sponsor or aid a retailer in the promotion of any tournament held primarily to benefit the retailer, its employees, members or guests.

*History Note: Authority G.S. 18B-207; 18B-1116(b);
Eff. July 1, 1992.*

04 NCAC 02T .0716 CONSUMER CONTESTS; SWEEPSTAKES

- (a) General. Consumer contests or sweepstakes may be offered by an industry member so long as no purchase is required. Entry forms may be attached to or part of an alcoholic beverage label or package so long as alternative methods of entry are available to the consumer by means of a tear pad of entry forms available at the point of purchase.
- (b) Point-of-Sale Permissible; Restriction on Retailer Involvement. An industry member may provide to a retailer point-of-sale advertising materials promoting a sweepstakes or contest. An industry member shall not offer or promote any sweepstakes or contest in conjunction with any retailer as a cosponsor or as the provider of any prize. No prizes may be drawn or awarded on the premises of any retailer.

*History Note: Authority G.S. 18B-207; 18B-1116(b);
Eff. July 1, 1992.*

04 NCAC 02T .0717 CONDITIONS WHEN COMMISSION APPROVAL REQUIRED FOR PROMOTIONS

(a) Prior Approval Required; Exceptions. An industry member shall obtain written approval from the Commission prior to entering into any agreement to engage in activities as a sponsor for any promotion, as that term is defined in Rule .0702(4) of this Section, unless the activity involves the following:

- (1) sponsorships of nonprofit organizations that are not special one-time permittees, and the sponsored activity is neither held on the premises of a retailer nor cosponsored by a retailer;
- (2) printing and distribution of items that are classified as point-of-sale advertising material, consumer specialty items, retailer specialty items or novelty items, so long as the items are displayed and distributed in compliance with these Rules;
- (3) promotions that occur on an annual or regular basis and that have received written approval by the Commission in previous years, so long as the sponsorship activities engaged in by the industry member have not changed; and
- (4) sponsorships of individual amateur sports teams, when:
 - (A) the services or things of value provided by the industry member are given to benefit the individual team and its members;
 - (B) the team is not comprised of retailers or employees of retailers; and
 - (C) the team is not jointly sponsored by a retailer.

(b) Procedures for Approval. Requests for approval of any promotional activity shall be made in writing by the industry member, and shall provide the following information:

- (1) names of all industry members participating;
- (2) names of all retailers involved as either cosponsors or as the host location;
- (3) name of nonprofit organization being sponsored, if any;
- (4) whether the organization being sponsored will obtain a Special One-Time permit;
- (5) purpose of the promotion;
- (6) beneficiary of the promotion, and description of what benefits will be derived by the beneficiary;
- (7) copies of broadcast and print advertisements;
- (8) samples of advertising pieces and costs of items;
- (9) outdoor advertising to be used and location;
- (10) date(s) of promotion; and
- (11) complete description of industry member's activities in relation to the promotion, including statement of monies, fees, and items to be given in exchange for sponsorship rights, and person to whom given.

(c) Notification to Wholesaler. A manufacturer, importer or nonresident vendor of beer or wine that receives approval for promotional activity under this Rule shall provide a copy of the Commission's approval to each of its wholesalers in this state if that wholesaler is or will be participating in the promotion in any manner, including the distribution of promotional materials.

(d) Approvals Restricted to Industry Members. No approval for any promotional activity by an industry member will be granted to a special one-time permittee, retailer, advertising agency, broadcaster or publisher.

(e) Approvals Granted Only Upon Written Request. The Commission will decline the approval of any verbal requests or hypothetical fact presentations describing promotional activities requiring prior written approval under this Rule.

(f) Timing of Requests. Industry members are encouraged to submit promotions for approval at least two months in advance of the promotion to allow adequate review by the Commission, and to allow for the mailing of written approvals to the industry member.

(g) Promotion Agreements Restricted. Commission approval of a promotion under this Rule shall not be construed as approval for the industry member to enter into any agreement, either express or implied, that its products will be sold or distributed by a retailer or special one-time permittee to the exclusion, in whole or in part, of other brands of alcoholic beverages offered by competitors.

*History Note: Authority G.S. 18B-105; 18B-207; 18B-1116;
Eff. July 1, 1992.*

SECTION .0800 - SHIP CHANDLER'S PERMIT

04 NCAC 02T .0801 DEFINITIONS

As used in this Section:

- (1) "Export Warehouse" or "Internal Revenue Warehouse" means any warehouse under an Internal Revenue Bond and conforming to all Internal Revenue Service rules and regulations.
- (2) "Ocean-going vessel" means any ship or vessel that plys the high seas in interstate or foreign commerce in the transport of freight, passengers, or both for hire exclusively.
- (3) "Ship chandler" means any retail or wholesale agent regularly engaging in the storage and sale to ocean-going vessels of stock and supplies.
- (4) "United States Customs Bonded Warehouse" means a private bonded warehouse used exclusively for the storage of imported merchandise belonging or consigned to the proprietor thereof or a public bonded warehouse used exclusively for the storage of imported merchandise.

*History Note: Authority G.S. 18B-106;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02T .0802 IMPORTATION AND TRANSPORTATION UNDER CUSTOMS BONDS

(a) Alcoholic beverages may be imported into North Carolina under United States Customs Bonds or United States Internal Revenue Bonds and held in North Carolina in United States Customs or Internal Revenue Bonded Warehouses and those alcoholic beverages may be removed from such a warehouse and transferred to any other similarly bonded warehouse, wherever situated.

(b) Alcoholic beverages so imported or removed to these warehouses in North Carolina shall be released from Customs or Internal Revenue Bonds in North Carolina only on a Ship Chandler's Permit issued by the Commission for transfer to another United States Customs or Internal Revenue Bonded Warehouse or delivery by a ship chandler to officers or agents of ocean-going vessels for use or consumption on those vessels.

(c) A ship chandler holding a Ship Chandler's Permit may make withdrawals of alcoholic beverages from United States Customs or Internal Revenue Warehouses for sale or transfer in reasonable quantities. If an unreasonable quantity is sold, the Commission may limit sales.

*History Note: Authority G.S. 18B-106;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02T .0803 TAXES

Sales by a ship chandler under the provisions of a Ship Chandler's Permit are exempt from all state taxes.

*History Note: Authority G.S. 18B-106; 105-113.86(j);
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02T .0804 APPLICATION FOR PERMIT

Every person desiring to obtain a Ship Chandler's Permit shall file application on a form provided by the Commission and comply with the procedures set forth in Rule .0102 of this Subchapter.

*History Note: Authority G.S. 18B-106;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02T .0805 COMPLIANCE: INSPECTION

(a) Holders of Ship Chandler's Permits shall comply with all regulations promulgated by the United States Customs Service, the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury, and the Commission.

(b) All documents that the United States Customs Service, the Bureau of Alcohol, Tobacco and Firearms and the Internal Revenue Service require a ship chandler to maintain shall be retained for inspection for a period of three years.

(c) Delivery of alcoholic beverages will be under the supervision of a United States Customs officer to ocean-going vessels under seal that shall not be broken until the ship is outside the territorial waters of the United States. Consumption of tax-exempt alcoholic beverages is forbidden within the territorial waters of the United States except as authorized by United States Customs in release of sea stores from under seal for immediate consumption on board a vessel by the officers and crew thereof.

(d) A ship chandler holding a Ship Chandler's Permit shall report all losses of alcoholic beverages held under United States Customs or Internal Revenue Bond to the Commission within five days of the loss and pay state taxes on any loss within 10 days of the loss.

*History Note: Authority G.S. 18B-106;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

SECTION .0900 - DISTILLERS: REPRESENTATIVES

04 NCAC 02T .0901 DISTILLER REPRESENTATIVES: PROHIBITED ACTS

(a) Representatives Prohibited from Entering Store. Distiller representatives shall not enter any ABC store except for the purpose of calling on the buyer if the buyer's office is maintained in the store or for the purpose of making a purchase.

(b) Representatives Prohibited from Contacting Store Personnel. Distiller representatives shall not contact, either directly or indirectly, or call upon store personnel while store personnel are off duty for the purpose of promoting their merchandise. Store personnel shall share equally with the distiller representative responsibility of any infraction of this Rule.

(c) Gifts Prohibited. Representatives shall not give liquor or anything of value to store personnel at any time. Store personnel shall be equally as guilty as the representative if they accept gifts, either directly or indirectly, from any representative.

(d) Soliciting and Advertising Prohibited. Except for purchases made by state or local officials for supply of ABC stores, salesmen of spirituous liquor shall not with regard to purchases of spirituous liquor by any person:

- (1) solicit any order, agreement, or other commitment to purchase liquor, whether or not it is legally enforceable; or
- (2) advertise, promote or encourage purchases by any means or method or furnish any means by which spirituous liquor may be obtained, except as provided in 4 NCAC 2S .1011.

Exceptions may be made upon notification from the Commission to a distiller representative when there is expressed interest by a fraternal or civic group in the purchase of a ceramic or commemorative decanter. Upon notice, distiller representatives may present pictorial art work or renderings in solicitation and a presentation to that group.

(e) Relationship With Mixed Beverages Permittee. No employee or representative of any distiller, importer, rectifier or bottler may in any manner promote or solicit orders by a mixed beverages permittee or aid the permittee in placing orders for any spirituous liquor or for any other alcoholic beverages.

(f) Gifts and Inducements Prohibited. No employee or representative of any rectifier or industry member may give or lend to any mixed beverage permittee, or his employee any gift, money, services, equipment, furniture, fixture or other thing of value.

*History Note: Authority G.S. 18B-207; 18B-1116;
Eff. January 1, 1982;*

Amended Eff. July 1, 1992; May 1, 1984.

04 NCAC 02T .0902 REVOCATION OR SUSPENSION OF PERMITS

(a) The suspension or revocation of the permit of any representative for a violation of these Rules shall raise a rebuttable presumption that the unlawful activity by the representative was done with the knowledge and consent of his employer.

(b) Upon a hearing and finding that the employer or distiller had knowledge of the employee's violation of any of these Rules and that the employer failed to take appropriate disciplinary action, the permit of the employer or distiller to do business in North Carolina may be suspended or revoked or any alcoholic beverages listed by the Commission may be put on embargo by the Commission for a specific period of time.

(c) For purposes of this Rule, an order of embargo issued by the Commission shall have the effect of barring the particular code from shipment by the distiller to the state ABC warehouse and from the warehouse to local systems. Therefore items affected by an order of embargo shall not be available to fill orders placed by local boards with the State ABC warehouse.

Notice of the embargo order shall be sent to the representative, his employer and to the State ABC warehouse.

History Note: Authority G.S. 18B-104; 18B-207;

Eff. January 1, 1982;

Amended Eff. May 1, 1984.

SECTION .1000 - AIR CARRIERS

04 NCAC 02T .1001 APPLICATION FOR PERMIT

An air carrier desiring to purchase malt beverages or wine for resale to its passengers while those passengers are in transit aboard an aircraft shall apply for and obtain an Air Carrier Permit. Application shall be on a form provided by the Commission and shall be made by the air carrier's employee responsible for purchases of food and beverages for service to passengers. The food and beverage service manager, by whatever title called, shall provide, and certify under oath the following information to the Commission:

- (1) name of air carrier;
- (2) name of airport where permit will apply;
- (3) address of airport;
- (4) mailing address of carrier at airport;
- (5) state in which air carrier corporation is incorporated; and
- (6) residence of food and beverage manager.

The applicant shall also include a detailed diagram of the exact location where the malt beverages and wine will be stored.

History Note: Authority G.S. 18B-107; 18B-207;

Eff. January 1, 1982;
Amended Eff. May 1, 1984.

04 NCAC 02T .1002 SEPARATE PERMITS REQUIRED

An air carrier shall obtain a separate Air Carrier Permit for each airport in this State at which the carrier operates when malt beverages or wines will be purchased, transported and stored for later service or sale to the air carrier's passengers.

History Note: Authority G.S. 18B-107; 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.

04 NCAC 02T .1003 SALES OF ALCOHOLIC BEVERAGES IN TERMINAL

(a) Malt Beverages and Wine. An air carrier offering service at airports boarding at least 150,000 passengers annually may sell malt beverages or wine in passenger rooms approved by the Commission upon obtaining the appropriate retail on-premises Malt Beverage or Wine Permits and following the application procedures set forth in 4 NCAC 2S .0102 of the Commission's Rules.

(b) Providing Complimentary Alcoholic Beverages. An air carrier offering service at airports boarding at least 150,000 passengers annually may serve complimentary alcoholic beverages to passengers in passenger rooms under the following conditions:

- (1) the carrier submits a detailed diagram of the carrier's passenger room, showing its exact location in the airport; and
- (2) the carrier obtains written authorization from the Commission to serve complimentary alcoholic beverages, which document is maintained by the carrier in its principal office at the airport.

History Note: Authority G.S. 18B-107; 18B-207; 18B-301(c)(2);
Eff. January 1, 1982;
Amended Eff. May 1, 1984.

SECTION .1100 - FUEL ALCOHOL PERMITS

04 NCAC 02T .1101 APPLICATION FOR FUEL ALCOHOL PERMIT: OPERATION

(a) Required Information. In addition to the information required by G.S. 18B-900 and G.S. 18B-902, an applicant for a Fuel Alcohol Permit shall furnish the following information to the Commission:

- (1) Federal Operating Permit number and a photocopy of the Federal Operating Permit; and
- (2) detailed diagram of fuel alcohol plant premises, identifying roads, streams, lakes, buildings, and other structures on or features of the land that will locate exactly the place where plant operations will occur.

(b) No person shall commence the operation of a fuel alcohol plant without first applying for and obtaining a Fuel Alcohol Permit from the Commission.

*History Note: Authority G.S. 18B-207; 18B-1105(b);
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02T .1102 CHANGE OF PLANT LOCATION

(a) Change of Less Than 100 Yards. Whenever any facility for the manufacture of fuel alcohol is moved less than 100 yards from the original site, the permittee shall amend his original application by submitting to the Commission a new diagram, providing the information required by Rule .1101 of this Section.

(b) Change of More Than 100 Yards; Change of Location. Any move of a plant facility of 100 yards or more shall be considered a change of location requiring a new application and new application fee and compliance with the provisions of G.S. 18B-900 and Rule .1101 of this Section.

*History Note: Authority G.S. 18B-207; 18B-900; 18B-903(e);
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02T .1103 INSPECTION OF PREMISES: AVAILABILITY OF PERMIT

(a) The premises of a fuel alcohol plant shall be open to inspection by law enforcement officers as provided by law.

(b) A permittee holding a permit for the manufacture of fuel alcohol shall produce his permit and make it available for inspection upon request of any law enforcement officer under Article 5 of Chapter 18B of the General Statutes or any representative of the Commission.

*History Note: Authority G.S. 18B-207; 18B-502;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

SECTION .1200 - ADMINISTRATIVE ACTION BY COMMISSION

04 NCAC 02T .1201 EFFECT OF ADMINISTRATIVE ACTION

The provisions of Rules .1101, .1104, and .1106 of Subchapter 2S of these Rules apply to all permittees covered by this Subchapter.

History Note: Authority G.S. 18B-104; 18B-207;

Eff. January 1, 1982;
Amended Eff. May 1, 1984.

04 NCAC 02T .1202 OFFERS IN COMPROMISE

History Note: Authority G.S. 18B-104; 18B-207;
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.