

Comments for the ABC Commission's Preliminary Draft of the Proposed Distillery Retail Sales Rules

The Board of Directors for the Distillers Association of North Carolina (DANC) has conducted an initial review of the preliminary draft of the proposed Distillery Retail Sales rules. Based on this review, the Board believes that many of the proposed rules are **onerous and unreasonable requirements** for NC's distilling industry.

State law allows distilleries to sell bottles of spiritous liquor, offer free tastings, and serve mixed beverages containing spirits produced by the distillery which means that distilleries are different from other retail permittees that do not have the authority to sell bottles of spiritous liquor. Rules regulating distilleries need to recognize this important distinction.

As an association representing distillers, we cannot support these rules in their current form, and we request that ABC Commission staff address the following issues:

Spiritous Liquor Bottle Sales (14B NCAC 15A.2104)

Proposed rule

(b) All sales made pursuant to this Section shall be conducted in a separate designated part of the distillery premises approved by the Commission outside of the distilled spirits plant premises and outside of any part of the premises designated and approved by the Commission for the sale of alcoholic beverages for on-premise consumption. The area approved by the Commission for sales pursuant to this section shall be separated by a solid or glass wall from any other part of the premises.

DANC Concern

NC distilleries already comply with the requirement that bottle sales be conducted in an area outside of the distilled spirit plant premises. However, this new requirement that bottle sales must be conducted in a space separated by a solid or glass wall from the area approved for the on-premise consumption of alcoholic beverages is an onerous requirement. Under this proposed rule, many distilleries will be forced to undergo costly renovations to build a separate room to sell bottles. In some cases, a distillery may have to choose whether to sell bottles or serve alcoholic beverages for on-premise consumption because their retail space is limited, and they cannot build a separate room for bottle sales. In addition, maintaining separate areas for bottle sales and on-premise consumption means that distilleries will have to hire more staff to support separate sales areas which will increase operating costs.

DANC cannot support the requirement that the sale of **unopened** bottles of spirits must be separated from an area approved for on-premise consumption of alcoholic beverages. Breweries and wineries can sell their products for on and off premise consumption and do not have to separate the sale of **unopened** containers of their products from an area approved for on-premise consumption of alcoholic beverages.

Proposed rule

(g) No bottle of spiritous liquor shall be sold to a consumer until after the consumer has completed a tour of the distillery. Proof of completion of a tour by the consumer shall be a written record maintained by the permittee available to law enforcement upon request which includes the consumer's name, drivers license or personal identification number, and the date and time the tour was completed. The date of the consumer's tour may be prior to the date of the bottle sale.

DANC Concern

Prior to the SB290, distilleries were required to maintain a written record of bottles sold to consumers to ensure that annual limit of bottle sales to a consumer was not exceeded. Those written records were burdensome and not very useful when they were reviewed by law enforcement. In some cases, consumers decided not to purchase bottles because they did not want a written record of their purchase. The proposed rule will impose an unnecessary burden on distilleries and is an invasion of consumer privacy that serves no public purpose.

DANC cannot support this burdensome record-keeping requirement.

Sale of Mixed Beverages, Malt Beverages, And Wine For On-Premise Consumption (14BNCAC 15A.2104)

Proposed rule

(a) Prior to selling distillery mixed beverages, a distillery permittee shall submit a request for approval to sell distillery mixed beverages as part of an original permit application or by amendment to the original approved diagram to the Commission regarding permittee's intent to sell distillery mixed beverages for approval pursuant to 14B NCAC 15B .0222.

(b) The part of the permitted premises approved by the Commission for sales, possession, and consumption of distillery mixed beverages shall be outside the part of the licensed premises covered by the distilled spirits plant permit and shall be separated by delineated vertical boundaries that the consumer would recognize as indicating the boundaries that physically separate areas where consumption is allowed from areas open to the general public other than patrons, or other uses of the premises.

(c) All sales, possession, and consumption of alcoholic beverages for on-premise consumption pursuant G.S. 18B-1105 shall be conducted in a separate part of the distillery premises outside the boundaries of the distilled spirits plant and separated by delineated vertical boundaries from any part of the premises designated and approved for the sale of distillery spirituous liquor to be sold to consumers pursuant to G.S. 18B-1105(a)(4).

(d) If a distillery that sells distillery mixed beverages also sells alcoholic beverages pursuant to permits allowing for on-premise consumption, the part of the premises approved for the sale of distillery mixed beverages shall be the same as the part of the premises where other alcoholic beverages are sold and consumed.

DANC Concern

NC distilleries already comply with the requirement that retail activities be conducted in an area outside of the distilled spirit plant premises. However, this proposed rule, like the bottle sales rule, requires distilleries to establish vertical boundaries to physically separate an area for the consumption of alcoholic beverages. This proposed rule has the same impact as the bottle sales rule including requiring distilleries to undergo costly renovations to tasting rooms, to choose whether to sell bottles or offer on-premise consumption of alcoholic beverage because of space limitations, and to hire more staff which will increase operating costs.

DANC cannot support the requirement that bottle sales must be separated from an area approved for on-premise consumption of alcoholic beverages.

Proposed rule

(e) All mixed beverages, including distillery mixed beverages, sold by a distillery holding a mixed beverages permit shall be considered a mixed beverage sold pursuant to a mixed beverages permit.

DANC Concern

DANC does not understand the intent of this proposed rule. It appears to require distilleries selling mixed beverages made with their spirits to be subject to the same requirements as a distillery that chooses to receive a mixed beverage permit. DANC needs to understand the intent of this rule before providing comments.

Distillery Tasting (14B NCAC 15A.2106)

Proposed Rule

(a) Consumer tasting events conducted by the distillery pursuant to a spirituous liquor tasting permit issued pursuant to G.S. 18B-1001(19) shall be conducted in the part of distillery premises designated by the permittee and approved by the Commission. The pouring of samples and the consumption of samples at a consumer tasting event shall be limited to the part of licensed premises designated and approved by the Commission for consumer tasting events.

(b) All consumer tasting events shall be conducted in a separate designated part of the distillery premises approved by the Commission outside of the bonded premises and outside of any part of the premises designated and approved by the Commission for the sale of alcoholic beverages for on-premise consumption. The part of the premises approved for tasting events may include the part of the premises approved for bottle sales pursuant to Rule .2101 of this Section.

DANC Concern

NC distilleries already comply with the requirement that consumer tastings be conducted in an area outside of the distilled spirit plant premises. However, this proposed rule requires distilleries to establish separate areas for the consumption of tasting samples and the consumption of other alcoholic beverages which is an unreasonable and unnecessary requirement. The only difference between these two types of consumption is that tasting samples are free and the consumer must purchase the other alcoholic beverages. State law already requires distilleries to limit free samples to a total of 1.5 ounces, and distilleries comply with the law. Requiring distilleries to separate free tastings from the consumption of other alcoholic beverages will not improve compliance. Like the other rules included in this preliminary draft, this proposed rule will require distilleries to undergo costly renovations to tasting rooms, to choose whether to sell bottles or offer on-premise consumption of alcoholic beverage because of space limitations, and to hire more staff which will increase operating costs.

DANC cannot support the requirement that consumer tastings must be separated from an area approved for on-premise consumption of alcoholic beverages.

Diagram Requirements

Proposed Rule

These proposed rules require distilleries to submit multiple new or amended diagrams of space usage to the ABC Commission.

DANC Concern

Requiring distilleries to submit multiple diagrams seems unreasonable, especially when bottle sales, tastings, and the consumption of alcoholic beverages occur in tasting rooms that already exist and are already separated from the distilled spirit plant premises.

Definitions (14B NCAC 15A.0103)

Proposed Rule

(15) “Distillery spirituous liquor” means spirituous liquor distilled at the distillery for sale pursuant to G.S. 18B-1105(a)(4).

DANC Concern

The definition of “Distillery spirituous liquor” uses “distilled” to describe the production of distilled spirits at a distillery which is not an accurate description of how distilled spirits can be manufactured. DANC requests that rule use “produced” instead of “distilled” to cover all manufacturing processes used to produce distilled spirits. If that change cannot be made because G.S. 18B-1105(a)(4) currently uses “distilled”, DANC requests that the definition includes “or produced” after “distilled”. Either of these changes would more accurately define the term “Distillery spirituous liquor”.

Unlaw Possession Or Consumption Of Alcoholic Beverages (14B NCAC 15B.208)

Proposed Rule

(a) ~~No~~ Except as permitted under Paragraph (b) of this Rule, no permittee or his permittee’s employee shall sell, offer for sale, possess or knowingly permit the possession or consumption on the licensed premises of any kind of alcoholic beverages, the sale or possession of which is not authorized by the ABC laws or by the permits issued to that permittee.

(b) In the part of a distillery's permitted premises designated as bonded premises, in addition to possessing spirituous liquor distilled at the distillery, a distillery may possess spirituous liquor not distilled at the distillery if used exclusively for distillery's spirituous liquor production purposes, including comparison, tasting, flavoring, sensory analysis, quality control, and education.

DANC Concern

This proposed rule authorizes distilleries to possess spiritous liquor not produced at the distillery in its bonded premises if it is used for activities related to the production of distilled spirits. DANC recognizes and appreciates that this rule is intended to protect distilleries from receiving an ALE violation for possessing spirits that were not produced at their facility if they are stored in the bonded premises. To be consistent with the requested changes for the definition of "Distillery spiritous liquor", DANC requests that this rule use "produced" instead of "distilled" to cover all manufacturing processes used to produce distilled spirits. If that change cannot be made because G.S. 18B-1105(a)(4) currently uses "distilled", then DANC requests that this rule includes "or produced" after "distilled".

Thanks for the opportunity to review the preliminary draft of the proposed Distillery Retail Sales rules. Please let us know how the Commission intends to address our concerns. The DANC Board will be sending our members these rules along with our concerns. They will be asked to identify additional concerns that have not been already addressed and to provide examples of how these rules will affect their business. The DANC Board will provide additional comments to Commission staff after our members have an opportunity to review the rules and report their concerns.