IMPACT ANALYSIS

04 NCAC 02T .0104 WINE PRODUCT BRAND

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Authority: G.S. 18B-100; 18B-207; 18B-1001(13)

Impact Summary: State Government: No

Local Government: No

Substantial Economic Impact: No

Rule Summary:

The purpose of the rule (see rule text in Appendix) is to confirm the manner in which French Bordeaux wine is marketed and distributed into the United States. This system of importation into the United States is unique only unto itself; no other wine imported into the United States is distributed in this fashion. The French *négociant* system, where a wine merchant assembled the produce of smaller growers and sells it under its own name, has existed for hundreds of years. This proposed rule was requested by industry members to clarify the continued importation and availability of French Bordeaux wine following adoption of S.L. 2011-73, s.2, amending G.S. 18B-1203, and to verify brand rights for French Bordeaux wine among wholesalers and importers. The effect of this rule is to continue to recognize brand approval for French Bordeaux wines.

Rule Impact:

This is a proposed Tier 1 *de minimis* rule change. The proposed rule has little to no State, local, federal or substantial economic impact. A minor impact would be a form that would be provided by the N.C. ABC Commission for product approval or brand registration. The adoption of this rule would reduce calls and emails to ABC Commission staff by permittees seeking clarification of the issue and would streamline the brand approval process. There are no additional fees associated with this proposal.

Without the adoption of this rule, there would be a minor economic impact to the extent these wines could no longer be sold by certain wholesalers in North Carolina.

The wine wholesalers have been polled on this issue and the total French Bordeaux wine sold in North Carolina for the calendar year 2011 where there is an overlap in wholesaler territory for

the same brand is approximately $11,000. Assuming the sales volume and revenue would remain at this level in the future, the agency estimates that French Bordeaux wine wholesalers who overlap the territory of the originally approved French Bordeaux wine wholesalers would lose about $5,500, while the originally approved French Bordeaux wine wholesalers would gain this amount. This estimate was computed by multiplying the sales revenue above by the FMV (fair market value) for brand rights multiplier, which is two times the gross profit (not gross sales). Thus, assuming a 25% margin on this wine (which is a liberal assumption), the gross profit lost from the wines subject to not amending this rule would be $11,000 multiplied by 25%, which would equal $2,750. The economic impact that would result if this rule is not amended would be $2,750 (gross profit) multiplied by the FMV of two, which would equal $5,500. The state government collections of excise taxes would not be impacted by this rule changes since excise is set per liter of wine and the demand for wine is not expected to be impacted by this rule.

APPENDIX

04 NCAC 02T .0104 is proposed for amendment as follows:

04 NCAC 02T .0104 WINE PRODUCT BRAND

(a) Determination of a product's brand shall be made by the Commission 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 sized of container, do not establish different brands.

(b) For purposes of Bordeaux Chateau wine brought into North Carolina under the French negociant system only, "brand" as defined in 4 N.C.A.C. 2T.0101(1) shall be determined based on the nonresident wine vendor or importer's name as reflected on the back of the product label. For purposes of Bordeaux Chateau wines only, wines manufactured and marketed under a common identifying trade name such as "Chateau Domaine", but which may be imported into the United States through multiple channels based on written authorizations from French negociants, would not be considered to be the same brand; e.g., the "Chateau Domaine" brought into the United States by Importer A would be considered to be a different brand than the "Chateau Domaine" brought into the United States by Importer B. Such written authorization(s) must be provided to the Commission upon request prior to product approval or brand registration on a form provided by the Commission.

History Note: *Authority G.S. 18B-100; 18B-207; 18B-1203;*
Eff. April 1, 2011.
Amended Eff. December 1, 2012.