

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Alcoholic Beverage Control Commission

RULE CITATION: 14B NCAC 15A .1406

### RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- X ☒ Object, based on:
  - ☐ Lack of statutory authority
  - X ☒ Unclear or ambiguous
  - ☐ Unnecessary
  - X ☒ Failure to comply with the APA
  - ☐ Extend the period of review

### COMMENT:

*Staff recommends objection for failure to comply with the APA because this Rule requires payment of a fee not established in rule as required by G.S. 150B-2(8a). This Rule requires local boards to remit payment of "bailment surcharges" in Paragraph (b) on cases of liquor shipped from a Commission warehouse.*

*The ABC Commission does have statutory authority to "fix the amount of bailment charges and bailment surcharges." G.S. 18B-203(a)(14). Staff cannot find the amount of bailment surcharges in rule as required by the APA. This Rule is also unclear as written because it does not specify the amount local boards will be required to pay in bailment surcharges.*

### **§ 150B-2. Definitions.**

As used in this Chapter,

...

- (8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. **The term includes the establishment of a fee and the amendment or repeal of a prior rule.** The term does not include the following: . . .

Ashley Snyder  
Commission Counsel  
Amended November 12, 2019

1 14B NCAC 15A .1406 is amended as published in 34:02 NCR 115 as follows:

2  
3 **14B NCAC 15A .1406 PAYMENT**

4 (a) Local boards shall remit full payment of the ~~contractor's~~Contractor's statement of account pertaining to the  
5 bailment fee within 30 days of receipt of the statement.

6 (b) Local boards shall remit full payment of the ~~contractor's~~Contractor's statement of account pertaining to the  
7 bailment surcharge within ~~45~~30 days of receipt of the statement.

8 (c) Local boards shall remit full payment of the distiller's invoice within 30 days of delivery of the liquor.

9 (d) Local boards that obtain spirituous liquor from another local board pursuant to 14B NCAC 15A .1301(e) shall  
10 remit full payment within 15 days of the transaction.

11  
12 *History Note: Authority G.S. 18B-100; G.S. 18B-207; 18B-702(u);*

13 *Eff. May 1, 1984;*

14 *Amended Eff. November 1, 2010; July 1, 1992;*

15 *Transferred and Recodified from 04 NCAC 02R .1407 Eff. August 1, 2015;*

16 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22,*  
17 *2015.*