



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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1711 New Hope Church Rd
Raleigh, NC 27609-6285

November 21, 2019

Walker Reagan
ABC Commission
Sent via email only to: Walker.Reagan@abc.nc.gov

Re: Extension of the Period of Review for 14B NCAC 15A .1406

Dear Mr. Reagan:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rule in accordance with G.S. 150B-21.10. The Commission did so in response to a request from the agency to extend the period in order to allow the agency additional time to prepare a response to a staff opinion issued on the rule.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Ashley B. Snyder
Commission Counsel

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Burgos, Alexander N

Subject: FW: Request for Extension of Period of Review for 14B NCAC 15A .1406

From: Reagan, Walker <Walker.Reagan@abc.nc.gov>

Sent: Thursday, November 14, 2019 1:22 PM

To: Snyder, Ashley B <ashley.snyder@oah.nc.gov>

Cc: Metz, Renee <renee.metz@abc.nc.gov>; Welch, Missy <Missy.Welch@abc.nc.gov>

Subject: Request for Extension of Period of Review for 14B NCAC 15A .1406

As we discussed, the ABC Commission would like to request an extension of the period of review for Rule 14B NCAC 15A .1406 for which you issued a revised staff opinion. We would like the opportunity to speak to the Rules Review Commission on the staff opinion and would like additional time to prepare our remarks. I plan to be present at the Rules Review Commission meeting on Thursday, November 21, 2019 and can be available for any questions the Commission might have related to this request. Please let me know if you need anything additional from me concerning this request.

Thanks for your help with this matter.

*Walker Reagan
Rulemaking Coordinator
Legal Section
NC Alcoholic Beverage Control Commission*

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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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Alcoholic Beverage Control Commission

RULE CITATION: 14B NCAC 15A .1406

DEADLINE FOR RECEIPT: November 7, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), what is the "bailment fee?" Is the same as the "bailment charge" mentioned in G.S. 18B-208(b) and 18B-804(b)(2)?

In (a), how much is the bailment fee? Is the amount set forth in rule?

In (b), how much is the bailment surcharge? Is the amount set forth in rule?

In your history note, should you include G.S. 18B-203(14) and (15)?

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

Ashley Snyder
Commission Counsel
Date submitted to agency: October 24, 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.*