



State of North Carolina
ALCOHOLIC BEVERAGE CONTROL COMMISSION

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FISCAL ANALYSIS OF PROPOSED RULES

Applications for Permits: General Provisions; Additional Permit Limitations and Requirements; Alcohol Seller/Server Training; Payment of Fees and Fines; Administrative Fines: Payment
14B NCAC 15A .0104; 15B .0102 - .0103; 15B .0113; 15B .1104

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AUTHORITY:

G.S. 18B- 100; 18B-104; 18B-122; 18B-206; 18B-207; 18B-900; 18B-901; 18B-902; 18B-903; 18B-905; 18B-1000(3); 18B-1001; 18B-1008; 18B-1009.

IMPACT SUMMARY:

State Government:	YES
Local Government:	NO
Substantial Economic Impact:	NO

SUMMARY OF NEED FOR RULE:

The Alcoholic Beverage Control (ABC) Commission is required by Chapter 150B to readopt Rule 14B NCAC 15B .0102 - Application for Permits: General Provision. In the process of readopting this rule, the ABC Commission has identified conforming, clarifying and corrective changes needed to the existing rule, and the need for additional collateral rules related to the permitting application process, to establish in rules administrative policies and procedures that are currently being utilized to carry out statutory requirements.

Specifically, through a comparison of the requirements of 14B NCAC 15B .0102 and the application forms, processes, and statutory requirements for qualifying for various ABC permits, the ABC Commission has identified additions and deletions to the rules to conform to the permit application process used by the

ABC Commission. Additionally, the ABC Commission wants to include in rule a listing of collateral documents required by statute that are required to be submitted as part of the application process.

In addition, for some years the ABC Commission has been accepting payments of fees by credit card and electronic funds transfer (hereinafter collectively referred to as electronic payments), including payments online, and recently has begun accepting payment of fines by credit card. In 2010, the Office of State Budget and Management authorized the ABC Commission to charge a convenience fee for credit card payments of up to twenty-five dollars (\$25) per transaction, which the agency began doing in April, 2011. Beginning in 2013, the agency reduced the convenience fee charged to ten dollars (\$10) per transaction. The ABC Commission has not adopted rules related to the acceptance of electronic payments, or the charging of a credit card convenience fee.

In 2008, the ABC Commission adopted a policy and program to require and provide responsible alcohol seller/server (RASP) training and to require applicants for retail permits to have this training before being issued temporary retail ABC permits. Beginning December 15, 2015, the ABC Commission has also approved other providers of alcohol seller/server training for purposes of providing this type of training. The ABC Commission has not adopted rules related to the requirement for alcohol seller/server training prior to the issue of temporary permits, the course requirements for this type of training, or the procedure for approving other providers of acceptable training.

IMPACT ON THE ABC COMMISSION:

Rule 14B NCAC 15A .0104.

The proposed Rule 14B NCAC 15A .0104 establishes a general rule to implement the current ABC Commission policy that allows, as additional acceptable forms of payment, credit card or electronic funds transfer payment for fees and fines to the ABC Commission, in addition to payment by certified check, cashier's check or money order. The addition of allowing payment by electronic payment provides consumers with an easier and quicker method of payment. These additional forms of payment also reduce, automate, and simplify the accounting and processing of these payments by the ABC Commission and reduce the amount of personnel time required to process these payments.

The cost to the agency to accept payments by electronic payment includes transaction fees charged by credit card companies and financial institutions, additional computer hardware needed to accept these forms of payment, additional computer software development and updating. The cost of the transactional fees charged by the credit card companies and financial institutions is a direct out of pocket expense that is over and above the agency's normal costs for processing payments of fees and fines. The collection of a ten dollar (\$10.00) convenience fee, from those payors who voluntarily elect to use this method of payment, has helped to off-set the additional cost incurred by the agency in order to be able accept payments by electronic payments.

The savings to the agency resulting from accepting payments by electronic payment come from reduction in staff time needed to manually process payments by check or money order, which need to be physically handled, endorsed and delivered for deposit, and the manual accounting for entering these payments into the payment system. The difference in receiving collectable funds between acceptable checks and money orders, and electronic payments, is insignificant.

The ABC Commission first began accepting credit cards and charging an authorized \$25 convenience fee in 2011. Because of the lower than desired utilization of this optional form of payment, in 2013 the agency reduced the convenience fee to \$10. Since that time, the utilization rate for electronic payments has increased to 57% for permit renewals and an overall 49% of all funds collected. Because of the benefits realized from electronic payments, as compared to payments by check or money order, the agency has

decided to cease charging a convenience fee effective February 12, 2018 in hopes of further increasing the utilization of electronic payments.

Because transaction fees are charged in part on a percentage of the amount of the transaction basis, the convenience fee does not cover the agency's transactional fee charges for credit card charges in excess of about \$ 475. The agency's cost for electronic funds transfer payment is currently \$.78 per transaction. Limiting the number of permit renewals to nine or less that can be paid by credit card avoids the agency being charged transaction fees in excess of the amounts recoverable through the convenience fee, or the cost savings resulting from not having to manually process a paper check.

The proposed rule does not make substantive changes in the current policy or practice, other than the elimination of the \$10 convenience fee, and does not impose any new burden on the regulated public.

Rules 14B NCAC 15B .0102 and .0103.

Other than the references to payments by electronic payments, the proposed changes to 14B NCAC 15B .0102 and the recodified 14B NCAC 15B .0103, will have no new fiscal impact on the ABC Commission. These changes do not impact the behavior, cost, or benefit of or to the ABC Commission or the regulated public in any way different from current policies and practices.

1. Rule 14B NCAC 15B .0102 is an existing rule, subject to readoption by May 31, 2018, and does not make any substantive changes in practice or requirements on the regulated public.
2. The proposed changes to this rule are all clarifying, conforming, or establishing in rule the requirements and procedures currently in place to otherwise comply with the requirements of the ABC statutes.

Specifically:

In regards to 14B NCAC 15B .0102 as revised:

- The current Paragraph (b) would be deleted because statutory requirements should not be duplicated in rule.
- The current Paragraph (c), to be recodified as (b), incorporates the new statutory exception for off-site storage from the separate permitting requirement, but otherwise makes no substantive change.
- The current Paragraph (d), to be recodified as (c), updates the information currently required on permit applications. Some old provisions in the existing rule are no longer needed and are not being required on the application. Other changes clarify or conform to existing policies, practices and statutory requirements.
- The new Paragraph (d) puts into rule the list of documents currently required in conjunction with permit applications; the requirement for most of which are set out in statute. This provision does not make substantive changes in current policy or practice, and does not impose any new burden on the regulated public.

In regards to the new proposed 14B NCAC 15B .0103, which is a recodification of Paragraphs (e) – (l) of the current 14B NCAC 15B .0102:

- New Paragraph (b) sets out the criteria that would be applied in deciding if a waiver of the two-bathroom requirement can be granted.
- New Paragraph (c) puts into rule the current policy for distinguishing areas open to the public and areas only open to patrons of the permittee. This provision does not make substantive changes in current policy or practice, and does not impose any new burden on the regulated public.
- The current Paragraph (h) is being deleted to eliminate an antiquated procedure that is no longer used with regards termination of old permits upon the issuance of new temporary permits arising from changes in ownership or location.
- New Paragraph (f) is a non-substantive clarifying change.

- New Paragraph (g) simplifies this rule by substituting a statutory term “in-stand sales” for a wordier definition and clarifies when in-stand sales have to cease.

Rule 14B NCAC 15B .0113.

The proposed Rule 14B NCAC 15B .0113 puts into rule the policy and practice of the ABC Commission with regards to mandatory training for applicants for retail ABC permits. These policies and procedures outline what is required for an applicant with regards to the law and best practices concerning legal alcoholic beverages sales, proper forms of identification, prohibition against underage sales and sales to intoxicated persons, and prohibited conduct on ABC licensed premises. The policy requiring proof of alcohol seller/server training has been in effect since 2008. This training has been made available free of charge by the ABC Commission as well as by some local ABC boards. Since 2015, the ABC Commission has also established by policy the minimum course content requirements for private companies and training programs who desire to provide training privately to meet these requirements.

The ABC Commission has two full-time positions that provides training on a regular basis, at the ABC Commission’s Offices as well as across the state. Additionally, the ABC Commission has part of the time of a senior administrator who works with private training entities on course requirements and approves private training programs who satisfies the mandatory training required for permitting purposes.

Rule 14B NCAC 15B .1104.

The proposed changes to Rule 14B NCAC 15B .1104 increases the number of days a permittee has to pay fines levied by the ABC Commission from 15 to 21 days. This increase in the payment period recognizes the time required by the agency to communicate the Commission’s action in levying the fine and, in most cases, provides for the deadline for payment to fall on a business day and not a weekend. The proposed changes also allow for payments of fines by electronic payment, and allows payments to be made and processed online.

The benefit to the agency from the proposed changes is that it allows more time to send out notices of fines levied, reducing the need for overtime or significantly shifting workloads. Additionally, payments made online reduce the amount of staff time needed to process payments either in person or over the telephone. The benefits from receiving payment of fines by electronic payment are the same as those set out above for Rule 14B NCAC 15A .0104.

IMPACT ON THE CONSUMERS:

Rules 14B NCAC 15A .0104 and Rule 14B NCAC 15B .1104.

The costs and benefits to the consumer based on the changes made in these rules are not calculable. Currently the consumer has whatever cost may be required to get a certified check, cashier’s check or money. The option to make payment by credit card or electronic funds transfer payment is voluntary. The consumer can calculate the most beneficial and cost effective means of payment for themselves, determine their costs for the various options, and chose accordingly. In addition, the benefit to the regulated public of 14B NCAC 15B .1104 is that the permittees will have an additional six days to pay their fines, and can pay these fines by credit card or electronic funds transfer, including payment online.

Rules 14B NCAC 15B .0102 and .0103.

The proposed changes in Rules 14B NCAC 15B .0102 and .0103 would not create any additional or greater burden on the regulated public than currently required, nor would it require the consumers to do anything differently in the permitting process.

The benefit to the consumer from the change in the new Rule 14B NCAC 15B .0102(b) with regards to off-site storage is that if the federal Alcohol and Tobacco Tax and Trade Bureau approves, the consumer no longer needs to obtain a State permit for the separate storage location. There is no way to know how many permittees this might apply to since currently permits are issued just for storage purposes, separate from the production facilities.

The current application process, dependent on the complexity of the business seeking the permit, is estimated to take between an hour to two hours to collect the necessary information, fill it in on the application form, and file the form with the ABC Commission. In addition, it is estimated, excluding travel time, to take approximately one hour to obtain the necessary local government officials signatures on the Zoning and Compliance Form.

Rule 14B NCAC 15B .0113.

The costs and benefits to the consumer are difficult to calculate. The ABC Commission does not charge an applicant for the cost of the training provided by the ABC Commission. On-site online training is available to the applicant at the ABC Commission office and can be taken at the time the applicant comes to the ABC Commission office to apply for a permit. Online training is also available on the agency's website. The ABC Commission in-person training is held on a regularly scheduled basis at the ABC Commission headquarters in Raleigh, and periodically at other locations throughout the State. Additionally, approved private training programs are available online. Companies with multiple permits and locations who prefer to have in-house training, not only for applicants, but other employees as well, are able to do their own training, and have that training to qualify for purposes of the ABC Commission permit application rules.

FACTORS AFFECTING COSTS AND BENEFITS

1) 14B NCAC 15A .0104 - Credit card and electronic payments

Fees

The ABC Commission collects application fees and renewals fees for new and existing permits. The agency accepts payments by certified check, cashier's check, money order, or credit card payment for applications and renewals. The agency only accepts electronic funds transfer (ACH) payments for renewals and not for applications.

In FY-16, the agency had 11,472 payment transactions for applications for permits and 11,360 for permit renewals. Of the application transactions, 10,900 (95.0%) application fee transactions were paid by check and 572 (5.0%) were paid by credit card. For permit renewal transactions, 5683 (50.0%) were paid by check, 5647 (49.7%) were paid by credit card, and 30 (0.3%) were paid by electronic funds transfer payment.

In FY-17, the agency had 11,555 payment transactions for applications for permits and 11,596 for permit renewals. Of the application transactions, 10,998 (95.2%) application fee transactions were paid by check and 557 (4.8%) were paid by credit card. For permit renewal transactions, 4976 (42.9%) were paid by check, 6588 (56.8%) were paid by credit card, and 32 (0.3%) were paid by electronic funds transfer payment.

Fines

The ABC Commission collects fines levied by the Commission for civil violations of the ABC laws. The agency accepts payments for fines by certified check, cashier's check, money order, or credit card payment. The agency does not accept electronic funds transfer (ACH) payments for fines.

In FY-16, the agency had 707 fine payment transactions. Of those, 393 (55.6%) were paid by check and 314 (44.4%) were paid by credit card.

In FY-17, the agency had 942 fine payment transactions. Of those, 460 (48.8%) were paid by check and 482 (51.2%) were paid by credit card.

Credit card and electronic payment costs and revenues

Costs

The ABC Commission pays transaction fees to credit card companies and the financial institutions that process electronic payments. In FY-16, the agency paid \$170,174 for these transaction fees. In FY-17, the agency paid \$202,647 for transaction fees. These transaction fees are charged on an average rate of 2.1% of the transaction amount.

Revenues

During FY-16 and FY-17, the ABC Commission collected a \$10 convenience fee for each electronic payment. In FY-16, the agency collected \$65,330 in convenience fees for credit card payments and \$300 for electronic funds transfer payments. In FY-17, the agency collected \$76,270 in convenience fees for credit card payments and \$320 for electronic funds transfer payments.

Administrative Costs and Savings

ABC Commission began accepting electronic payments in 2011. At that time, the agency acquired the hardware and software to be able to accept and process electronic payments. Since that time there have been no distinguishable costs for the annual operation and maintenance cost for the electronic payment system separate and apart from the agency's overall information technology operation and maintenance cost. The adoption of Rule 14B NCAC 15A .0104 will not require additional hardware or software or increase the agency's administrative costs to process electronic payments. The agency's decision to cease charging a \$10 per transaction convenience charge will result in a loss of revenue of \$10 per electronic payment transaction. To date, these funds had been used to offset the transaction fees charged to the agency.

The personnel cost for manually processing payments for paper check payments vs. electronic payments is difficult to precisely determine. For paper checks, the process requires manual computer entry of payment information and verification of information on the check, including verifying the correct payee, the amount of payment due, the check date, the application number on check, and that the check is properly signed. The checks have to be logged into two separate ledger systems, then endorsed, a deposit slip prepared, and the checks and deposit slip delivered to the bank for deposit.

For application and renewal payment transactions, the average amount of staff time required to process a paper check payment is approximately four minutes, excluding the time required to transport the check to the bank for deposit.

For fine payment transactions, the average amount of staff time required to process a proper paper check payment is approximately five minutes, excluding the time required to transport the check to the bank for deposit. In addition, approximately 10% of fine payments attempted to be made by check have to be returned because payments are made by personal or business checks which cannot be accepted. Checks must be by certified or cashier's check, or money order. When the payment of fines is made with an unacceptable check, an additional five minutes on average is required to prepare a letter reiterating the acceptable forms of payment and returning the check.

Daily bank deposits by the agency combine checks for permit applications with those for permit renewals, fines, and ABC Warehouse receipts. The staff time to make the deposit is constant despite the number of checks being deposited. The cost of the delivery of the Commission's checks to the bank is incurred daily, regardless of whether checks are received for permit applications, renewals, fines or other purposes. Therefore, there is no cost savings arising from payments by electronic payments due to fewer bank deposits.

For credit card payments, the credit card information has to be entered into the payment processing system, either by swiping the card or entering the credit card numbers manually into the system. No additional staff time is required to process these forms of payment. Electronic funds transfer payments require no additional data entry by agency staff. The average amount of staff time required to process an electronic payment is approximately one minute. No bank deposit is required for electronic payments.

Application and Renewal Payment Transactions

Generally, the agency staff that processes application and renewal payments is a Processing Assistant V. The cost for this position is an average mid-range salary of \$36,974 per year, plus 22.86% of salary for social security and retirement, plus \$5,378 per year for employee health benefits, for a total of \$50,804 per year.

In FY-17, if all permit application and renewal payment transactions had been paid by check, it would have taken approximately 1569 hours to process those payments. That translates to a cost of \$38,323 for the year, or \$1.59 per transaction. If all permit application and renewal payment transactions had been paid by electronic payment, it would have taken approximately 392 hours to process those payments. That translates to a cost of \$9,565 for the year, or \$.40 per transaction. The savings of receiving payments by electronic payments instead of payments by paper check is approximately \$1.19 per transaction.

Fine Payment Transactions

Generally, the agency staff that processes fine payments is a Legal Secretary. The cost for this position is an average mid-range salary of \$39,719 per year, plus 22.86% of salary for social security and retirement, plus \$5,378 per year for employee health benefits, for a total of \$ 54,176 per year.

In FY-17, if all fine payment transactions had been paid by proper check, it would have taken approximately 79 hours to process those payments. That translates to a cost of \$2,058 for the year, or \$2.18 per transaction. If 10% of all tendered payments have to be returned, it would have taken approximately 8 hours to return those checks. That translates to an additional cost of \$208 for the year. Combined the cost for processing fine payments by checks in FY-17 would have totaled \$2,266. If all fine payment transactions had been paid by electronic payment, it would have taken approximately 16 hours to process those payments. That translates to a cost of \$417 for the year, or \$.44 per transaction. There are no checks to be returned in credit card payments. The savings of receiving payments by electronic payments instead of payments by paper check is approximately \$1.96 per transaction.

Effects of Eliminating the \$10 Convenience Fee

It is anticipated that the elimination of the current \$10 convenience fee will increase the utilization of electronic payments of application and renewal fees, and the payments of fines. Because of other non-rule efforts that will be implemented in the future that are expected to effect the utilization of credit card payments (notices on the website and on applications that fees can be paid electronically, fines being able to be paid online (vs. current process of taking a credit card number by telephone), and possibly the ability to apply for permits online), it is difficult to estimate how much of the increased utilization of electronic payments can be attributed to the elimination of the \$10 convenience fee.

The cost to the agency by greater utilization of electronic payments will be an increase in the total transaction fees paid, and the loss of revenues previously collected due to the \$10 per transaction convenience fee. Since transaction fees are based on the size of the payments, part of the effect will be dependent on the size of additional transactions that may utilize electronic payment. The loss of the \$10 per transaction convenience fee is not dependent on the size of the transaction.

In order to make the best guess estimate of the effect from the elimination of the convenience fee, the differences in electronic payment utilization in 2013 after the reduction of the convenience fee from \$25 to \$10 was analyzed. Since the amount of the convenience fee reduction in 2018 will be two-thirds of the reduction in FY-13 (2013 reduction of \$15, 2018 reduction of \$10), two-thirds of the rate of increased utilization seen in 2013 can reasonably be expected in 2018. By taking two-thirds of the increase in utilization seen in 2013 plus one, multiplied by the electronic payment utilization rate in FY-17, gives a best guess estimate of the effect arising from the elimination of the convenience fee in FY-18. While the effect from reducing the cost by an additional \$10 may not be two-thirds of the effect observed from reducing the cost by \$15, due in part to the decreased difference between the cost of the convenience fee and the cost of

obtaining a money order, certified check or cashier's check, making the assumption the effect is the same for each \$5 reduction in the fee seems most reasonable.

Of the total payments received for permit applications, permit renewals and fines (FY-16 - \$25,262,604, FY-17 - \$26,438,868), 43% of the revenues were received electronically in FY-16, and 49% were received electronically in FY-17. But during these same periods, 49% of the renewals were paid electronically in FY-16 and 57% in FY-17. From this data, it appears that the average size of the electronic payment transactions is smaller than check transactions for permit renewals, but larger for permit applications. The size of the transaction impacts the amount of transaction fees paid by the agency.

The costs to the agency due to the elimination of the convenience fee would be approximately 2.1% of the amounts of the additional credit card transactions, together with the loss of \$10 per transaction from those customers who have previously paid electronically.

While it is hard to estimate the increased utilization of electronic payments for permit renewals due to the elimination of the convenience fee, it seems reasonable based on the experience when the convenience fee was reduced from \$25 to \$10 in 2013, where utilization increased from 14.1% to 18.9%, that an increase from the current utilization rate of 57% to 70% utilization on permit renewals in 2018 would be reasonable. This equates to 1,482 additional transactions.

Without consideration of other factors that might affect utilization of electronic payments for applications, it seems reasonable based on the experience in 2013 when the convenience fee was reduced, where utilization increased from 2.8% to 4.7%, that an increase from the current utilization rate of 5% to 7.0% utilization on applications would be reasonable. This equates to 243 additional transactions.

Without consideration of other factors that might affect utilization of electronic payments for fines, it seems reasonable based on the experience in 2013 when the convenience fee was reduced, where utilization increased from 25.6% to 33.1%, that an increase from the current utilization rate of 51% to 61% utilization for fines would be reasonable. This equates to 94 additional transactions.

An increase in utilization for permit renewals from 57% in FY-17 to 70% in FY-18, based on the number of FY-17 renewals, would increase the number of electronic payment transactions for renewals by 1482 transactions. The resulting staff savings from these payments being made electronically versus by check at an average savings of \$1.19 per transaction, would be an additional \$1,764 in staff costs. Assuming the size of the additional permit renewal transactions are the average size of FY-17 check transactions (\$1,889), the increased transactional costs would be approximately \$58,789.

An increase in utilization for permit applications from 5% in FY-17 to 7% in FY-18, based on the number of FY-17 applications, would increase the number of electronic payment transactions for applications by 243 transactions. The resulting staff savings from these payments being made electronically versus by check at an average savings of \$1.19 per transaction, would be an additional \$289.17 in staff costs. Assuming the size of the additional transactions are the average size of FY-17 check transactions (\$287), the increased transactional costs would be approximately \$1,465.

An increase in utilization for the payment of fines from 51% in FY-17 to 61% in FY-18, based on the number of FY-17 fine payments, would increase the number of electronic payment transactions for fines by 94 transactions. The resulting staff savings from these payments being made electronically versus by check at an average savings of \$1.96 per transaction, would be an additional \$184.24 in staff costs. Assuming the size of the additional transactions are the average size of FY-17 check transactions (\$1309), the increased transactional costs would be approximately \$2,584.

Based on the total estimated increased utilization due to the elimination of the convenience fee, assuming the number and sizes of transaction remained constant at FY-17 levels, the additional transactional costs borne by the agency for FY-19 would be \$62,838.

Benefits from use of credit cards or electronic funds transfer payments

ABC Commission

The benefits to the ABC Commission from payments made by credit card or electronic funds transfer payment are several:

1. Significant reduction in staff time for processing payments – on average 1 minutes for electronic payment transactions; 4 minutes for check payment transactions. The estimated new staff time savings is valued at approximately \$2,238 per year.
2. Immediate collection of funds.
3. Increased accuracy of data entry due to electronic entry and reduction in errors that arise from manual entry of data relative to collection.

Consumers

The benefits to the consumers (applicants and permittees) are incalculable but numerous including the following:

1. Avoidance of the \$10 convenience fee per transaction. The increased savings to the regulated community from the elimination of the convenience fee would equal the agency's loss due to the elimination of the convenience fee. Based on convenience fees collected in FY-17, the savings to the consumers and the loss of revenue to the agency would be \$76,590 per year.
2. Avoidance of the cost to obtain a certified check, cashier's check or money order.
3. Savings of the time required to acquire a certified check, cashier's check or money order.
4. Delay in ultimate payment until credit card payment is due.

2) 14B NCAC 15B .0113 – Alcohol seller/server training

Training program data

The ABC Commission has been providing training for best practices for selling and serving alcoholic beverages for many years, generally to promote the safe consumption of alcoholic beverages and encourage compliance with the ABC laws by alcohol providers and consumers. These training programs are available online and in person. Participants in these programs have included ABC permit holders, managers and employees, local ABC board employees, law enforcement and private citizens, both adults and children. Included in the individuals attending the training are retail permittees who have attended the training as part of a deferred prosecution program related to criminal ABC law violations. A subset of the participants in these programs are applicants for ABC retail permits. In 2008, the agency adopted a policy requiring all applicants for temporary retail ABC permits to show proof of responsible alcohol seller/server (RASP) training before a temporary permit could be issued. In 2015, as a result of private companies who hold large number of ABC permits, i.e. grocery stores, convenient stores and restaurant chains, and other private training programs who wanted to offer RASP training for applicants, the agency adopted a policy to recognize private RASP training programs, including in-house programs, that meet certain minimum standards to be acceptable for permitting purposes. There are currently 43 private RASP training programs approved for applicant training purposes, 28 by private vendors and 15 corporate in-house training programs.

The data on attendance at agency sponsored RASP training programs is not broken down by the reason participants are taking the training. While all retail applicants are required to get the training, not all participants in the training are applicants. Because no data is kept on why attendees are attending the training program, there is no way to calculate what percentage of the participants are applicants.

In FY-16, the agency offered RASP training programs with 11,314 RASP participants. Of those, 6,138 participants were trained in person at live presentations. The other 5,176 participants received this training on-line. During this period, there were 11,472 applications for retail permits received.

In FY-17, the agency offered RASP training programs with 13,786 RASP participants. Of those, 3,856 participants were trained in person at live presentations. The other 9,930 participants received this training on-line. During this period, there were 11,555 applications for retail permits received.

The agency training programs offered in person are a 2-hour lecture, question and answer program. The cost to the agency to offer the course is the same regardless of the number of attendees or the reasons for attendance.

The proposed Rule 14B NCAC 15B .0113 would not increase the cost to the agency or to consumers above the costs for complying with the current policies.

ABC Commission costs

Trainers

The agency has two full-time training positions, one classified as an Information Communication Specialist III and one as an Information Communication Specialist II. These two positions are responsible for providing all the RASP training programs offered by the agency. The mid-range salary for an Information Communication Specialist III position is \$59,389 per year, plus 22.86% of salary for social security and retirement, plus \$5,378 for employee health benefits, for a total annual cost of \$78,343. The mid-range salary for an Information Communication Specialist II position is \$50,319 per year, plus 22.86% of salary for social security and retirement, plus \$5,378 for employee health benefits, for a total annual cost of \$67,200.

Course provider approval

The agency uses a portion of a Business Officer to review and approve private RASP training providers. On average, it requires one hour for the review and approval of a proposed training program and follow-up communications with the vendor on corrections or updates. On average, 5 new vendors are approved per year. Additionally, under the proposed rule, approved vendors would need to seek reapproval every three years. The amount of time required for reapproval is expected to be on average one hour.

The mid-range salary for the Business Officer is \$63,646, plus 22.86% of salary for social security and retirement, plus \$5,378 for employee health benefits, for a total annual cost of \$83,573.

If the number of new vendors seeking approval each year remains about the same and on average one-third of all approved vendors seek reapproval each year, then it would require on average about 5 hours a year to approve new vendors, and 14 hours a year to reapprove existing approved vendors for a total of 19 hours a year. That translates to a cost of approximately \$763 per year for the approval or reapproval of private RASP training programs.

Consumer costs

1. **Applicants** – The cost to applicants cannot be accurately determined. The cost to the applicant of approved training course varies. There is no cost for ABC Commission online and in-person training courses. The cost for private vendor training courses varies from \$10 to \$250 a course.
One of the incalculable costs is dependent on the value of the applicant's time. Agency in-person training courses typically run 1 ½ to 2 hours. The online can take between 15 and 30 minutes. Private vendor training courses, including online courses, appear to vary in the length of time, some up to 4 hours. In addition, travel time is required for in-person training.
2. **Private vendors** – In order to obtain approval for a private course, a vendor submits an approval request form together with the course content to the ABC Commission. There is no fee for course approval. It is not possible to calculate the cost to the vendor to apply for course approval but the cost should be minimal, only requiring submission of information to the agency the vendor should have already prepared.

PROPOSED RULES TEXT

1 14B NCAC 15A .0104 is proposed for adoption as follows:

2
3 **14B NCAC 15A .0104 PAYMENT OF FEES AND FINES**

4 Except as otherwise limited in this Rule, payment of fees and fines owed to the Commission may be paid by certified
5 check, cashier's check, money order, electronic payment, or Discover, Mastercard, or Visa credit cards. Payments for
6 permit renewals for more than nine locations shall not be made by credit card. Credit card and electronic payments
7 may be made online through the Commission's website. All payments shall be made payable to the North Carolina
8 ABC Commission.

9
10 History Note: Authority G.S. 18B-100, 18B-104; 18B-206; 18B-207; 18B-902; 18B-903

11
12
13 14B NCAC 15B .0102 is proposed for readoption with substantive changes as follows:

14
15 **14B NCAC 15B .0102 APPLICATIONS FOR PERMITS: GENERAL PROVISIONS**

16 (a) ~~Forms.~~—Application forms for all ABC permits may be obtained from the North Carolina Alcoholic Beverage
17 Control Commission's office or ~~web site~~website as ~~referenced~~set forth in 14B NCAC 15A .0102.

18 (b) ~~Statutory Requirements.~~—~~Before the issuance of any ABC permit, an applicant shall comply with the statutory~~
19 ~~requirements of Articles 9 and 10 of Chapter 18B of the General Statutes and with the rules of the Commission.~~

20 (c) ~~Separate Permits Required.~~—~~An applicant operating separate~~noncontiguous buildings or ~~structures not connected~~
21 ~~directly with each other structures, except as permitted pursuant to G.S. 18B-1120, or businesses with separate trade~~
22 ~~names~~names, shall obtain and hold separate permits for each building or business for which he or she wants permits,
23 and shall pay the ~~appropriate~~ application fees as ~~provided~~set forth in G.S. 18B-902(d). ~~Where there are multiple~~
24 ~~buildings, and the Commission determines that the business is operated as one entity, the Commission may, in its~~
25 ~~discretion, issue one permit.~~An applicant operating contiguous buildings or structures over which the applicant has
26 exclusive control over the buildings and the space between buildings, and the buildings are operated as one business
27 as determined by the Commission, may obtain and hold a single permit for the business.

28 (d)(c) Information Required on Application.—~~An~~Each individual required to qualify for an ABC permit under G.S.
29 18B-900(c) applicant for an ABC permit shall file a written application with the Commission and in the application
30 shall state, under oath, the following information:

- 31 (1) ~~name and address of applicant;~~the name, address, email address, last four digits of social security
32 number, and telephone number(s) of the applicant;
- 33 (2) ~~the name of the business and whether the business is a sole proprietorship, e~~orporate,corporation,
34 limited liability e~~ompany~~company, or partnership name;partnership;
- 35 (3) ~~the mailing address and location address of~~the business for which a permit is desired, and the county
36 in which~~county, and city if applicable, where the business is located;~~
- 37 (4) the trade name of business;

- 1 (5) ~~name and address of owner of premises;~~
 2 (6) ~~the applicant's date and place of birth;~~
 3 ~~(7)(6) if the business is a corporation or limited liability company, the name and address of the agent or~~
 4 ~~employee person authorized to serve as process agent (person upon whom accept service of process~~
 5 ~~under G.S. 1A, Rule 4(j) legal service of Commission notices or orders can be made); orders;~~
 6 (8)(7) if the applicant is a non-resident, the name and address of person a resident of this State appointed
 7 as the applicant's attorney-in-fact in accordance with Chapter 32A of the General Statutes by a
 8 power of attorney; for purposes of G.S. 18B-900(a)(2)b.;
 9 (9)(8) an actual diagram of the premises showing:
 10 (A) the entrances and exits;
 11 (B) the storage area for alcoholic beverages; and
 12 (C) the locations where alcoholic beverages will be served or consumed; and
 13 (D) the exterior areas under lease, authority, or control of the applicant;
 14 (10)(9) that the applicant is the actual and bona fide owner or lessee of the premises premises, or controls
 15 the premises pursuant to a management agreement to operate the premises with the actual owner or
 16 lessee, for which where a permit is sought and shall submit a copy or memorandum of the lease
 17 showing the applicant as tenant, or a copy of the deed showing the applicant as the grantee or
 18 owner; sought;
 19 (11) ~~that the applicant intends to carry on the business authorized by the permit himself or herself or~~
 20 ~~under his or her immediate supervision and direction; and~~
 21 (12)(10) that the applicant is an actual and bona fide resident of the State of North Carolina or, as a non-
 22 resident, has appointed, by a power of attorney, a resident manager manager, who is an actual
 23 resident of this State, to serve as attorney-in-fact who will manage the business and accept service
 24 of process and official Commission notices or orders orders; and
 25 (11) that the applicant is in compliance with G.S. 18B-900(a)(3) through (8).

26 (d) The following documents completed, signed, notarized, and recorded, as applicable, shall be attached to and
 27 submitted with an application, and shall be incorporated as part of the application:

- 28 (1) a Zoning and Compliance Form signed by the appropriate officials pursuant to G.S. 18B-901(c);
 29 (2) for applicants for retail permits, a Proof of Alcohol Seller/Server Training Form containing the
 30 applicant's name, business name, address, and telephone number, and a certification of completion
 31 of an approved Alcohol Seller/Server training class with training date issued by the approved course
 32 provider unique to the applicant;
 33 (3) the fingerprint card, Authority for Release of Information Form, and certified check, cashier check,
 34 money order, electronic payment, or credit card payment made payable to the North Carolina ABC
 35 Commission in the amount of thirty-eight dollars (\$38.00) for payment of a state and national
 36 fingerprint based check pursuant to 14B NCAC 18B .0405;
 37 (4) payment of applicable permit fees as authorized in 14B NCAC 15A .0104;

- 1 (5) a certified copy of any recorded power of attorney registered in the county where the proposed
- 2 licensed premises is located;
- 3 (6) a Recycling Compliance Form for on-premise malt beverage, fortified wine, unfortified wine, and
- 4 mixed beverage permits only;
- 5 (7) for corporations not already holding a permit in this State, a copy of the Articles of Incorporation
- 6 and notarized corporate certification of shareholders holding 25% or more of the shares of the
- 7 corporation;
- 8 (8) for limited liability companies not already holding a permit in this State, a copy of Articles of
- 9 Organization and notarized organizational certification of members owning 25% or more interest in
- 10 the company. Additionally, if manager managed, a copy of the Operating Agreement;
- 11 (9) a black and white copy of applicant's current photo identification that bears a reasonable
- 12 resemblance to the applicant;
- 13 (10) a copy or memorandum of the lease showing the applicant as tenant, a copy of the deed showing the
- 14 applicant as the grantee or owner, or a copy of a management agreement with the owner or lessee
- 15 of the permitted property showing the applicant has the authority to operate the business at the
- 16 permitted location;
- 17 (11) a diagram of the premises including the details required pursuant to Subparagraph (c)(8) of this
- 18 Rule; and
- 19 (12) a Federal Employer Identification/Social Security Number Verification Form.

20
21
22 *History Note: Authority 18B-100; ~~18B-206(a)~~; ~~18B-207~~; 18B-900; ~~18B-901(d)~~; ~~18B-901~~; 18B-902; 18B-903;*
23 *~~18B-905~~; ~~18B-1000(3)~~; ~~18B-1001~~; ~~18B-1008~~; ~~18B-1009~~;*
24 *Eff. January 1, 1982;*
25 *Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984;*
26 *Temporary Amendment Eff. October 25, 2013;*
27 *Amended Eff. September 1, 2014;*
28 *Transferred and Recodified from 04 NCAC 02S .0102 Eff. August 1, 2015;*
29 *Recodified Paragraphs (c)-(l) to 14B NCAC 15B .0103 Eff. _____;*
30 *Readopted Eff. _____.*

31
32
33 14B NCAC 15B .0103 (originally Rule 15B .0102 (c)-(l)) is proposed for readoption with substantive changes as
34 follows:

35
36 [Paragraphs (e) through (l) of 15B .0102 will be recodified as 15B .0103, and the existing 15B .0103 will be
37 recodified as 15B .0109.]

1
2 **14B NCAC 15B .0103 ADDITIONAL PERMIT LIMITATIONS AND REQUIREMENTS**

3 ~~(e)(a) General Restriction; Living Quarters.~~—No permit for the possession, ~~salesale,~~ or consumption of alcoholic
4 beverages shall be issued to any establishment when there are living quarters in or connected directly thereto, to, and
5 no permittee shall establish or maintain living quarters in or connected to ~~his or her~~ the permittee's licensed premises.

6 ~~(f)(b) General Restriction; Restrooms.~~—No permit for the on-premises possession, sale, or consumption of alcoholic
7 beverages shall be issued to any establishment unless there are two restrooms in working order on the premises. The
8 Commission shall waive ~~this~~ the two-restroom requirement upon a showing by the permittee that ~~he or she will suffer~~
9 financial hardship or the safety of the employees will be jeopardized. it is not possible to have a second restroom in
10 the existing premises due to building restrictions under historical preservation or zoning laws, or building or fire codes.

11 ~~(g)(c) Areas for Sales and Consumption.~~—In determining the areas where alcoholic beverages ~~will~~ may be sold and
12 consumed, the Commission shall consider the convenience of the permittee and patrons, allowing the ~~fullest~~ maximum
13 use of the premises consistent with the control of the sale and consumption of alcoholic ~~beverages,~~ but the beverages.
14 ~~Commission will attempt to avoid consumption.~~ Consumption shall not be allowed in areas open to the general public
15 other than patrons. To be approved, any premises shall have delineated vertical boundaries that the consumer would
16 recognize as indicating the boundaries that physically separate areas where consumption is allowed from areas open
17 to the general public other than patrons.

18 ~~(h) Temporary Permits for Continuation of Business.~~ ~~The Commission may issue temporary permits to an applicant~~
19 ~~for the continuation of a business operation that holds current ABC permits when a change in ownership or location~~
20 ~~of a business has occurred. To obtain a temporary permit an applicant shall submit the appropriate ABC permit~~
21 ~~application form, all required fees, a lease or other proof of legal ownership or possession of the property on which~~
22 ~~the business is to be operated, and a written statement from the ALE agent in that area stating that there are no pending~~
23 ~~ABC violations against the business. An applicant for a temporary permit shall also submit the permits of the prior~~
24 ~~permittee for cancellation prior to the issuance of any temporary permit. No temporary permit shall be issued to any~~
25 ~~applicant unless all prior ABC permits issued for the premises have been cancelled by the Commission.~~

26 ~~(i)(d) Retail Sales at Public Places Restricted.~~—The sale and delivery of alcoholic beverages by permitted retail outlets
27 located on ~~fair grounds,~~ fairgrounds, golf courses, ball parks, race tracks, and other similar public places are restricted
28 to an enclosed establishment in a designated place. No alcoholic beverages shall be sold, served, or delivered by these
29 outlets outside the enclosed establishment, nor in grandstands, stadiums, or bleachers at public gatherings, except as
30 provided in Paragraph ~~(i)(g)~~ of this Rule. As used in this Paragraph, the term "enclosed establishment" includes a
31 temporary structure or structures constructed and used for the purpose of dispensing food and beverages at events to
32 be held on fairgrounds, golf courses, ball parks, race tracks, and other similar places. Sales of alcoholic beverages
33 may be made in box seats only under the following conditions:

- 34 (1) table service of food and non-alcoholic beverages are available to patrons in box seats;
35 (2) no alcoholic beverages are delivered to the box seats area until after orders have been taken; and

1 (3) box seat areas have been designated as part of the permittee's premises on a diagram submitted by
2 the permittee, and the Commission has granted written approval of alcoholic beverage sales in these
3 seating areas.

4 ~~(j)(e)~~ If one permittee has more than one location within a single terminal of an airport boarding at least 150,000
5 passengers annually and that permittee leases space from the airport authority, the permittee in such a situation may:

- 6 (1) obtain a single permit for all its locations in the terminal;
- 7 (2) use one central facility for storing the alcoholic beverages it sells at its locations; and
- 8 (3) pool the gross receipts from all its locations for determining whether it meets the requirements of
9 G.S. 18B-1000(6) and 14B NCAC 15B .0514.

10 ~~(k)(f) Food Businesses.~~—Unless the business otherwise qualifies as a wine shop primarily engaged in selling wines
11 for off-premise consumption, a food business qualifies for an off-premise fortified wine permit only if it maintains an
12 inventory of staple foods worth at least one thousand five hundred dollars (\$1,500) at retail value. Staple foods include
13 meat, poultry, fish, bread, cereals, vegetables, fruits, vegetable and fruit juices, and dairy products. Staple foods do
14 not include coffee, tea, cocoa, soft drinks, candy, condiments, and ~~spices.~~ baked goods ingredients, except for
15 ingredients also listed as staple foods in this Paragraph.

16 ~~(h)(g) Professional Sporting Events.~~—Notwithstanding Paragraph ~~(i)(d)~~ of this Rule, holders of a retail permit pursuant
17 to G.S. 18B-1001(1) may ~~sell malt beverages for consumption in the seating areas of stadiums, ball parks, and similar~~
18 ~~public places with a seating capacity of 3,000 or more during professional sporting events~~ have in-stand sales pursuant
19 to G.S. 18B-1009, provided that:

- 20 (1) the permittee or the permittee's employee shall not wear or display alcoholic beverage branded
21 advertising;
- 22 (2) the permittee or the permittee's employee shall not use branded carrying trays, coolers, or other
23 equipment to transport malt beverage products;
- 24 (3) the permittee or the permittee's employee may display the malt beverage product names and prices
25 provided that all of the product names are displayed with the same font size and font style; and
- 26 (4) in-stand sales shall cease, whichever is earlier, upon the cessation of other malt beverage sales
27 otherwise in the sports facility or upon the commencement of:
 - 28 (A) ~~the eighth inning during baseball games; provided that games.~~ However, if a single ticket
29 allows entry to more than one baseball game, then the eighth inning of the final game;
 - 30 (B) the fourth quarter during football and basketball games;
 - 31 (C) the sixtieth minute during soccer games;
 - 32 (D) the third period during hockey games;
 - 33 (E) the final 25 percent of the distance scheduled for automotive races; and
 - 34 (F) the final hour of the anticipated conclusion of a contest or event for all other events.

35
36 *History Note:* Authority 18B-100; 18B-207; 18B-900; 18B-901; 18B-902; 18B-903; 18B-905; 18B-1000(3); 18B-
37 1001; 18B-1008; 18B-1009;

1 Transferred from 14B NCAC 15B .0102(c)-(l) Eff. _____;
2 Readopted Eff. _____.

3
4
5 14B NCAC 15B .0113 is proposed for adoption as follows:

6
7 **14B NCAC 15B .0113 ALCOHOL SELLER/SERVER TRAINING**

8 (a) All applicants applying for retail ABC permits shall submit as part of the application proof of responsible alcohol
9 seller/server training prior to obtaining an ABC permit.

10 (b) The Commission shall accept documentation provided by an approved course provider or approved corporate,
11 partnership or limited liability company business permittee, such as a certificate of training or transcript. In the event
12 the approved course provider did not issue a document reflecting completion of training, the applicant may have the
13 course provider sign a form provided by the ABC Commission attesting to completion of this training.

14 (c) Minimum course content requirements for an approved responsible alcohol seller/server training course shall
15 include North Carolina-specific laws including:

16 (1) age requirements for possessing, purchasing, and consuming alcoholic beverages;

17 (2) age requirements for selling and serving alcoholic beverages;

18 (3) acceptable forms of identification;

19 (4) methods to detect fake, altered, and imposter forms of identification;

20 (5) State Dram Shop laws;

21 (6) sales to intoxicated persons, including:

22 (A) penalties;

23 (B) prevention;

24 (C) typical signs of intoxication; and

25 (D) methods of detecting intoxication in customers;

26 (7) sales to underage persons, including:

27 (A) penalties;

28 (B) prevention; and

29 (C) methods of identifying potential underage customers;

30 (8) hours of sale and consumption, including clearing of tables;

31 (9) prohibited conduct on the ABC licensed premises, including:

32 (A) drug use; and

33 (B) gambling; and

34 (10) amounts of alcohol that may be purchased by customers in accordance with G.S. 18B-303.

35 (d) Responsible alcohol seller/server training courses and providers shall be approved by the Commission before a
36 certificate of training or transcript will be accepted by the Commission for purposes of this Rule. A person seeking
37 to become an approved vendor for alcohol education in North Carolina and a business permittee that provides training

1 for its own employees shall submit the course provider's name, mailing, physical and email addresses, telephone
2 numbers and the contract person's name and contact information, together with a copy of its responsible alcohol
3 seller/server training program course content, to the Commission for approval. The Commission shall approve courses
4 and providers that meet the minimum course content requirements set forth in Paragraph (c) of this Rule. Course
5 approval shall be valid for three years. A course provider's course content shall be submitted to the Commission for
6 approval at least once every three years in order to maintain approved status.

7 (e) An approved course provider shall update their responsible alcohol seller/server training course content within 30
8 days of notice from the Commission to the course provider of changes needed in the alcohol education training
9 curriculum to reflect changes in current ABC laws or rules.

10
11 History Note: Authority G.S. 18B-100; 18B-122; 18B-207;

12
13 14B NCAC 15B .1104 is proposed for amendment as follows:

14
15 **14B NCAC 15B .1104 ADMINISTRATIVE FINES: PAYMENT**

16 ~~Pursuant to G.S. 18B-104, the Commission may fine a permittee whenever the ABC law authorizes suspension or~~
17 ~~revocation of his permit.~~

18 When the Commission orders a permittee to pay a fine as part of a penalty, payment shall be received in Commission
19 offices in Raleigh no later than ~~45~~21 days following the meeting at which the Commission orders the fine. The
20 Commission shall include, as part of the order, what penalty will be imposed if the fine has not been received by the
21 Commission by the prescribed deadline. Payment shall be ~~by certified check, cashier's check, or money order made~~
22 ~~payable to the North Carolina ABC Commission.~~in accordance with 14B NCAC 15A .0104.

23
24 *History Note: Authority G.S. 18B-100; G.S. 18B-104; 18B-207;*

25 *Eff. January 1, 1982;*

26 *Amended Eff. May 1, 1984;*

27 *Transferred and Recodified from 04 NCAC 02S .1104 Eff. August 1, 2015;*

28 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20,*
29 *2016.*