



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: North Carolina State Board of Opticians	
2. Rule citation & name: 21 NCAC 40 .0113	
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Effective date: April 9, 2020	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: April 1, 2020 b. Proposed Temporary Rule published on the OAH website: April 3, 2020 c. Public Hearing date: April 13, 2020 d. Comment Period: April 8, 2020 through April 30, 2020 e. Notice pursuant to G.S. 150B-21.1(a3)(2): April 1, 2020 f. Adoption by agency on: May 15, 2020 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input checked="" type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:	
<p><b>Explain:</b> On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. On March 12, 2020, the Governor of North Carolina and the NC Department of Health and Human Services recommended high risk persons stay at home, that schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services. On March 14, 2020, the Governor of North Carolina issues Executive Order No. 117 that prohibited mass gatherings, closed schools, and urged social distancing.</p>	

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required? The public health threat posed by COVID-19 requires immediate action to limit mass gatherings, increase social distancing, and limit exposure of high risks individuals. It is in the public's interest to immediately adopt rules that limit the Commission's regulated audience's exposure to COVID-19 and allow for relaxed requirements during the time of this public health emergency.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:  
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Sue Hodgin

Phone: 919-420-1390

E-Mail: shodgin@ncopticiansboard.org

Agency contact, if any:

Phone:

E-Mail:

10. Signature of Agency Head\*:



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Sue Hodgin

Title: Director

E-Mail: shodgin@ncopticiansboard.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:



TEMPORARY RULES  
REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Opticians

RULE CITATION: 21 NCAC 40 .0113

**DEADLINE FOR RECEIPT: Wednesday, May 20, 2020, by noon**

**NOTE WELL:** *This request when viewed on computer extends 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*G.S. 150B-21.1(a4) requires the "head of the agency adopting the temporary rule" to sign the form. As such, please have the Chair of the Board sign the Findings of Need Form.*

*G.S. 150B-19 allows an agency to "waive or modify a requirement set in a rule" only if a rule "establishes specific guidelines the agency must follow in determining whether to waive or modify the requirement." As written, the factors provided in Items (1) through (7) of this Rule appear to apply when the Board receives a request from an outside party and does not address how the Board will determine whether to waive a rule "on its own initiative." Please consider breaking "The Board may also waive any rule in this Chapter that is not statutorily required upon its own initiative" into a separate Paragraph (b) and provide some parameters as to when this will apply and how the Board will determine whether it is appropriate.*

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

Amber May  
Commission Counsel  
Date submitted to agency: May 20, 2020

21 NCAC 40 .0113 is adopted under temporary procedures as follows:

**21 NCAC 40 .0113 WAIVER**

The Board may waive any rule in this Chapter that is not statutorily required if a licensee, business or training establishment, trainee, or continuing education course provider submits a written request. The Board may also waive any rule in this Chapter that is not statutorily required upon its own initiative. Factors the Board shall use in determining whether to grant the waiver are:

- (1) degree of disruption to the Board;
- (2) cost to the Board;
- (3) degree of benefit to the public;
- (4) whether the requesting party had control over the circumstances that required the requested waiver;
- (5) notice to and opposition by the public;
- (6) need for the waiver; and
- (7) previous requests for waivers submitted from the requesting party.

*History Note: Authority G.S. 90-249; 150B-19(6)*