



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 Effective date: April 9, 2020 <input type="checkbox"/> No
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>Explain: 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

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Agency contact, if any:

Phone:

E-Mail:

10. Signature of Agency Head*:

Karen M. Moshoures

* 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: Karen Moshoures

Title: Board Chair

E-Mail: Kmoshoures@ncopticiansboard.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review

☐ Date returned to agency:

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

21 NCAC 40 .0113 WAIVER

(a) 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.

(b) The Board may waive any rule in this Chapter that is not statutorily required upon its own initiative during an exercise of emergency authority by a federal, state, or local governmental authority impacting North Carolina citizens based on the factors set forth in Paragraph (a)(1), (2), (3), (5) and (6) of this Rule. If the Board wishes to waive a rule, it shall provide notice by posting a link on their website and sending out information to their interested persons mailing list.

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