

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: **North Carolina State Board of Registration for Foresters**

REPORT: **21 NCAC 20**

RECOMMENDED ACTION:

- X Find that the comments have merit for Rules 21 NCAC 20 .0109 and .0110 and designate those Rules as "Necessary with Substantive Public Interest;" and
- X Approve the reminder of the designations for all other rules set forth in the report.

COMMENT:

SUMMARY		
Rules with Comments	Agency Designation	Staff Recommendation
21 NCAC 20 .0103	Necessary with substantive public interest	Approve determination as filed by the agency
21 NCAC 20 .0109	Unnecessary	Change agency determination to necessary with substantive public interest
21 NCAC 20 .0110	Unnecessary	Change agency determination to necessary with substantive public interest
21 NCAC 20 .0111	Necessary with substantive public interest	Approve determination as filed by the agency
21 NCAC 20 .0120	Necessary without substantive public interest	Approve determination as filed by the agency
21 NCAC 20 .0123	Necessary with substantive public interest	Approve determination as filed by the agency

Applicable standard of review for public comments:

The requirement of G.S.150B-21.3A(b)(2) is:

If a public comment relates to a rule that the agency determined to be necessary and without substantive public interest or unnecessary, the Commission shall determine whether the public comment has merit and, if so, designate the rule as necessary with substantive public interest. For purposes of this subsection, a public comment has merit if it addresses the specific substance of the rule and relates to any of the standards for review by the Commission set forth in G.S. 150B-21.9(a).

§ 150B-21.3A. Periodic review and expiration of existing rules.

(a) Definitions. - For purposes of this section, the following definitions apply:

...

(5) Public comment. - Means written comments objecting to the rule, in whole or in part, received by an agency from any member of the public, including an association or other organization representing the regulated community or other members of the public.

Comment(s) on Rule 21 NCAC 20 .0103:

Agency Initial Determination: Necessary with substantive public interest

Agency Final Determination: Necessary with substantive public interest

Rule Comment : 0103 Qualifications for Registration

Classification Selected: Agree with the Board

Comment : WOULD LIKE TO SEE THE PROCESS FOR RENEWAL STREAMLINED . LIKE SOME OTHER CONSULTANTS, I AM ALSO A LICENSED SURVEYOR AND REAL ESTATE BROKER. REQUIREMENTS FOR RENEWAL IN EACH OF THOSE CASES IS MUCH SIMPLER THAN THAT OF THE REGISTERED FORESTER/CONSULTANT. FOR STARTERS, BOTH CAN BE COMPLETED ONLINE AND NEITHER REQUIRES A NOTARIZED SIGNATURE WITH EACH YEAR\ ' S RENEWAL. THAT REQUIREMENT, IN PARTICULAR, SEEMS TO SUGGEST THAT THE BOARD QUESTIONS THE INTEGRITY OF THE APPLICANT.

Response to Tony Webb's comment (He agreed with the Board)

0103 Qualifications for Registration

Pursuant NC General Statute 89B-2 & 89B-11, which requires the NC Registered Forester that wishes to be listed as a consulting forester "Has filed annually an affidavit with the Board in accordance with G.S. 89B-14(b)." Also, the NC Registered Foresters have to follow the Board Rules for registration and renewal and are not combined with other agencies renewal procedures. Thank you for taking the time to review the rules that govern our Board.

Staff counsel recommendation for Rule 21 NCAC 20 .0103:

There is no action to be taken by the Commission, as the agency has classified the Rule as necessary with substantive public interest, and will be readopting the Rule.

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Comment(s) on Rule 21 NCAC 20 .0109:

Agency Initial Determination: Unnecessary

Agency Final Determination: Unnecessary

Rule Comment: 0109 Registration Cards

Classification Selected: Agree with the Board

Comment : Will Registration Cards continue to be available on request? If not, the Board should be vigilant about informing members when their renewals are approved and registrants should be encouraged to check the Board\'s website to insure that they are listed. Therefore, a Registered Forester can be confident when referring the Public to the Board\'s website to confirm registration.

Response to Marian Keegan 's comment (She agreed with the Board)

0109- Registration Cards

Pursuant NC General Statute 89B-6, the Board will continue to offer registration cards upon request.

21 NCAC 20 .0109 REGISTRATION CARD

In addition to the certificate prescribed by G.S. 89B-10, upon request and receipt of required fees, the Board shall furnish each registered forester with a card impressed with the seal of the Board indicating that the individual is a registered forester for the period indicated.

History Note: Authority G.S. 89B-6;

Eff. February 1, 1976;

Amended Eff. August 1, 2010; May 1, 1989; February 1, 1985.

§ 89B-6. Powers of the Board.

The Board may adopt rules in accordance with Chapter 150B of the General Statutes for the proper performance of its duties and the regulation of the proceedings before it. The Board shall adopt an official seal. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

The Board may establish fees, subject to the maximum amounts prescribed by this Chapter. (1975, c. 531, s. 6; 1998-157, s. 1.)

Staff counsel recommendation for Rule 21 NCAC 20 .0109:

Staff recommends changing the classification to necessary with substantive public interest, as the response to the comment indicates that the action discussed in the rule will continue to exist and the comment is requesting how to obtain the information.

Comment(s) on Rule 21 NCAC 20 .0110

Agency Initial Determination: Unnecessary

Agency Final Determination: Unnecessary

Rule Comment: 0110 Registration Seal (Comment 1)

Classification Selected: Agree with the Board

Comment: inserting a pdf symbol of the RF # should be an appropriate substitute for a rubber stamp

Response to Philip Weigel's comment (He agreed with the Board)

0110- Registration Seal

The Board is going to look into creating a pdf or electronic version of the registration seal for NC Registered Foresters to use. Thank you for taking the time to review the rules that govern our Board.

Rule Comment : 0110 Registration Seal (Comment 2)

Classification Selected : Necessary with substantive public interest

Comment: Are Registration Seals no longer used by other licensed / registered professionals, such as engineers) If so, I disagree with the Board that this is unnecessary. If not, then I agreed with the Board; however, Registered Foresters should have the option of purchasing a seal. If a form of documentation other than a seal is used by professionals, then the Board should launch an educational effort to inform Registered Foresters and the Public what is common practice.

Response to Marian Keegan's comment (She thought Necessary with substantive public interest)

0110- Registration Seal

Pursuant NC General Statute 89B- 6, "The Board shall adopt an official seal. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board." The Board will continue the seal and encourage NC Registered Foresters to do the same.

21 NCAC 20 .0110 REGISTRATION SEAL

Upon issuance of a certificate to an applicant as a registered forester, the applicant becomes eligible to purchase an impression type seal or rubber stamp of a design approved by the Board. This seal will bear the registrant's name and number as shown on the registration certificate. This seal can be affixed on all plans, maps, and reports prepared by the registrant. Where a registrant is required to reproduce original plans, maps, or reports in multiple copies, a suitable replica or rubber stamp may be employed to facilitate reproduction. The Board considers it flagrant misconduct for a registered forester to use a seal to stamp work done by another individual unless it is the work of an employee or agent working under the supervision of the registrant. The outside diameter of the seal shall be 1-9/16 inches. In ordering a seal, the registrant must provide the supplier with the proper registration number.

History Note: Authority G.S. 89B-6;

Eff. February 1, 1976;

Amended Eff. May 1, 1989; February 1, 1985.

§ 89B-6. Powers of the Board.

The Board may adopt rules in accordance with Chapter 150B of the General Statutes for the proper performance of its duties and the regulation of the proceedings before it. The Board shall adopt an official seal. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

The Board may establish fees, subject to the maximum amounts prescribed by this Chapter. (1975, c. 531, s. 6; 1998-157, s. 1.)

Staff counsel recommendation for Rule 21 NCAC 20 .0110:

Staff recommends changing the classification to necessary with substantive public interest, as the response to the comment indicates that the action discussed in the rule will continue to exist and the comment is requesting information on what will be used.

Comment(s) on Rule 21 NCAC 20 .0111:

Agency Initial Determination: Necessary without substantive public interest

Agency Final Determination: Necessary without substantive public interest

Rule Comment: 0111 Registration Certificate

Classification Selected: Agree with the Board

Comment: It seems that the changes to the Rules 109, 110 and 111 revolve around reducing paperwork and the increased use of internet sources to check credibility. If so, I agree with the Board's intent to keep up with common practices of the Public and professionals. If the Board will no longer issue a paper \"Certificate \" and only issue a \"Number\", then the title of this Rule should change because include the work \"certificate\" in the Rule Title is confusing.

Response to Marian Keegan 's comment (She agreed with the Board)

0111- Registration Certificate

Pursuant NC General Statute 89B-6;B-13, the Board will provide the registrant with a certificate upon registration. Thank you for taking the time to review the rules that govern our Board.

21 NCAC 20 .0111 REGISTRATION CERTIFICATE

(a) Registrations issued to successful applicants will be given consecutive individual numbers. Once issued to a registrant, a number will not be assigned again.

(b) A revoked, expired or invalid registration shall not be displayed in any public office or place of business by any registrant in connection with the practice of forestry.

(c) Any violation of this Rule may be cause for the Board to require the custodian of said registration to surrender it to the Board.

History Note: Authority G.S. 89B-6; 89B-13;

Eff. February 1, 1976;

Amended Eff. February 1, 1985.

§ 89B-6. Powers of the Board.

The Board may adopt rules in accordance with Chapter 150B of the General Statutes for the proper performance of its duties and the regulation of the proceedings before it. The Board shall adopt an official seal. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

The Board may establish fees, subject to the maximum amounts prescribed by this Chapter. (1975, c. 531, s. 6; 1998-157, s. 1.)

§ 89B-13. Revocations and reissuance of registration.

The Board may revoke or suspend the certificate of registration of any registrant who it finds has committed gross negligence, fraud, deceit or flagrant misconduct in the practice of forestry or has demonstrated incompetence as a practicing forester. The Board may designate a person or persons to investigate and report to it upon any charges of fraud, deceit, gross negligence, incompetency or other misconduct by a registrant in the practice of forestry.

Any person may prefer charges against a registrant. The charges shall be in

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writing, sworn to by the person making them, and filed with the secretary of the Board. The time and place for a hearing before the Board shall be fixed by the Board. At any hearing the accused may appear in person or by counsel. The Board may reissue a certificate of registration to any person whose certificate of registration has been revoked or suspended. (1975, c. 531, s. 13; 1998-157, s. 1.)

Staff counsel recommendation for Rule 21 NCAC 20 .0111:

Staff recommends approving the classification of necessary without substantive public interest, as the comment is not a public comment objecting to the rule, but is seeking clarification as to whether the process will change. The response indicates there will be no change.

Comment(s) on Rule 21 NCAC 20 .0120:

Agency Initial Determination: Necessary without substantive public interest

Agency Final Determination: Necessary without substantive public interest

Rule Comment : 0120 Certification of Consulting Foresters

Classification Selected : Necessary with substantive public interest

Comment : The purpose of the affidavit is ostensibly to prevent industry employed foresters from abusing a salaried position by misrepresenting themselves in timber procurement . However, this restriction is made on the CONSULTANTS ONLY . I know of many instances where industry- employed foresters have performed timber estimate, timber trespass evaluation and other services FOR PRIVATE LANDOWNERS FOR A FEE by \ "moonlighting\" from their jobs . I respectfully ask why there is not a rule to prevent salaried, industry- employed foresters from competing with certified consulting foresters for these activities while those industry or government foresters are engaged in timber procurement or government work? It seems that there is no mechanism for this or even a rule to prevent it . If an industry forester can consult , with impunity, for a fee, why then is a consultant restricted from timber procurement and buying and reselling timber on his own?

Response to Cecil Saunders' comment (Necessary with substantive public interest)

0120- Certification of Consulting Foresters

Pursuant NC General Statute 89B, requires consulting foresters to file the annual affidavit, and the Board is not allowed to .change this law. Through the current law and the affidavit, the public may determine that consulting (registered) foresters are more highly qualified to render services without a conflict of interest, as compared to individuals that are not classified as consulting foresters. The law is not intended to serve the interests of consulting foresters.

21 NCAC 20 .0120 CERTIFICATION OF CONSULTING FORESTERS

Each registered forester who practices as a consulting forester shall file an affidavit with the Board each year by June 30, utilizing the proper form supplied by the Board.

*History Note: Authority G.S. 89B-2; 89B-6;
Eff. November 1, 1993;
Temporary Amendment Eff. March 1, 1999;
Amended Eff. August 1, 2000.*

§ 89B-14. Roster of registered foresters; consulting forester affidavit.

(a) A roster showing the names, registration numbers, and places of business residence of all registrants under this Chapter shall be prepared annually by the secretary of the Board. Copies of this roster shall be placed on file with the Secretary of State of North Carolina and each clerk of superior court in North Carolina. A copy shall be sent to each registrant, and copies may be furnished to the public upon request and upon payment of a fee set by the Board.

(b) Each consulting forester shall annually file with the Board an affidavit of its compliance with this Chapter. (1975, c. 531, s. 14; 1998-157, s. 1.)

Staff counsel recommendation for 21 NCAC 20 .0120:

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G.S. 89B-14 contains a clear directive for an annual filing. The comment does not address the specific substance of the rule, but is objecting to the activities of a consultant. The definition of a “consultant” appears to limit the conduct to avoid any conflicts of interest.

§ 89B-2. Definitions.

As used in this Chapter:

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(5) "Consulting forester" means a registered forester who:

- a. through c. Repealed by Session Laws 1998-157, s.1.
- d. Is competent to practice forest management, appraisal, development, marketing, protection, and utilization for the benefit of the general public on a fee, contractual, or contingency basis;
- e. Has not engaged in any practice that constitutes a conflict of interest or in any way diminishes his ability to represent the best interests of his clients; and
- f. Has filed annually an affidavit with the Board in accordance with G.S. 89B-14(b).

Staff recommends approving the classification of necessary without substantive public interest, as the comment is not a public comment objecting to the rule, but is objecting to the statutory constraints.

Comment(s) on Rule 21 NCAC 20 .0123:

Agency Initial Determination: Necessary without substantive public interest

Agency Final Determination: Necessary without substantive public interest

Rule Comment: 0123 Continuing Education (Comment 1)

Classification Selected : Agree with the Board

Comment: Instead of 10 hours per year it would make more sense to be 50 hours with a 5 year time limit to earn the credits. This is the exact same hourly requirement, but the expanded time limit would enable the RF to take courses more in line with individual needs and interests rather than taking classes that mean little to him just to get the credits in on time. The expanded time limit would enable the RF to take desirable courses that might not be available to him every year . Thank You.

Response to Ted Graham's comment (Agree with the Board)

0123 Continuing Education

Pursuant NC General Statute 89B-11(b), the Board is following the requirements set forth by the statute for continuing education. Thank you for taking the time to review the rules that govern our Board.

Rule Comment : 0123 Continuing Education (Comment 2)

Classification Selected : Agree with the Board

Comment : I believe that the Board should , based upon LONG STANDING PRECEDENT of other Boards in this State , allow the carry over of several (I suggest five (5)) units of continuing education from one year to another . This is not too complicated, for most foresters will adhere to this voluntarily , and it allows a greater latitude in continuing education for registrants .

Response to Cecil Saunders' comment (Agree with the Board)

0123- Continuing Education

Pursuant NC General Statute 89B-11(8), there is no provision for carryover of hours for the renewal period. Thank you for taking the time to review the rules that govern our Board.

Rule Comment : 0123 Continuing Education (Comment 3)

Classification Selected: Agree with the Board

Comment : You\ ' ve chosen a \ " year\" to mean the State of NC year= July 1 to June 30. This does NOT match up with many other Gov . agencies and private companies . With our annual training cycle and budget , your dates have the effect of me only having a 6 month window to attain my CFEs . A simple solution would be to follow the State of Georgia . They give two years to get 20 hours. Simpler is always better .

Response to Robert Dennis's comment (Agree with the Board)

0123- Continuing Education

Pursuant NC General Statute 89B-11, the Board is abiding by the process set out in the statute for the renewal time frame and process. Thank you for taking the time to review the rules that govern our Board.

Rule Comment: 0123 Continuing Education (Comment 4)

Classification Selected: Agree with the Board

Comment : I recommend a change in section (c) of rule 0123 that will allow those Registered Foresters who verify to the Board that they are fully retired after a career in forestry to continue their registration without having to earn any CFE\ ' s as long as they meet all other requirements, including payment of the annual fee. Reason being that many elderly RF\ ' s have great difficulty attending training sessions and earning CFE\'s but do not want to be prohibited from referring to themselves as a forester.

Response to Derryl Walden's comment (Agree with the Board)

0123 Continuing Education

Pursuant NC General Statute 89B-11(B), the Board is following the requirements set forth by the statute for continuing education. There is a hardship section that has been added to this rule to assist individuals in need. Thank you for taking the time to review the rules that govern our Board.

21 NCAC 20 .0123 CONTINUING EDUCATION

(a) All registered foresters shall attend continuing education courses annually to maintain their registration. Ten CFE (Continuing Forestry Education) credits approved by the Society of American Foresters are required each year, except as outlined in this Rule. CFE's must be SAF category 1, 2, or 3, with at least six being from category 1.

(b) Registered foresters shall verify CFE compliance to the Board with each annual renewal.

(c) Those registered foresters who provide information to the Board that verifies that they are retired from a career in forestry may qualify to continue their registration by earning a minimum of three category 1, 2, or 3 CFE's annually.

(d) The Board shall approve hardship cases, such as military deployment, extended illness or other circumstances that prevent the Registered Forester from obtaining the required CFE's upon request.

*History Note: Authority G.S. 89B-6; 89B-11;
Temporary Adoption Eff. March 1, 1999;
Eff. August 1, 2000;
Amended Eff. August 1, 2010.*

§ 89B-11. Expiration and renewals; continuing education.

(a) Registrations shall expire on the last day of June following issuance or renewal and shall become invalid after that date unless renewed. The secretary of the Board shall notify every person registered under this Chapter, at the person's last registered address, of the date of the expiration of registration and the amount of fee required for its renewal for one year. The notices shall be mailed at least 30 days prior to the expiration date of the registrations. The annual renewal fee for certificates shall be in an amount established by the Board, not to exceed fifty dollars (\$50.00). The fee for issuance of replacement certificates of registration shall be five dollars (\$5.00). Any registration which has expired may be renewed by paying the registration fee plus one-twelfth of the annual renewal fee per calendar month from the date of expiration. Charges above the renewal fee shall not exceed an amount equal to the renewal fee.

(b) The Board shall require registered foresters to attend continuing education courses approved by the Board, not to exceed 12 hours per year, as a condition of renewal. (1975, c. 531, s. 11; 1989, c. 245, s. 2; 1998-157, s. 1.)

Staff counsel recommendation for 21 NCAC 20 .0120:

Staff recommends approving the classification of necessary without substantive public interest for the following reasons:

- (1) the first comment refers to the timing of the continuing education and is not a public comment objecting to the rule, but is objecting to the statutory directive set forth in G.S. 89B-11(b);
- (2) the second comment suggests a carryover, which is a suggestion to approve the rule. However, a review of the rule under G.S. 150B-21.9 finds that this suggestion is not within the purview of the Rules Review Commission and therefore the comment does not have merit;
- (3) the third comment refers to the renewal year and is not a public comment objecting to the rule, but is objecting to the statutory directive set forth in G.S. 89B-11(a); and
- (4) the fourth comment suggest allowing a waiver of any continuing education for retired registered foresters. However, a review of the rule under G.S. 150B-21.9 finds that this suggestion is not within the purview of the Rules Review Commission and may be contrary to G.S. 89B-11(b). Therefore the comment does not have merit.