

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0101

DEADLINE FOR RECEIPT: September 10, 2015

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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

This Rule seems to quote, nearly verbatim, G.S. 74C-4(a), suggesting that the Rule is not necessary pursuant to G.S. 150B-19(4). Please consider whether the Rule is necessary or is a "brief statement that informs the public of a requirement imposed by law" as set forth in G.S. 150B-19(4).

Line 1: Amendment without notice is appropriate for this Rule; however, G.S. 150B-21.5(a)(1) is not applicable. Please modify this citation to G.S. 150B-21.5(a) or G.S. 150B-21.5(a)(4).

Line 6: Please capitalize "state."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609-6700.

Jason S. Thomas
Commission Counsel
Date submitted to agency: August 27, 2015

CHAPTER 16 - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

14B NCAC 16 .0101 is amended without notice pursuant to G.S. 150B-21.5(a)(1):

14B NCAC 16 .0101 PURPOSE

The Private Protective Services Board is established within the North Carolina ~~Department of Justice~~ Department of Public Safety for the purpose of administering the licensing of and setting the education and training requirements for persons, firms, associations and corporations engaged in the private protective services businesses within this state.

History Note: Authority G.S. 74C-4;

Eff. June 1, 1984;

Transferred and Recodified from 12 NCAC 07D .0101 Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0807

DEADLINE FOR RECEIPT: September 10, 2015

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Page 1, line 1: Amendment without notice is appropriate for this Rule; however, G.S. 150B-21.5(a)(1) is not applicable. Please modify this citation to G.S. 150B-21.5(a) or G.S. 150B-21.5(a)(4).

Page 1, line 6: Please add the appropriate space between the Paragraph number and the word "Private."

Page 1, lines 7-8: The phrase "and all additional training requirements set forth in that Rule" is ambiguous, as it is not clear whether which additional training requirements included in Rule .0707 are required. For instance, are .0707(a)(3) through (7) required? For a clearer statement, compare with your Rule .1407(a), in which you list those courses that are not required. Please clarify which training requirements are and are not required.

Page 1, lines 12, 14, 15,16, and 17: The summary of hours in parentheses is formatted differently in your rules – compare .0707(a). For consistency and clarity, please format these parentheses as you do in .0707(a): for instance, the end of line 12 should read "...relating to armed security guards – (minimum of four hours);" Note that the dash is a double dash – this Word document converts it into a single larger dash.

Page 1, line 21: Please change "will" to "shall."

Page 1, line 23: Please change "must" to "shall."

Page 1, lines 22-23: The last sentence of Paragraph (d) appears to modify the third-to-last sentence, beginning "Should a student fail..." If this is accurate, please clarify, perhaps by deleting the last sentence of the paragraph and modifying the third-to-last sentence to read: "Should a student fail to attain a score of 80 percent accuracy, the student shall be given three additional attempts to qualify on the course of fire they did not

Jason S. Thomas
Commission Counsel
Date submitted to agency: August 27, 2015

pass, which additional attempts shall take place within 20 days of the completion of the initial 20 hour course."

Page 1, line 26: Please change "must" to "shall."

Page 2, line 14: Please clarify the meaning of "initial training in this Rule." Does this mean the training required in Paragraph (a) and (b)? Please consider citing to the paragraphs that detail this initial training.

Page 2, lines 14-18: Paragraphs (j) and (k) are organized differently than parallel paragraphs (h) and (i) in Rule .1407. Though not a requirement of this Technical Change Request, as the Rule seems clear enough either way, you may wish to consider organizing these paragraphs consistently with one another.

Page 2, line 18: Please add a comma after "Safety."

Page 2, line 24: The first line of Paragraph (n) is ambiguous. Please clarify, perhaps by adapting similar language from .1407(l): "An armed security officer shall qualify annually for both day and night firing with his or her duty weapon and shotgun, if applicable."

Page 2, line 26: Please change "must" to "shall."

Page 2, line 27: Please add a comma after "carry a firearm."

Page 2, line 27: Please change "must" to "shall so."

Page 2, line 30: Please add a citation to G.S. 74C-9 to your History Note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609-6700.

Jason S. Thomas
Commission Counsel
Date submitted to agency: August 27, 2015

1 14B NCAC 16.0807 is amended without notice pursuant to G.S. 150B-21.5(a)(1)

2
3 **14B NCAC 16 .0807 TRAINING REQUIREMENTS FOR ARMED SECURITY GUARDS**

4 (a) Applicants for an armed security guard firearm registration permit shall first complete the basic unarmed security
5 guard training course set forth in Rule .0707 of this Chapter.

6 (b) Private investigator licensees applying for an armed security guard firearm registration permit shall first complete
7 a four hour training course consisting of the courses set forth in Rule .0707(a)(1) and (2) of this Chapter and all
8 additional training requirements set forth in that Rule.

9 (c) Applicants for an armed security guard firearm registration permit shall complete a basic training course for armed
10 security guards which consists of at least 20 hours of classroom instruction including:

- 11 (1) legal limitations on the use of handguns and on the powers and authority of an armed security guard,
12 including familiarity with rules and regulations relating to armed security guards (minimum of four
13 hours);
- 14 (2) handgun safety, including range firing procedures (minimum of one hour);
- 15 (3) handgun operation and maintenance (minimum of three hours);
- 16 (4) handgun fundamentals (minimum of eight hours); and
- 17 (5) night firing (minimum of four hours).

18 (d) Applicants for an armed security guard firearm registration permit shall attain a score of at least 80 percent
19 accuracy on a firearms range qualification course adopted by the Board and the ~~Attorney General~~, Secretary of Public
20 Safety, a copy of which is on file in the Director's office. Should a student fail to attain a score of 80 percent accuracy,
21 the student will be given three additional attempts to qualify on the course of fire they did not pass. Failure to meet
22 the qualification after three attempts shall require the student to repeat the entire Basic Training Course for Armed
23 Security Guards. All additional attempts must take place within 20 days of the completion of the initial 20 hour
24 course.

25 (e) All armed security guard training required by this Chapter shall be administered by a certified trainer and shall be
26 completed no more than 90 days prior to the date of issuance of the armed security guard firearm registration permit.

27 (f) All applicants for an armed security guard firearm registration permit must obtain training under the provisions of
28 this Section using their duty weapon and their duty ammunition or ballistic equivalent ammunition, to include lead-
29 free ammunition that meets the same point of aim, point of impact, and felt recoil of the duty ammunition, for all
30 weapons.

31 (g) No more than six new or renewal armed security guard applicants per one instructor shall be placed on the firing
32 line at any one time during firearms range training.

33 (h) Applicants for re-certification of an armed security guard firearm registration permit shall complete a basic
34 recertification training course for armed security guards which consists of at least four hours of classroom instruction
35 and is a review of the requirements set forth in Subparagraphs (c)(1) through (c)(5) of this Rule. The recertification
36 course is valid for 180 days after completion of the course. Applicants for recertification of an armed security guard
37 firearm registration permit shall also complete the requirements of Paragraph (d) of this Rule.

(i) An armed guard currently registered with one company may be registered with a second company. Such registration shall be considered "dual." The registration with the second company shall expire at the same time that the registration expires with the first company. An updated application shall be required, along with the digital photograph, updated criminal records checks and a forty dollar (\$40.00) registration fee. If the guard will be carrying a weapon of the same make and model, then no additional firearms training is required. The licensee shall submit a letter stating the guard will be carrying the same make and model weapon. If the guard will be carrying a weapon of a different make and model, the licensee shall submit a letter to the Board advising of the make and model of the weapon the guard will be carrying and the guard shall be required to qualify at the firing range on both the day and night qualification course. The qualification score is valid for 180 days after completion of the course.

(j) To be authorized to carry a standard 12 gauge shotgun in the performance of his or her duties as an armed security guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (c) and (d) of this Rule, four hours of classroom training which shall include the following:

- (1) legal limitations on the use of shotguns;
- (2) shotgun safety, including range firing procedures;
- (3) shotgun operation and maintenance; and
- (4) shotgun fundamentals.

(k) An applicant may take the additional shotgun training at a time after the initial training in this Rule. If the shotgun training is completed at a later time, the shotgun certification shall run concurrent with the armed registration permit. In addition to the requirements set forth in Paragraph (j) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a shotgun range qualification course adopted by the Board and the ~~Attorney General~~, Secretary of Public Safety a copy of which is on file in the Director's office.

(l) Applicants for shotgun recertification shall complete an additional one hour of classroom training as set forth in Paragraph (j) of this Rule and shall also complete the requirements of Paragraph (k) of this Rule.

(m) Applicants for an armed security guard firearm registration permit who possess a current firearms trainer certificate shall be given, upon their written request, a firearms registration permit that will run concurrent with the trainer certificate upon completion of an annual qualification with their duty weapons as set forth in Paragraph (d) of this Rule.

(n) The armed security officer is required to qualify annually both day and night. If the security officer fails to qualify on either course of fire, the security officer cannot carry a firearm until such time as he or she meets the qualification requirements. Upon failure to qualify the firearm instructor must notify the security officer that he or she is no longer authorized to carry a firearm and the firearm instructor must notify the employer and the Private Protective Services Board staff on the next business day.

History Note: Authority G.S. 74C-5; 74C-13;

Eff. June 1, 1984;

Amended Eff. November 1, 1991; February 1, 1990; July 1, 1987;

Temporary Amendment Eff. January 14, 2002;

1 *Amended Eff. October 1, 2013; October 1, 2010; June 1, 2009; February 1, 2006; August 1, 2002;*
2 *Transferred and Recodified from 12 NCAC 07D .0807 Eff. July 1, 2015.*

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: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0901

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

Staff recommends that the Commission object to this amended rule because the phrase "to the Board's satisfaction" is (1) ambiguous and (2) exceeds the statutory authority of the Board.

COMMENT:

Paragraphs (d) and (f) (lines 24 and 31) allow the Board to modify the requirements for certification as a firearms trainer set forth in the Rule if the applicant has certain military experience or is the spouse of an active duty member of the U.S. Armed Forces. These paragraphs allow such modification if certain conditions are established "to the Board's satisfaction."

The statute authorizing these modified requirements states, in relevant part:

Jason Thomas
Commission Counsel

§ 93B-15.1. Licensure for individuals with military training and experience; licensure by endorsement for military spouses; temporary license.

(a) Notwithstanding any other provision of law, **an occupational licensing board**, as defined in G.S. 93B-1, **shall issue** a license, certification, or registration to a military-trained applicant to allow the applicant to lawfully practice the applicant's occupation in this State **if, upon application to an occupational licensing board, the applicant satisfies the following conditions:**

- (1) Has been awarded a military occupational specialty and has done all of the following at a level that is substantially equivalent to or exceeds the requirements for licensure, certification, or registration of the occupational licensing board from which the applicant is seeking licensure, certification, or registration in this State: completed a military program of training, completed testing or equivalent training and experience, and performed in the occupational specialty.
- (2) Has engaged in the active practice of the occupation for which the person is seeking a license, certification, or permit from the occupational licensing board in this State for at least two of the five years preceding the date of the application under this section.
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (4) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

.
(b) Notwithstanding any other provision of law, **an occupational licensing board**, as defined in G.S. 93B-1, **shall issue** a license, certification, or registration to a military spouse to allow the military spouse to lawfully practice the military spouse's occupation in this State **if, upon application to an occupational licensing board, the military spouse satisfies the following conditions:**

- (1) Holds a current license, certification, or registration from another jurisdiction, and that jurisdiction's requirements for licensure, certification, or registration are substantially equivalent to or exceed the requirements for licensure, certification, or registration of the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.
- (2) Can demonstrate competency in the occupation through methods as determined by the Board, such as having completed continuing education units or having had recent experience for at least two of the five years preceding the date of the application under this section.
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (4) Is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit.
- (5) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

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Under the Rule, the Board may modify certification requirements if an applicant establishes certain facts “to the Board’s satisfaction.” Precisely what would satisfy the Board is not set forth in the Rule – based solely on the language of the Rule, the Board’s satisfaction appears to be left to

its unbridled discretion. For this reason, the phrase “established to the Board’s satisfaction” is ambiguous.

Moreover, G.S. 93B-15.1 states that the Board shall issue a certification if an applicant satisfies conditions that are expressly set forth in the statute. G.S. 93B-15.1(a)(1-4), (b)(1-5). The statute expressly states that the applicant must satisfy statutory conditions, not that the applicant must satisfy the Board. Because G.S. 93B-15.1(a) and (b) place a mandatory duty on the Board, the unbridled discretion afforded to the Board by the Rule exceeds the Board’s statutory authority.

RECOMMENDATION:

Staff recommends that the Commission object to this Rule because it is ambiguous and it exceeds the statutory of the Board. The phrase “to the Board’s satisfaction” is undefined and no principles are articulated that might guide the Board in determining its satisfaction. The Rule also appears to afford the Board unbridled discretion in determining whether an applicant satisfies conditions set forth in G.S. 93B-15.1(a)(1-4), (b)(1-5), contradicting the express terms of the statute.

APPENDIX

§ 93B-15.1. Licensure for individuals with military training and experience; licensure by endorsement for military spouses; temporary license.

(a) Notwithstanding any other provision of law, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military-trained applicant to allow the applicant to lawfully practice the applicant's occupation in this State if, upon application to an occupational licensing board, the applicant satisfies the following conditions:

- (1) Has been awarded a military occupational specialty and has done all of the following at a level that is substantially equivalent to or exceeds the requirements for licensure, certification, or registration of the occupational licensing board from which the applicant is seeking licensure, certification, or registration in this State: completed a military program of training, completed testing or equivalent training and experience, and performed in the occupational specialty.
- (2) Has engaged in the active practice of the occupation for which the person is seeking a license, certification, or permit from the occupational licensing board in this State for at least two of the five years preceding the date of the application under this section.
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (4) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(a1) No later than 30 days following receipt of an application, an occupational licensing board shall notify an applicant when the applicant's military training or experience does not satisfy the requirements for licensure, certification, or registration and shall specify the criteria or requirements that the board determined that the applicant failed to meet and the basis for that determination.

(b) Notwithstanding any other provision of law, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military spouse to allow the military spouse to lawfully practice the military spouse's occupation in this State if, upon application to an occupational licensing board, the military spouse satisfies the following conditions:

- (1) Holds a current license, certification, or registration from another jurisdiction, and that jurisdiction's requirements for licensure, certification, or registration are substantially equivalent to or exceed the requirements for licensure, certification, or registration of the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.
- (2) Can demonstrate competency in the occupation through methods as determined by the Board, such as having completed continuing education units or having had recent experience for at least two of the five years preceding the date of the application under this section.
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (4) Is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit.

- (5) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.
- (c) All relevant experience of a military service member in the discharge of official duties or, for a military spouse, all relevant experience, including full-time and part-time experience, regardless of whether in a paid or volunteer capacity, shall be credited in the calculation of years of practice in an occupation as required under subsection (a) or (b) of this section.
- (c1) Each occupational licensing board shall publish a document that lists the specific criteria or requirements for licensure, registration, or certification by the board, with a description of the criteria or requirements that are satisfied by military training or experience as provided in this section, and any necessary documentation needed for obtaining the credit or satisfying the requirement. The information required by this subsection shall be published on the occupational licensing board's Web site and the Web site of the North Carolina Division of Veterans Affairs.
- (d) A nonresident licensed, certified, or registered under this section shall be entitled to the same rights and subject to the same obligations as required of a resident licensed, certified, or registered by an occupational licensing board in this State.
- (e) Nothing in this section shall be construed to apply to the practice of law as regulated under Chapter 84 of the General Statutes.
- (f) An occupational licensing board may issue a temporary practice permit to a military-trained applicant or military spouse licensed, certified, or registered in another jurisdiction while the military-trained applicant or military spouse is satisfying the requirements for licensure under subsection (a) or (b) of this section if that jurisdiction has licensure, certification, or registration standards substantially equivalent to the standards for licensure, certification, or registration of an occupational licensing board in this State. The military-trained applicant or military spouse may practice under the temporary permit until a license, certification, or registration is granted or until a notice to deny a license, certification, or registration is issued in accordance with rules adopted by the occupational licensing board.
- (g) An occupational licensing board may adopt rules necessary to implement this section.
- (h) Nothing in this section shall be construed to prohibit a military-trained applicant or military spouse from proceeding under the existing licensure, certification, or registration requirements established by an occupational licensing board in this State.
- (i) For the purposes of this section, the State Board of Education shall be considered an occupational licensing board when issuing teacher licenses under G.S. 115C-296.
- (j) For the purposes of this section, the North Carolina Medical Board shall not be considered an occupational licensing board. (2012-196, s. 1; 2014-67, s. 1.)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0901

DEADLINE FOR RECEIPT: September 10, 2015

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Page 1, line 1: Amendment without notice is appropriate for this Rule; however, G.S. 150B-21.5(a)(1) is not applicable. Please modify this citation to G.S. 150B-21.5(a) or G.S. 150B-21.5(a)(4).

Page 1, line 24: The phrase "to the Board's satisfaction" is ambiguous. Either delete this phrase, define it, or describe the factors that will guide the Board in determining whether it is satisfied with the information provided by the applicant.

Page 1, lines 25-26: It is unclear whether the phrase "as a firearms instructor" relates only to "two years of verifiable experience" or whether it also relates to "military occupational speciality." You may wish to revise as follows: "a military occupational specialty in firearms instruction and two years of verifiable experience within the past five years in the U.S. Armed Forces as a firearms instructor."

Page 1, line 28: Please replace "eight hour" with "eight-hour."

Page 1, line 28: Is the "eight hour course given by the Board on rules and regulations" a single, well-identified course? If a cite to another rule will clarify what is required here, please add such a cite.

Page 1, line 31: The phrase "to the Board's satisfaction" is ambiguous. Either delete this phrase, define it, or describe the factors that will guide the Board in determining whether it is satisfied with the information provided by the applicant.

Jason S. Thomas
Commission Counsel
Date submitted to agency: August 27, 2015

Page 1, lines 17, 19, 20, 21, and 22: The summary of hours in parentheses is formatted differently in your rules – compare .0707(a). For consistency and clarity, please format these parentheses as you do in .0707(a): for instance, the end of line 12 should read “...relating to armed security guards – (minimum of four hours);” Note that the dash is a double dash – this Word document converts it into a single larger dash.

Page 1, line 28: Please change “must” to “shall.”

Page 1, lines 28-29: The last sentence of Paragraph (c) appears to modify the third-to-last sentence, beginning “Should a student fail...” If this is accurate, please clarify, perhaps by deleting the last sentence of the paragraph and modifying the third-to-last sentence to read: “Should a student fail to attain a score of 80 percent accuracy as referenced above, the student shall be given an additional three attempts to qualify on the course of fire they did not pass, which additional attempts shall take place within 20 days of the completion of the initial 20 hour course.”

Page 1, line 33: Please change “must” to “shall.”

Page 2, line 4: Please remove the “[“ prior to “that.” Please consider using the same word – either “which” or “that” – in the similar paragraphs in this Paragraph and in Rule .0807(h).

Page 2, line 16: Please clarify the meaning of “initial training in this Rule.” Does this mean the training required in Paragraph (a)? Please consider citing to the paragraphs that detail this initial training.

Page 2, lines 16-20: Paragraphs (h) and (i) are organized differently than parallel paragraphs (j) and (k) in Rule .0807. Though not a requirement of this Technical Change Request, as the Rule seems clear enough either way, you may wish to consider organizing these paragraphs consistently with one another.

Page 2, line 20: Please add a comma after “Safety.”

Page 2, line 31: Please change “must” to “shall.”

Page 2, line 32: Please add a comma after “carry a firearm.”

Page 2, line 32: Please change “must” to “shall so.”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609-6700.

Jason S. Thomas
Commission Counsel
Date submitted to agency: August 27, 2015

SECTION .0900 – TRAINER CERTIFICATE

14B NCAC 16 .0901 is amended without notice pursuant to G.S. 150B-21.5(a)(1):

14B NCAC 16 .0901 REQUIREMENTS FOR A FIREARMS TRAINER CERTIFICATE

(a) Firearms trainer applicants shall:

- (1) meet the minimum standards established by Rule .0703 of this Chapter;
- (2) have a minimum of one year of supervisory experience in security with a contract security company or proprietary security organization, or one year of experience with any federal, state, county or municipal law enforcement agency;
- (3) attain a 90 percent score on a firearm's prequalification course approved by the Board and the ~~Attorney General~~, Secretary of Public Safety, with a copy of the firearm's course certificate to be kept on file in the administrator's office;
- (4) complete a training course approved by the Board and the ~~Attorney General~~ Secretary of Public Safety which shall consist of a minimum of 40 hours of classroom and practical range training in handgun and shotgun safety and maintenance, range operations, night firearm training, control and safety procedures, and methods of handgun and shotgun firing;
- (5) pay the certified trainer application fee established in Rule .0903(a)(1) of this Section; and
- (6) successfully complete the requirements of the Unarmed Trainer Certificate set forth in Rule .0909 of this Section.

(b) The applicant's score on the prequalification course set forth in Subparagraph (a)(3) of this Rule is valid for 180 days after completion of the course.

(c) In lieu of completing the training course set forth in Subparagraph (a)(4) of this Rule, an applicant may submit to the Board a current Criminal Justice Specialized Law Enforcement Firearms Instructor Certificate from the North Carolina Criminal Justice Education and Training Standards Commission.

(d) In lieu of Subparagraphs (a)(2) and (4) of this Rule, an applicant may establish to the Board's satisfaction a military occupational specialty and two years of verifiable experience within the past five years in the U.S. Armed Forces as a firearms instructor.

(e) All applicants subject to Paragraphs (c) and (d) of this Rule shall comply with the provisions of Subparagraph (a)(3), pay the application amount as set forth in Rule .0903 of this Section, and complete the eight hour course given by the Board on rules and regulations.

(f) In addition to the requirement of Section .0200 of this Chapter, an applicant for a firearms trainer certificate who is the spouse of an active duty member of the U.S. Armed Forces shall establish to the Board's satisfaction that:

- (1) the spouse holds a current license, certification, or registration from another jurisdiction and the other jurisdiction's requirements are substantially equivalent to or exceed the Board's requirements; and
- (2) the spouse has two years of verifiable experience within the past five years as a firearms instructor.

(g) A Firearms Trainer Certificate expires two years after the date of issuance.

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History Note: Authority G.S. 74C-5; 74C-9; 74C-13; 93B-15.1;
Eff. June 1, 1984;
Amended Eff. July 1, 2014; October 1, 2013; December 1, 2008; January 1, 2008; August 1, 2004;
November 1, 1991;
Transferred and Recodified from 12 NCAC 07D .0901 Eff. July 1, 2015.

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: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0904

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☐ Unnecessary
- ☒ Failure to comply with the APA
- ☐ Extend the period of review

Staff recommends that the Commission object to this amended Rule because the required use of a "renewal form" violates the APA.

COMMENT:

Paragraph (a) (line 4) requires an applicant to complete a "renewal form" in seeking renewal of a firearms trainer certificate. G.S. 150B-2 defines "rule" as follows:

- (8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:

- d. A form, the contents or substantive requirements of which are prescribed by rule or statute.

G.S. 150B-18 establishes that a rule is not valid unless it is adopted in substantial compliance with the APA:

Jason Thomas
Commission Counsel

§ 150B-18. Scope and effect.

This Article applies to an agency's exercise of its authority to adopt a rule. **A rule is not valid unless it is adopted in substantial compliance with this Article.** An agency shall not seek to implement or enforce against any person a policy, guideline, or other interpretive statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy, guideline, or other interpretive statement has not been adopted as a rule in accordance with this Article. (1991, c. 418, s. 1; 2011-398, s. 1; 2012-187, s. 2.)

This Rule requires the use of a “renewal form.” Such a form is a rule within the meaning of Chapter 150B unless excluded pursuant to G.S. § 150B-2(8a)d. Staff has asked the Board whether the contents or substantive requirements of the renewal form are set forth in a rule or statute, but the Board has not responded to this question, nor has the Board demonstrated that the renewal form has been adopted in substantial compliance with the APA.

RECOMMENDATION:

Staff recommends that the Commission object to this Rule because it fails to comply with the Administrative Procedure Act, in that the Board has failed to demonstrate: (1) that the renewal form has been adopted in substantial compliance with the APA, or (2) that the contents or substantive requirements of the renewal form are prescribed by rule or statute.

APPENDIX

§ 150B-2. Definitions.

As used in this Chapter,

.

- (8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:
- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
 - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing board, as defined by G.S. 93B-1, or by the State Board of Elections.
 - c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
 - d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
 - e. Statements of agency policy made in the context of another proceeding, including:
 - 1. Declaratory rulings under G.S. 150B-4.
 - 2. Orders establishing or fixing rates or tariffs.
 - f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
 - g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
 - h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.
 - i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.

- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21 and the variable component of the excise tax on motor fuel under G.S. 105-449.80.
- k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
- l. Standards adopted by the Office of Information Technology Services applied to information technology as defined by G.S. 147-33.81.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0904

DEADLINE FOR RECEIPT: September 10, 2015

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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 1: Amendment without notice is appropriate for this Rule; however, G.S. 150B-21.5(a)(1) is not applicable. Please modify this citation to G.S. 150B-21.5(a) or G.S. 150B-21.5(a)(4).

Line 4: Paragraph (a) refers to a form that renewal applicants are required to use. Such forms are rules which must be promulgated through rulemaking unless the form's "contents or substantive requirements ... are prescribed by rule or statute." G.S. 150B-2(8a)d. If the contents or substantive requirements of this form are not prescribed in another rule or statute, please add a detailed list of the contents or substantive requirements of the form to this rule, perhaps in a new subparagraph. In addition, the rule should also state, with specificity, where the form may be obtained; for instance, a website address may be referenced in the rule.

Line 14: Please add a comma after "48 months and."

Line 24: Please replace "must" with "shall."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609-6700.

Jason S. Thomas
Commission Counsel
Date submitted to agency: August 27, 2015

1 14B NCAC 16 .0904 is amended without notice pursuant to G.S. 150B-21.5(a)(1):

2
3 **14B NCAC 16 .0904 RENEWAL OF A FIREARMS TRAINER CERTIFICATE**

4 (a) Each applicant for renewal of a firearms trainer certificate shall complete a renewal form provided by the Board.
5 This form shall be submitted not less than 30 days prior to the expiration of the applicant's current certificate and shall
6 be accompanied by:

- 7 (1) certification of the successful completion of a firearms trainer refresher course approved by the
8 Board and the ~~Attorney General~~ Secretary of Public Safety consisting of a minimum of eight hours
9 of classroom and practical range training in handgun and shotgun safety and maintenance, range
10 operations, control and safety procedures, and methods of handgun and shotgun firing. This training
11 shall be completed within 180 days of the submission of the renewal application;
- 12 (2) a certified statement of the result of a criminal records search from the appropriate governmental
13 authority housing criminal record information or clerk of superior court in each county where the
14 applicant has resided within the immediately preceding 48 months and if any address history
15 contains an out of state address, a criminal record check from the reporting service designated by
16 the Board pursuant to G.S. 74C-8.1(a);
- 17 (3) the applicant's renewal fee; and
- 18 (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation
19 to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected
20 by the Private Protective Services Board.

21 (b) Members of the armed forces whose certification is in good standing and to whom G.S. 105-249.2 grants an
22 extension of time to file a tax return are granted that same extension of time to pay the certification renewal fee and
23 to complete any continuing education requirements prescribed by the Board. A copy of the military order or the
24 extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be
25 furnished to the Board.

26
27 *History Note: Authority G.S. 74C-5; 74C-8.1(a); 74C-13;*

28 *Eff. June 1, 1984;*

29 *Amended Eff. January 1, 2013; October 1, 2010; June 1, 2009; December 1, 1995; December 1,*
30 *1985;*

31 *Transferred and Recodified from 12 NCAC 07D .0904 Eff. July 1, 2015.*
32

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: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0909

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☒ Failure to comply with the APA
 - ☐ Extend the period of review

Staff recommends that the Commission object to this amended Rule because the phrase “to the Board's satisfaction” is (1) ambiguous and (2) exceeds the statutory authority of the Board. In addition, Staff recommends that the Commission object to this amended Rule because the required use of an application form violates the APA.

COMMENT:

A. “ESTABLISH TO THE BOARD'S SATISFACTION”

Paragraphs (c) and (d) (lines 29 and 33-34) allow the Board to modify the requirements for certification as an unarmed guard trainer set forth in the Rule if the applicant has certain military experience or is the spouse of an active duty member of the U.S. Armed Forces. These Paragraphs allow such modification if certain conditions are established “to the Board's satisfaction.”

The statute authorizing these modified requirements states, in relevant part:

§ 93B-15.1. Licensure for individuals with military training and experience; licensure by endorsement for military spouses; temporary license.

(a) Notwithstanding any other provision of law, **an occupational licensing board**, as defined in G.S. 93B-1, **shall issue** a license, certification, or registration to a military-trained applicant to allow the applicant to lawfully practice the applicant's occupation in this State **if, upon application to an occupational licensing board, the applicant satisfies the following conditions:**

(1) Has been awarded a military occupational specialty and has done all of the following at a level that is substantially equivalent to or exceeds the requirements for licensure, certification, or registration of the occupational licensing board from which the applicant is seeking licensure, certification, or registration in this State: completed a military program of training, completed testing or equivalent training and experience, and performed in the occupational specialty.

(2) Has engaged in the active practice of the occupation for which the person is seeking a license, certification, or permit from the occupational licensing board in this State for at least two of the five years preceding the date of the application under this section.

(3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.

(4) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

.

(b) Notwithstanding any other provision of law, **an occupational licensing board**, as defined in G.S. 93B-1, **shall issue** a license, certification, or registration to a military spouse to allow the military spouse to lawfully practice the military spouse's occupation in this State **if, upon application to an occupational licensing board, the military spouse satisfies the following conditions:**

(1) Holds a current license, certification, or registration from another jurisdiction, and that jurisdiction's requirements for licensure, certification, or registration are substantially equivalent to or exceed the requirements for licensure, certification, or registration of the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(2) Can demonstrate competency in the occupation through methods as determined by the Board, such as having completed continuing education units or having had recent experience for at least two of the five years preceding the date of the application under this section.

(3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.

(4) Is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit.

(5) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

.

Under the Rule, the Board may modify certification requirements if an applicant establishes certain facts “to the Board’s satisfaction.” Precisely what would satisfy the Board is not set forth in the Rule – based solely on the language of the Rule, the Board’s satisfaction appears to be left to its unbridled discretion. For this reason, the phrase “establish to the Board’s satisfaction” is ambiguous.

Moreover, G.S. 93B-15.1 states that the Board shall issue a certification if an applicant satisfies conditions that are expressly set forth in the statute. G.S. 93B-15.1(a)(1-4), (b)(1-5). The statute expressly states that the applicant must satisfy statutory conditions, not that the applicant must satisfy the Board. Because G.S. 93B-15.1(a) and (b) place a mandatory duty on the Board, the unbridled discretion afforded to the Board by the Rule exceeds the Board's statutory authority.

B. APPLICATION FORM

Subparagraph (a)(5) (line 20) requires an applicant to complete an application form in seeking an unarmed trainer certificate. G.S. 150B-2 defines, in relevant part, "rule" as follows:

- (8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:

- d.
A form, the contents or substantive requirements of which are prescribed by rule or statute.
.

G.S. 150B-18 establishes that a rule is not valid unless it is adopted in substantial compliance with the APA:

§ 150B-18. Scope and effect.

This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article. An agency shall not seek to implement or enforce against any person a policy, guideline, or other interpretive statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy, guideline, or other interpretive statement has not been adopted as a rule in accordance with this Article. (1991, c. 418, s. 1; 2011-398, s. 1; 2012-187, s. 2.)

This Rule requires the use of an application form. Such a form is a rule within the meaning of Chapter 150B unless excluded pursuant to G.S. § 150B-2(8a)d. Staff has asked the Board whether the contents or substantive requirements of the application form are set forth in a rule or statute, but the Board has not responded to this question, nor has the Board demonstrated that the application form has been adopted in substantial compliance with the APA.

RECOMMENDATION:

Staff recommends that the Commission object to this Rule because it is ambiguous and it exceeds the statutory of the Board. The phrase "to the Board's satisfaction" is undefined and no

principles are articulated that might guide the Board in determining its satisfaction. The Rule also appears to afford the Board unbridled discretion in determining whether an applicant satisfies conditions set forth in G.S. 93B-15.1(a)(1-4), (b)(1-5), contradicting the express terms of the statute.

In addition, staff recommends that the Commission object to this Rule because it fails to comply with the Administrative Procedure Act, in that the Board has failed to demonstrate: (1) that the application form has been adopted in substantial compliance with the APA, or (2) that the contents or substantive requirements of the application form are prescribed by rule or statute.

APPENDIX

§ 93B-15.1. Licensure for individuals with military training and experience; licensure by endorsement for military spouses; temporary license.

(a) Notwithstanding any other provision of law, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military-trained applicant to allow the applicant to lawfully practice the applicant's occupation in this State if, upon application to an occupational licensing board, the applicant satisfies the following conditions:

- (1) Has been awarded a military occupational specialty and has done all of the following at a level that is substantially equivalent to or exceeds the requirements for licensure, certification, or registration of the occupational licensing board from which the applicant is seeking licensure, certification, or registration in this State: completed a military program of training, completed testing or equivalent training and experience, and performed in the occupational specialty.
- (2) Has engaged in the active practice of the occupation for which the person is seeking a license, certification, or permit from the occupational licensing board in this State for at least two of the five years preceding the date of the application under this section.
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (4) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(a1) No later than 30 days following receipt of an application, an occupational licensing board shall notify an applicant when the applicant's military training or experience does not satisfy the requirements for licensure, certification, or registration and shall specify the criteria or requirements that the board determined that the applicant failed to meet and the basis for that determination.

(b) Notwithstanding any other provision of law, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military spouse to allow the military spouse to lawfully practice the military spouse's occupation in this State if, upon application to an occupational licensing board, the military spouse satisfies the following conditions:

- (1) Holds a current license, certification, or registration from another jurisdiction, and that jurisdiction's requirements for licensure, certification, or registration are substantially equivalent to or exceed the requirements for licensure, certification, or registration of the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.
- (2) Can demonstrate competency in the occupation through methods as determined by the Board, such as having completed continuing education units or having had recent experience for at least two of the five years preceding the date of the application under this section.
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (4) Is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit.

- (5) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.
- (c) All relevant experience of a military service member in the discharge of official duties or, for a military spouse, all relevant experience, including full-time and part-time experience, regardless of whether in a paid or volunteer capacity, shall be credited in the calculation of years of practice in an occupation as required under subsection (a) or (b) of this section.
- (c1) Each occupational licensing board shall publish a document that lists the specific criteria or requirements for licensure, registration, or certification by the board, with a description of the criteria or requirements that are satisfied by military training or experience as provided in this section, and any necessary documentation needed for obtaining the credit or satisfying the requirement. The information required by this subsection shall be published on the occupational licensing board's Web site and the Web site of the North Carolina Division of Veterans Affairs.
- (d) A nonresident licensed, certified, or registered under this section shall be entitled to the same rights and subject to the same obligations as required of a resident licensed, certified, or registered by an occupational licensing board in this State.
- (e) Nothing in this section shall be construed to apply to the practice of law as regulated under Chapter 84 of the General Statutes.
- (f) An occupational licensing board may issue a temporary practice permit to a military-trained applicant or military spouse licensed, certified, or registered in another jurisdiction while the military-trained applicant or military spouse is satisfying the requirements for licensure under subsection (a) or (b) of this section if that jurisdiction has licensure, certification, or registration standards substantially equivalent to the standards for licensure, certification, or registration of an occupational licensing board in this State. The military-trained applicant or military spouse may practice under the temporary permit until a license, certification, or registration is granted or until a notice to deny a license, certification, or registration is issued in accordance with rules adopted by the occupational licensing board.
- (g) An occupational licensing board may adopt rules necessary to implement this section.
- (h) Nothing in this section shall be construed to prohibit a military-trained applicant or military spouse from proceeding under the existing licensure, certification, or registration requirements established by an occupational licensing board in this State.
- (i) For the purposes of this section, the State Board of Education shall be considered an occupational licensing board when issuing teacher licenses under G.S. 115C-296.
- (j) For the purposes of this section, the North Carolina Medical Board shall not be considered an occupational licensing board. (2012-196, s. 1; 2014-67, s. 1.)

§ 150B-2. Definitions.

As used in this Chapter,

.....

- (8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:

Jason Thomas
Commission Counsel

- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
- b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing board, as defined by G.S. 93B-1, or by the State Board of Elections.
- c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
- d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
- e. Statements of agency policy made in the context of another proceeding, including:
 - 1. Declaratory rulings under G.S. 150B-4.
 - 2. Orders establishing or fixing rates or tariffs.
- f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
- g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
- h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.
- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21 and the variable component of the excise tax on motor fuel under G.S. 105-449.80.
- k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
- l. Standards adopted by the Office of Information Technology Services applied to information technology as defined by G.S. 147-33.81.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0909

DEADLINE FOR RECEIPT: September 10, 2015

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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Page 1, line 1: Amendment without notice is appropriate for this Rule; however, G.S. 150B-21.5(a)(1) is not applicable. Please modify this citation to G.S. 150B-21.5(a) or G.S. 150B-21.5(a)(4).

Page 1. Line 10: Please add a comma after "Safety."

Page 1, lines 12-18: The summary of hours in parentheses is formatted differently in your rules – compare .0707(a). For consistency and clarity, please format these parentheses as you do in .0707(a): for instance, the end of line 12 should read "...for the security trainer – (two hours);" Note that the dash is a double dash – this Word document converts it into a single larger dash.

Page 1, line 20: Line 4: Subparagraph (5) refers to an application form that renewal applicants are required to use. Such forms are rules which must be promulgated through rulemaking unless the form's "contents or substantive requirements ... are prescribed by rule or statute." G.S. 150B-2(8a)d. If the contents or substantive requirements of this application form are not prescribed in another rule or statute, please add a detailed list of the contents or substantive requirements of the form to this rule, perhaps in a new part. In addition, the rule should also state, with specificity, where the form may be obtained; for instance, a website address may be referenced in the rule.

Page 1, line 28: The phrase "to the Board's satisfaction" is ambiguous. Either delete this phrase, define it, or describe the factors that will guide the Board in determining whether it is satisfied with the information provided by the applicant.

Page 1, lines 29-30: It is unclear whether the phrase "as an unarmed guard trainer" relates only to "two years of verifiable experience" or whether it also relates to "military occupational speciality." You may wish to revise as follows: "a military occupational

Jason S. Thomas
Commission Counsel
Date submitted to agency: August 27, 2015

specialty in training unarmed guards and two years of verifiable experience within the past five years in the U.S. Armed Forces as an unarmed guard trainer.”

Page 1, line 32: The phrase “to the Board’s satisfaction” is ambiguous. Either delete this phrase, define it, or describe the factors that will guide the Board in determining whether it is satisfied with the information provided by the applicant.

Page 2, line 2: G.S. 74C-13 does not appear to be relevant to this Rule. If it is not, please delete it from the History Note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609-6700.

1 14B NCAC 16 .0909 is amended without notice to G.S.150B-21.5(a)(1):

2
3 **14B NCAC 16 .0909 UNARMED TRAINER CERTIFICATE**

4 (a) To receive an unarmed trainer certificate, an applicant shall meet the following requirements:

- 5 (1) comply with the requirements of Rule .0703 of this Chapter;
- 6 (2) have a minimum of one year of experience in security with a contract security company or
- 7 proprietary security organization, or one year of experience with any federal, state, county or
- 8 municipal law enforcement agency;
- 9 (3) successfully complete a training course approved by the Board and the ~~Attorney General~~ Secretary
- 10 of Public Safety which shall consist of a minimum of 24 hours classroom instruction to include the
- 11 following topic areas:
- 12 (A) civil liability for the security trainer – two hours;
- 13 (B) interpersonal communications in instruction – three hours;
- 14 (C) teaching adults – four hours;
- 15 (D) principles of instruction – one hour;
- 16 (E) methods and strategies of instruction – one hour;
- 17 (F) principles of instruction: audio-visual aids – three hours; and
- 18 (G) student performance – 45 minute presentation;.
- 19 (4) receive a favorable recommendation from the employing or contracting licensee; and
- 20 (5) submit the application required by Rule .0910 of this Section.

21 (b) In lieu of completing the training course set forth in Subparagraph (a)(3) of this Rule, an applicant may submit to

22 the Board:

- 23 (1) a Criminal Justice General Instructor Certificate from the North Carolina Criminal Justice Education
- 24 and Training Standards Commission; or
- 25 (2) any training certification that meets or exceeds the requirements of Subparagraph (a)(3) of this Rule
- 26 and is approved by the Director of PPS.

27 (c) In lieu of the experience requirement of Subparagraph (a)(2) of this Rule and completing the training course set

28 forth in Subparagraph (a)(3) of this Rule, an applicant may establish to the Board's satisfaction a military occupational

29 specialty and two years of verifiable experience within the past five years in the U.S. Armed forces as an unarmed

30 guard trainer.

31 (d) In addition to the requirements of Section .0200 of this Chapter, an applicant for an unarmed guard trainer

32 certificate that is the spouse of an active duty member of the U.S. Armed Forces shall establish to the Board's

33 satisfaction:

- 34 (1) the spouse holds a current license, certification or registration from another jurisdiction and the other
- 35 jurisdiction's requirements are substantially equivalent to or exceed the Board's requirements; and
- 36 (2) the spouse has two years of verifiable experience within the past five years as an unarmed guard
- 37 trainer.

38 (e) An Unarmed Trainer Certificate shall expire two years after the date of issuance.

1

2 *History Note:* Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13; 93B-15.1;

3 *Eff. October 1, 2004;*

4 *Amended Eff. October 1, 2013; January 1, 2013; January 1, 2008;*

5 *Transferred and Recodified from 12 NCAC 07D .0909 Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .1407

DEADLINE FOR RECEIPT: September 10, 2015

NOTE WELL: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Page 1, line 1: Amendment without notice is appropriate for this Rule; however, G.S. 150B-21.5(a)(1) is not applicable. Please modify this citation to G.S. 150B-21.5(a) or G.S. 150B-21.5(a)(4).

Page 1, lines 5-14: Paragraph (a) is organized differently than parallel paragraphs (a) and (b) in Rule .0807. Though not a requirement of this Technical Change Request, as the Rule seems clear enough either way, you may wish to consider organizing these paragraphs consistently with one another.

Page 1, lines 17, 19, 20, 21, and 22: The summary of hours in parentheses is formatted differently in your rules – compare .0707(a). For consistency and clarity, please format these parentheses as you do in .0707(a): for instance, the end of line 12 should read “...relating to armed security guards – (minimum of four hours);” Note that the dash is a double dash – this Word document converts it into a single larger dash.

Page 1, line 28: Please change “must” to “shall.”

Page 1, lines 28-29: The last sentence of Paragraph (c) appears to modify the third-to-last sentence, beginning “Should a student fail...” If this is accurate, please clarify, perhaps by deleting the last sentence of the paragraph and modifying the third-to-last sentence to read: “Should a student fail to attain a score of 80 percent accuracy as referenced above, the student shall be given an additional three attempts to qualify on the course of fire they did not pass, which additional attempts shall take place within 20 days of the completion of the initial 20 hour course.”

Page 1, line 33: Please change “must” to “shall.”

Page 2, line 4: Please remove the “[“ prior to “that.” Please consider using the same word – either “which” or “that” – in the similar paragraphs in this Paragraph and in Rule .0807(h).

Jason S. Thomas
Commission Counsel

Date submitted to agency: August 27, 2015

Page 2, line 16: Please clarify the meaning of "initial training in this Rule." Does this mean the training required in Paragraph (a)? Please consider citing to the paragraphs that detail this initial training.

Page 2, lines 16-20: Paragraphs (h) and (i) are organized differently than parallel paragraphs (j) and (k) in Rule .0807. Though not a requirement of this Technical Change Request, as the Rule seems clear enough either way, you may wish to consider organizing these paragraphs consistently with one another.

Page 2, line 20: Please add a comma after "Safety."

Page 2, line 31: Please change "must" to "shall."

Page 2, line 32: Please add a comma after "carry a firearm."

Page 2, line 32: Please change "must" to "shall so."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609-6700.

1 14B NCAC 16 .1407 is amended without notice pursuant to G.S. 150B 21.5(a)(1):

2
3 **14B NCAC 16 .1407 TRAINING REQUIREMENTS FOR ARMED ARMORED CAR SERVICE**
4 **GUARDS**

5 (a) Prior to applying, applicants for an armed armored car service guard firearm registration permit shall complete
6 the basic unarmed armored car service guard training course set forth in Rule ~~.1307~~ .1307(a) of this Chapter. Private
7 Investigator Licensees applying for an armed armored car service guard firearm registration permit shall complete a
8 four hour training course consisting of blocks of instruction "The Security Officer in North Carolina" and "Legal
9 Issues for Security Officers" as set forth in Rule .1307(a) of this Chapter. Private Investigator Licensees applying for
10 an armed armored car service guard firearm registration permit are not required to complete the following training
11 blocks found in the basic training course referenced in Rule .1307(a) of this Chapter: "Emergency Situations,"
12 "Deployment," "Armored Security Operations," and "Safe Driver Training." A Private Investigator Licensee applying
13 for an armed armored car service guard firearm registration permit shall meet all additional training requirements set
14 forth in Rule .1307(a) of this Chapter .1407 as well as the training requirements set forth in this Rule.

15 (b) Applicants for an armed armored car service guard firearm registration permit shall complete a basic training
16 course for armed security guards that consists of at least 20 hours of classroom instruction including:

- 17 (1) legal limitations on the use of handguns and on the powers and authority of an armed security guard,
18 including familiarity with rules relating to armed security guards (minimum of four hours);
19 (2) handgun safety, including range firing procedures (minimum of one hour);
20 (3) handgun operation and maintenance (minimum of three hours);
21 (4) handgun fundamentals (minimum of eight hours); and
22 (5) night firing (minimum of four hours).

23 (c) Applicants for an armed armored service guard firearm registration permit shall attain a score of at least 80 percent
24 accuracy on a firearms range qualification course adopted by the Board and the Attorney General, a copy of which is
25 on file in the Director's office. Should a student fail to attain a score of 80 percent accuracy as referenced above, the
26 student shall be given an additional three attempts to qualify on the course of fire they did not pass. Failure to meet
27 the qualification after three attempts shall require the student to repeat the entire Basic Training Course for Armed
28 Security Guards. All additional attempts must take place within 20 days of the completion of the initial 20 hour
29 course.

30 (d) All armed security guard training required by this Subchapter shall be administered by a certified trainer and shall
31 be successfully completed no more than 90 days prior to the date of issuance of the armed armored car service guard
32 firearm registration permit.

33 (e) All applicants for an armed armored car service guard firearm registration permit must obtain training under the
34 provisions of this Rule using their duty weapon and their duty ammunition or ballistic equivalent ammunition, to
35 include lead-free ammunition that meets the same point of aim, point of impact, and felt recoil of the duty ammunition,
36 for all weapons.

(f) No more than six new or renewal armed armored car service guard applicants per one instructor shall be placed on the firing line at any one time during firearms range training.

(g) Applicants for re-certification of an armed armored car service guard firearm registration permit shall complete a basic recertification training course for armed security guards [that consists of at least four hours of classroom instruction and is a review of the requirements set forth in Subparagraphs (b)(1) through (b)(5) of this Rule. The recertification course is valid for 180 days after completion of the course. Applicants for recertification of an armed armored car service guard firearm registration permit shall also complete the requirements of Paragraph (c) of this Rule.

(h) To be authorized to carry a standard 12 gauge shotgun in the performance of his duties as an armed armored car service guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (b) and (c) of this Rule, four hours of classroom training that shall include the following:

- (1) legal limitations on the use of shotguns;
- (2) shotgun safety, including range firing procedures;
- (3) shotgun operation and maintenance; and
- (4) shotgun fundamentals.

An applicant may take the additional shotgun training at a time after the initial training in this Rule. If the shotgun training is completed at a later time, the shotgun certification shall run concurrently with the armed registration permit.

(i) In addition to the requirements set forth in Paragraph (h) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a shotgun range qualification course adopted by the Board and the ~~Attorney General~~, Secretary of Public Safety a copy of which is on file in the Director's office.

(j) Applicants for shotgun recertification shall complete an additional one hour of classroom training as set forth in Subparagraphs (h)(1) through (h)(4) of this Rule and shall also complete the requirements of Paragraph (i) of this Rule.

(k) Applicants for an armed armored car service guard firearm registration permit who possess a current firearms trainer certificate shall be given, upon their written request, a firearms registration permit that will run concurrently with the trainer certificate upon completion of an annual qualification with their duty weapons as set forth in Paragraph (c) of this Rule.

(l) An armed armored car service guard shall qualify annually for both day and night firing with his or her duty weapon and shotgun, if applicable. If the armed armored car service guard fails to qualify on either course of fire, the guard cannot carry a firearm until such time as he or she meets the qualification requirements. Upon failure to qualify the firearm instructor must notify the armed armored car service guard that he or she is no longer authorized to carry a firearm and the firearm instructor must notify the employer and the Private Protective Services staff on the next business day.

(m) Armed armored car service guard personnel may also work as armed security guards only if they hold an unarmed or armed security guard registration.

History Note: Authority G.S. 74C-3; 74C-5; 74C-13;

1 *Eff. January 1, 2013;*
2 *Transferred and Recodified from 12 NCAC 07D .1507 Eff. July 1, 2015.*
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