

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21

DEADLINE FOR RECEIPT: Friday, May 12 2017

NOTE WELL: *This request 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.

General Issues:

Several of these rules address the internal management of the agency and are excluded from the definition of "rule" by G.S. 150B-2(8a). However, G.S. 89E-5(b) expressly requires the Board to "adopt rules, consistent with the Administrative Procedures Act, to govern its proceedings." A review of several other statutes that include this phrase or other materially similar phrases authorize or require agencies to adopt rules to "govern its proceedings," apparently referring internal agency management. Is this reading of G.S. 89E-5(b) the basis for adopting rules that would otherwise be foreclosed by the definition in G.S. 150B-2(8a)?

The APA requires that the substantive contents of forms be set forth in either rules or statute. Wherever you refer to forms, you should either state the substantive contents of the form in the rule or know of rules or statutes where the substantive content is stated. In addition, the rule should also state, with specificity, where the form may be obtained.

In all of these rules, the History Note should list the history in chronological order.

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0101

DEADLINE FOR RECEIPT: Friday, May 12 2017

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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.

This Rule asserts legal conclusions that should be avoided in rules. Consider revising the Rule and its title as follows:

21 NCAC 21 .0101

AUTHORITY, NAME AND LOCATION OF BOARD

The North Carolina Board for Licensing of Geologists (the "Board") is governed by Chapter 89E of the General Statutes of North Carolina. Unless otherwise directed, all communications to the Board shall be addressed to the Board at Post Office Box 41225, Raleigh, North Carolina 27629.

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

1 **21 NCAC 21 .0101 is amended as published in 31: 12 NCR 1235 as follows:**

2
3 **21 NCAC 21 .0101 AUTHORITY: NAME AND LOCATION OF BOARD**

4 The "North Carolina Geologists Licensing Act", Chapter 89E of the General Statutes of North Carolina, establishes
5 and authorizes the "North Carolina Board for Licensing of Geologists," hereafter called the "Board". Unless
6 otherwise directed, all communications should be addressed to the Board at Post Office Box ~~27402~~, 41225, Raleigh,
7 North Carolina ~~27611~~, 27629.

8
9 *History Note: Authority G.S. 89E-4;*

10 *Eff. February 1, 1986;*

11 *Amended Eff. June 1, 2017; April 1, 1989;*

12 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
13 *16, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0103

DEADLINE FOR RECEIPT: Friday, May 12 2017

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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.

Lines 7-8 – what statute authorizes the Board to exercise these powers? If you rely on 150B-39 and 150B-40, please cite these statutes in the History Note and revise these lines as follows:

- (b) The Board shall have power to compel the attendance of witnesses, to administer oaths, and to take testimony and proofs of all matters within its jurisdiction as allowed by Article 3A of G.S. 150B.

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

1 **21 NCAC 21 .0103 is amended as published in 31: 12 NCR 1235 as follows:**

2
3 **21 NCAC 21 .0103 ORGANIZATION OF THE BOARD**

4 (a) Meetings shall be open and public except that the Board may meet in closed sessions to prepare, approve,
5 administer, or grade examinations; to deliberate the qualifications of an applicant for license; or to deliberate on the
6 disposition of a proceeding to discipline a licensed geologist.

7 (b) The Board shall have power to compel the attendance of witnesses, to administer oaths, and to take testimony
8 and proofs of all matters within its jurisdiction.

9 (c) The ~~chairman~~ Chair and ex-officio member shall be full voting members of the Board.

10
11 *History Note: Authority G.S. 89E-4; 89E-5; 143-318.18(6);*

12 *Eff. February 1, 1986;*

13 *Amended Eff. June 1, 2017; April 1, 1989;*

14 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
15 *16, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0104

DEADLINE FOR RECEIPT: Friday, May 12 2017

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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.

Line 6 – add a comma after “issued”

Lines 8-9 – on what basis will the Chair determine if a complaint is complete? Is there another rule that describes what constitutes a complete complaint?

Line 8 – replace “Board Chair” with “Chair”

Line 9 – do not capitalize “complaint”

Line 9 – replace “should be forwarded” with “, if so, shall forward it”

Line 11 – this citation is in error. Do you mean .0515?

Lines 11-12 – on what basis will the Chair identify a conflict of interest? Is there another rule that describes what constitutes a conflict of interest?

Line 16 – does the Vice-Chair always sign certificates, along with the Chair? That’s how the rule now reads. Do you intend for the Vice-Chair to sign only in the absence of the Chair?

Line 22 – add a comma after “care”

Line 22 – what does “the official documents by order of the Board” mean? Consider deleting “by order of the Board” if it adds nothing to the meaning of the Rule.

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

21 NCAC 21 .0104 is amended as published in 31: 12 NCR 1235 as follows:

21 NCAC 21 .0104 DUTIES OF OFFICERS

(a) ~~Chairman-Board Chair:~~

(1) The ~~chairman~~ Chair shall ~~shall, when present,~~ preside at all ~~meetings,~~ meetings when present, appoint all committees, sign all certificates issued and perform all other duties pertaining to his office.

(2) The Board Chair, together with the Board Counsel and Board Executive Director, shall determine if a Complaint submitted to the Board is complete and should be forwarded to an investigator. In addition, the Chair shall be responsible for evaluating the investigative report and proposing further action as authorized by Rule .05105 of this Chapter. Should the Chair identify a conflict of interest, the Vice-Chair shall review the Complaint. If both Chair and Vice-Chair have a conflict of interest, the Secretary-Treasurer shall review the Complaint. If none of these persons can serve, then the Chair shall designate another Board member to review the Complaint.

(b) Board Vice-Chair. ~~Vice chairman.~~ The ~~vice chairman~~ Vice-Chair, in the absence of the Chair, ~~chairman~~, shall perform all of the duties of the Chair. ~~chairman.~~ The Vice-Chair shall sign all certificates issued.

(c) ~~Secretary-treasurer~~ Treasurer:

(1) The ~~secretary-treasurer,~~ Secretary-Treasurer, with the assistance of an ~~executive-director~~ Executive Director or such other officers or employees as may be approved by the Board, shall conduct and care for all the correspondence of the Board, keep the minutes of all the meetings, keep all books and records, and ~~shall~~ sign all certificates issued. ~~He~~ The Secretary-Treasurer shall have charge, care and custody of the official documents by order of the Board. ~~He~~ The Secretary-Treasurer shall provide due notice of the time and place of all meetings of the Board to each member of the Board.

(2) The ~~secretary-treasurer,~~ Secretary-Treasurer, with the assistance of an ~~executive-director~~ Executive Director or such other officers or employees as may be approved by the Board, shall receive all moneys from applicants for annual renewal or other fees and deposit them in an authorized depository of the Board. The ~~secretary-treasurer~~ Secretary-Treasurer shall give bond to be conditioned on the faithful performance of the duties of this office and on the faithful accounting of all monies and other property as shall come into ~~his~~ this officer's hands.

(3) The ~~secretary-treasurer,~~ Secretary-Treasurer, with the assistance of an ~~executive-director~~ Executive Director or such other officers or employees as may be approved by the Board, shall provide to each applicant for a license or registration a current copy of G.S. 89E and the rules of this Chapter. Copies of the Geologists Licensing Act and the rules of this Chapter shall be provided by mail with the application packet or in electronic format on the Board's Internet website (www.ncblg.org) with the on-line application packet.

1 (4) The Secretary-Treasurer, with the assistance of an Executive Director or such other officers or
2 employees as may be approved by the Board, shall update the Board's Internet website
3 (www.ncblg.org) thirty (30) days prior to each meeting of the Board with the agenda for the next
4 Board meeting and thirty (30) days following each meeting of the Board with the latest approved
5 minutes and disciplinary actions taken by the Board.

6
7 *History Note:* Authority G.S. ~~89E4; 89E5;~~ 89E-4; 89E-5;

8 *Eff. February 1, 1986;*

9 *Amended Eff. June 1, 2017; April 1, 2003; April 1, 1989.*

10 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
11 *16, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0301

DEADLINE FOR RECEIPT: Friday, May 12 2017

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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 5 – delete “minimum”

Lines 8-14 – consider revising as follows:

An applicant shall have:

- (1) graduated from an accredited college or university and have a degree with a major in geology, engineering geology or geological engineering, or related geological science; or
- (2) completed 30 hours of geological study or the equivalent in geological science courses leading to a major in geology, of which at least 24 hours of the equivalent shall have been upper-level courses or graduate courses in areas including geology, geophysics, geochemistry, oceanography, paleontology, hydrology, soil science, economic geology, and engineering geology.

Note that the rule is presently written to require those qualifying under Subparagraph (2) to have completed each of the listed courses. If that is not the intent, replace “including” with “such as.”

Line 20 – delete “all”

Line 22 – replace “as to” with “of”

Lines 24-26 – consider revising as follows, if this is what is meant:

An applicant having a record of three failures shall not be allowed to take that examination again until the applicant makes a written appeal to the Board and the Board confirms the applicant is qualified for examination pursuant to the rules in this Section.

Lines 26-27 – what actions might “improve the applicant's possibility of passing the exam”? Can you provide a few examples, adding “such as ...” to the end of line 27?

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

Line 28 – delete “minimum”

Page 2, line 3 – delete “deemed to be equal or”

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

21 NCAC 21 .0301 is amended as published in 31: 12 NCR 1235-1236 as follows:

21 NCAC 21 .0301 REQUIREMENTS FOR LICENSING

(a) Education. In determining whether an applicant meets the minimum education requirements of the Geologists Licensing Act, the Board shall accept transcripts from colleges and universities that are accredited by a national or regional accrediting organization such as the Southern Association of Colleges and Schools. ~~The Board requires 30 hours of geological study, with 24 hours of upper level~~ The Board requires that an applicant have graduated from an accredited college or university and have a degree with a major in geology, engineering geology or geological engineering or related geological science. If the applicant does not have a degree in any of the listed majors, the applicant must have completed 30 hours of geological study or the equivalent in geological science courses leading to a major in geology, of which at least 24 hours of the equivalent were upper-level courses or graduate courses in areas including: geology, geophysics, geochemistry, oceanography, paleontology, hydrology, soil science, economic geology and engineering geology.

(b) References. Five letters of reference submitted to the Board which shall satisfy the Board as to the character, reputation, responsibility, integrity and competence of the applicant. These letters of reference must be submitted by licensed ~~or qualified~~ geologists or ~~professional~~ engineers. No member of the Board shall act as a reference for any applicant for licensing. At least two of the five letters of reference must be submitted by licensed ~~or qualified~~ geologists who are familiar with the applicant's work in the field of geology.

(c) Written Examination. Except as provided in Paragraph (e) of this Rule, all applicants shall pass the written examination administered by the Board in conjunction with the National Association of State Boards of Geology (A.S.B.O.G.). The applicant shall be notified, not less than 30 days before the examination, as to the time and place of the examination. ~~A person who has failed an examination is allowed to take the examination again at the next regularly scheduled examination period.~~ A person having a record of three failures shall not be allowed to take that examination again until a written appeal is made to the Board and qualifications for examination are reviewed and reaffirmed by the Board. The applicant shall demonstrate to the Board that actions have been taken to improve the applicant's possibility of passing the exam.

(d) Experience. In determining whether an applicant meets the minimum experience requirements of the Geologists Licensing Act, the Board shall consider the total work experience record of the applicant. The Board shall look for the applicant's ability to conduct geological work in a satisfactory manner with little or no supervision.

(e) Certificate by comity. The Board shall grant a license without further examination to a person ~~holding a license who has been licensed by another jurisdiction~~ to engage in the practice of geology ~~geology, which license has been issued by another jurisdiction,~~ when the applicant meets the following conditions:

- (1) the applicant has filed an application for license and paid the fee required by Rule .0107 of this Chapter;
- (2) the applicant has provided evidence of education and experience equal to the requirements of Paragraphs (a), (b), and (d) of this Rule as indicated in Rule .0302 of this Section;

- 1 (3) the applicant is in good standing with the agency regulating the practice of geology in any
2 jurisdiction in which the applicant holds a license to practice geology; and
3 (4) the applicant has successfully passed a written examination deemed to be equal or equivalent to
4 the examination required by the Board pursuant to G.S. 89E-9 and Paragraph (c) of this Rule.

5
6 *History Note:* *Authority G.S. 89E-7; 89E-8; 89E-9; 89E-11;*
7 *Eff. February 1, 1986;*
8 *Amended Eff June 1, 2017; April 1, 2003; April 1, 1990; April 1, 1989; March 1, 1988;*
9 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
10 *16, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0302

DEADLINE FOR RECEIPT: Friday, May 12 2017

NOTE WELL: *This request 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 4 – replace “are required to” with “shall” and move “with their application” after “following”

Line 5 – define or delete “legible”

Line 5 – delete “(s)”

Lines 7, 9, and 12 refer to a form or an application. See the general note regarding forms.

Lines 13-14 – what information might the Board require? Can you provide a few examples, adding “such as ...” after “89E-21,”?

Line 18 – add a coma after “articles”

Line 20 – what factors form the basis for the Board’s decision whether to reject an application? Can you list the factors or provide a few examples?

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

1 **21 NCAC 21 .0302 is amended as published in 31: 12 NCR 1236 as follows:**

2
3 **21 NCAC 21 .0302 APPLICATION PROCEDURE**

4 (a) All applicants for licensing are required to furnish with their applications the following:

- 5 (1) A legible, official copy of their college ~~transcript(s)~~, transcript(s) and verification of graduation
6 sent directly from the institution to the Board;
7 (2) Verification of experience in the practice of geology on forms provided by the Board;
8 (3) Five references as defined in Rule .0301(b) of this Section;
9 (4) A notarized copy of a completed application form as prescribed by the Board; and
10 (5) The application fee as prescribed in Rule .0107 of this Chapter.

11 (b) Applicants for reinstatement of an ~~expired~~ expired, suspended, or inactive license or registration shall submit a
12 reinstatement application and shall submit the fee as provided by Rule .0107 of this Chapter.

13 (c) Applicants for reinstatement of a revoked license or registration shall submit such information as is required by
14 the Board to determine eligibility for reinstatement pursuant to G.S. 89E-21, and shall submit the fee as provided by
15 Rule .0107 of this Chapter.

16 (d) Additional information required by the Board to approve or deny approval on any application shall be filed with
17 the Board within 60 days of the applicant's receipt of notice to provide such information. This may include any of
18 the applicant's written reports, maps, published articles or other materials the Board determines are appropriate to
19 document the applicant's experience as a geologist. Failure to submit the supplemental information requested within
20 the time specified by this Rule may result in the Board's rejection of the application without further notice prior to
21 such rejection.

22
23 *History Note: Authority G.S. 89E-7; 89E-8; 89E-9; 89E-11; 89E-12; 89E-21;*

24 *Eff. February 1, 1986;*

25 *Amended Eff. June 1, 2017; April 1, 2003; April 1, 1990; April 1, 1989; March 1, 1988;*

26 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
27 *16, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0303

DEADLINE FOR RECEIPT: Friday, May 12 2017

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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.

Lines 4-10 – consider revising as follows if this accurately reflects the Board's practice:

- (a) The Board shall grant inactive status to a licensee if:
 - (1) the licensee submits a letter in writing to the Board before the current license has expired, requesting inactive status; and
 - (2) at the time the letter request is submitted, the licensee's license has not been suspended, surrendered, or revoked.

The Board shall notify the licensee that he or she has been granted inactive status or the reason the request was not granted.

Line 8 – "good standing" appears to mean that a license has not been suspended, surrendered, or revoked. In Rule .0407, line 10, "good standing" appears to mean that a license has not been suspended or revoked. Do you intend this difference?

Line 12 – delete "The Professional Corporation Act (G.S. § 55B) requires that"

Line 13 – add "shall" after "requirements"

Lines 14-15 – revise as follows:

If this is not done before the licensee is granted inactive status, the Board shall suspend the professional corporation's registration and shall notify the professional corporation of this suspension.

Line 15 – how and when will the notice of suspension be provided?

Line 22 – revise as follows:

- (g) An individual who wishes to convert their license from inactive to active status shall submit ...

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

Line 24 – replace “requests” with “request”

Line 28 – replace “will be expired” with “shall expire”

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

21 NCAC 21 .0303 is adopted as published in 31: 12 NCR 1236-1237 as follows with changes:

21 NCAC 21 .0303 Inactive Status

(a) A licensee may request inactive status by following this process:

- (1) Licensee shall submit a letter in writing to the Board before the current license has expired requesting inactive status;
- (2) At the time the letter request is submitted, the licensee shall ~~must~~ be in good standing with the Board (that is, the license has not been suspended, surrendered, or revoked); and
- (3) The Board shall ~~will~~ notify the licensee that he or she has been granted inactive status or the reason the request was not granted;

~~(b) (4)~~—Should the licensee seeking inactive status be the person identified as the North Carolina licensed geologists for a corporation registered with the Board, The Professional Corporation Act (G.S. § 55B) requires that another licensee who meets the statutory requirements be identified in order to maintain the professional corporation's registration with the Board. If this is not done before the licensee is granted inactive status, the professional corporation shall ~~will~~ be notified by the Board that its registration is suspended.

~~(c) (b)~~—A geologist or registered corporation with an inactive or suspended license shall not engage in the public practice of geology in North Carolina.

~~(d) (e)~~—A geologist with an inactive license shall no longer seal and certify documents with his or her seal.

~~(e) (d)~~—The Board shall ~~will~~ maintain a list of all inactive licensees.

~~(f) (e)~~—Any reference to an inactive geologist on a letter, title, sign, card, or devise shall list such geologist as "Retired Geologist" or "N.C. Geology License No. __ (inactive)."

~~(g) (f)~~—An individual who is on inactive status shall ~~may~~ convert his or her license to active status by submission of an application for reinstatement of license, license and proof of 12 hours of continuing education credit received in the 12 months prior to the reinstatement requests, and payment of the reinstatement fee set forth in 21 NCAC 21 .0107.

~~(h) (g)~~—In no case may an individual remain on inactive status for more than five years without permission of the Board. If an individual has been on inactive status for five years and does not request additional time to hold an inactive license, the license will be expired.

~~(i) (h)~~—Any geologist who has been granted inactive status is not required to fulfill continuing education requirements.

History Note: Authority G.S. 89E-4; 89E-5;

Eff. June 1, 2017.

Amended Eff. June 1, 2017.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0403

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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.

The form accompanying this Rule indicates that it was adopted by the Board on April 19, 2017. This seems unlikely, because most of the rules in this set were adopted on April 18, 2017. Please check the adoption date and correct the form if necessary.

Lines 5-7 – delete the first sentence entirely.

Line 8 – 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.

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

1 **21 NCAC 21 .0403 is adopted as published in 31: 12 NCR 1237 as follows with changes:**

2
3 **SECTION .0400 – CONTINUING EDUCATION**

4 **21 NCAC 21 .0403 INTRODUCTION**

5 The following continuing education requirements are established by the Board in accordance with G.S. 89E-2 and
6 89E-5 to protect the life, property, health and public welfare through the regulation of the practice of geology in the
7 State of North Carolina. Beginning July 1, ~~2018-2017~~ and before July 1, 2018, each person holding an active
8 geology license must ~~complete~~ have completed 12 hours of continuing professional education relating to geology as
9 a condition for licensure renewal.

10
11 *History Note:* *Authority G.S. 89E-4; 89E-5;*
12 *Eff. June 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0404

DEADLINE FOR RECEIPT: Friday, May 12 2017

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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.

Line 4 – add a comma after “information”

Line 5 – see the general note regarding forms.

Line 5 – add a comma after “Board”

Line 7 – replace “Every” with “Each” and add “during” after “education”

Line 11 – delete both commas

Lines 13-14 – revise as follows if this accurately reflects the Board’s practice:

(d) In order to meet the requirements of this Section, courses and activities shall be in accordance with the continuing education Guidelines approved by the Board.

Line 16 – replace “by” with “through”

Line 36 – add a comma after “provider”

Line 37 – there appears to be an extra space after “after”

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

21 NCAC 21 .0404 is adopted as published in 31: 12 NCR 1237 as follows with changes:

21 NCAC 21 .0404 REQUIREMENTS

(a) Each application for renewal shall include information attested to by the licensee under penalty of perjury on a form provided by the Board establishing that the licensee has completed the minimum required contact hours of approved continuing education.

(b) Every licensee shall obtain 12 contact hours of continuing education each renewal period. If a licensee exceeds the annual requirement in any renewal period, a maximum of 12 hours may be carried forward to the next renewal period.

(c) A contact hour is defined as actual instruction time (credited to the nearest one-quarter of an hour) received in-person, or through an online class that includes interaction between the teacher and student, or through any other similar format.

(d) Selection of courses and activities that meet the requirements of this Section are the responsibility of the licensee and shall be in accordance with any continuing education Guidelines approved by the Board. The Board will provide a list posted on the Board's website of the professional societies whose courses have been preapproved for continuing education credit. ~~In general, continuing~~ Continuing education credit may be earned by any of the following activities:

(1) Teaching or completing for-credit courses at any accredited university or college;

(2) Teaching or completing ~~for credit~~ continuing-education courses, seminars, field trips, or workshops sponsored by a professional geological societies-society or an accredited university or college;

(3) Teaching or completing ~~for credit~~ of course work sponsored by other professional or educational organizations approved by the Board;

(4) Presenting or attending seminars, workshops, or professional or technical presentations made at conventions, conferences of professional ~~organizations; and organizations, or at accredited universities or colleges;~~

(5) Presenting or attending seminars, workshops, or professional or technical presentations made by or sponsored by employers who apply geoscience skills to accomplish their organizational missions; and

~~(6) (5)~~ Licensee may receive double credits for each hour ~~they he or she~~ teaches or presents. Teaching credit is valid for teaching a course or seminar for the first time only. ~~Teaching credit does not apply to full-time faculty, as defined by the institution where a licensee is teaching.~~

(7) Licensee may receive a maximum of six hours continuing education credit for a published peer reviewed book or article.

(e) Courses offered by professional societies that have not been pre-approved by the Board may be ~~submitted~~ submitted, by either the licensee or course provider for review and approval within 90 days before or for up to 180 days after the licensee takes the course.

1

2

3 *History Note:* *Authority G.S. 89E-4; 89E-5;*

4 *Eff. June 1, 2017.*

5

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0405

DEADLINE FOR RECEIPT: Friday, May 12 2017

NOTE WELL: *This request 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 4 – see the general note regarding forms.

Line 7 – replace “has final authority to” with “shall” and add a comma after “licensee”

Lines 8 and 9 – do not capitalize “relevance” or “number”

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

1 **21 NCAC 21 .0405 is adopted as published in 31: 12 NCR 1237 as follows with changes:**

2
3 **21 NCAC 21 .0405 DETERMINATION OF CREDIT**

4 (a) The Board shall review all information provided by the licensee on the form required by 21 NCAC 21 .0404(a)
5 of this subchapter ~~the Board~~ as part of the annual license renewal. The Board may request additional information
6 from the licensee as required to verify the continuing education earned.

7 (b) The Board has final authority to determine the amount of continuing education credit earned by each licensee
8 based on materials submitted. The Board determination of credit shall consider the following factors: (1) Relevance
9 of course material to the practice of geology, and (2) Number of credit hours requested.

10
11 *History Note:* *Authority G.S. 89E-4; 89E-5;*
12 *Eff. June 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0406

DEADLINE FOR RECEIPT: Friday, May 12 2017

NOTE WELL: *This request 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.

Lines 4-5 – revise as follows:

(a) Records substantiating Board-approved continuing-education activities shall include the following:

Lines 6, 9, 11, and 12 – do not capitalize the first words in these lines.

Line 7 – add “and” before “instructor’s”

Line 11 – add “and” at the end of the line

Line 13 – delete “the” before “Board” and replace “Board approved” with “Board-approved”

Line 14 – replace “must” with “shall”

Lines 15-16 – delete the last sentence of Paragraph (b).

Line 17 – replace “be responsible for providing” with “provide”

Lines 17-18 – move “to the Board’s Executive Director” immediately after “provide”

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

21 NCAC 21 .0406 is adopted as published in 31: 12 NCR 1237-1238 as follows:

21 NCAC 21 .0406 RECORDKEEPING

(a) Records substantiating the Board-approved continuing-education activities may include, but are not limited to the following:

(1) A log that shows the type of activity claimed; title or specific subject; the name of the organization that provided the continuing education; the location, duration, date, instructor's or speaker's name; credits hours earned; and other information on a form as prescribed by the Board;

(2) Copies of registration receipts and brochures identifying the continuing-education activities attended by the licensee;

(3) Attendance verification records in the form of completion certificates;

(4) Other documents that support evidence of attendance.

(b) The licensee is responsible for maintaining records that support the claimed credit hours for the Board approved continuing education activities. These records must be maintained for a period of three years and copies may be requested by the Board for audit verification purposes. The Board may approve other records that contain the information required by this Rule.

(c) The licensee shall be responsible for providing electronic copies of the records substantiating the continuing education activities for which he or she is claiming credit to the Board's Executive Director.

History Note: Authority G.S. 89E-4; 89E-5;

Eff. June 1, 2017.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0407

DEADLINE FOR RECEIPT: Friday, May 12 2017

NOTE WELL: *This request 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.

Throughout this rule – please consistently use either “continuing education” or “continuing-education”

Line 7 – does “renewed for the second time” mean this is the licensee’s third license? That is what the rule now says.

Line 9 – add “Board-issued” or “North Carolina” before “license”

Lines 10 and 31 – in Rule .0303, “good standing” meant that a license has not been suspended, surrendered, or revoked. Here, “good standing” appears to mean that a license has not been suspended or revoked. Do you intend this difference?

Line 11 – the “f” in “force” appears to be highlighted

Line 14 – add commas around “26 U.S.C. 7508”

Line 21 – replace “is” with “was”

Line 35 – replace “90 day” with “90-day”

Page 2, line 6 – replace “is” with “was”

Page 2, lines 18 and 23 – replace “must” with “shall”

Line 22 – delete “each year”

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

21 NCAC 21 .0407 is adopted as published in 31: 12 NCR 1238 as follows with changes:

21 NCAC 21 .0407 EXEMPTIONS

A licensee is exempt from the annual continuing-education requirements as long as any of the following exceptions apply:

- (1) Any new ~~New~~-licensees by way of examination shall be required to show proof of 12 hours of continuing education when his or her ~~their~~ geology license is renewed for the second time.
- (2) Any new ~~New~~-licensees by way of comity shall be required to show proof of 12 hours of continuing education the first time his or her ~~the~~ license is renewed.
- (3) If currently licensed by and in good standing (license is not suspended or revoked) with the Board, a licensee who is serving on active duty as a member of ~~in~~ the armed forces of the United States and who is eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2 may request a waiver of the mandatory continuing-education requirements for the time period disregarded pursuant to the Internal Revenue Code 26 U.S.C. 7508 as follows:
 - (a) The licensee shall notify the Board of eligibility before the current license expires. Upon such notification, the Board shall maintain the license in active status through the extension period.
 - (b) If the licensee fails to notify the Board of eligibility for the extension period before the current license expires, upon receipt and acceptance of a renewal application within the extension period and presentation of proof that the licensee was eligible on the date that is the deadline for renewal, the expired license or registration shall be deemed retroactively to have not expired.
 - (c) The licensee who submits a renewal application within the extension period shall not be deemed to hold a lapsed license subject to reinstatement fees.
 - (d) The licensee may renew the license within the extension period despite failing to complete the specified continuing-education requirements.
 - (e) A licensee shall provide proof of eligibility for the extension period when the licensee or registrant submits the renewal ~~application~~ application, which shall include: (1) a copy of military orders denoting the respective active duty period(s); or (2) a copy of form DD-214 denoting each respective active duty period.
- (4) If currently licensed by and in good standing (license is not suspended or revoked) with the Board, a licensee who is serving in a reserve component of the armed forces of the United States and completes an aggregate of 90 days active duty in a given calendar year in accordance with 10 USC 12301(a); 10 USC 12302; 10 USC 12304; or 14 USC 712 may request a waiver of the mandatory continuing education requirements during the year in which the 90 day aggregate active duty occurred as follows:

1 (a) The licensee shall notify the Board of eligibility before the current license expires. Upon
2 such notification, the Board shall maintain the license in active status through the extension
3 period.

4 (b) If the licensee fails to notify the Board of eligibility for the extension period before the
5 current license expires, upon receipt and acceptance of a renewal application within the extension
6 period and presentation of proof that the licensee was eligible on the date that is the deadline for
7 renewal, the expired license or registration shall be deemed retroactively to have not expired.

8 (c) The licensee who submits a renewal application within the extension period shall not be
9 deemed to hold lapsed license subject to reinstatement fees.

10 (d) The licensee may renew the license within the extension period despite failing to
11 complete the specified continuing education requirements.

12 (e) A licensee shall provide proof of eligibility for the extension period when the licensee or
13 registrant submits the renewal application, which shall include: (1) a copy of military orders
14 denoting the respective active duty period(s) or (2) a copy of form DD-214 denoting the respective
15 active duty period.

16 (5) (4) The Board may grant an exemption at a licensee's request if the Board determines that the licensee
17 is experiencing physical disability, illness, or other extenuating circumstances that prevent the
18 licensee from obtaining continuing-education hours. Supporting documentation must be furnished
19 to the Board along with a written request.

20 (6) (5) Licensees who list their occupation as "Inactive" on the Board-approved renewal form and who
21 are no longer providing geological services are not required to earn continuing education credits
22 each year. In the event such a person elects to return to active practice of geology, 12 hours of
23 continuing education must be earned in the year prior to the licensee's return to active practice.

24
25 History Note: Authority G.S. 89E-4; 89E-5;
26 Eff. June 1, 2017.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0501

DEADLINE FOR RECEIPT: Friday, May 12 2017

NOTE WELL: *This request 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.

Lines 5-6 – delete “charge of negligence, incompetence, dishonest practice, or other misconduct or of any in”

Line 6 – see the general note regarding forms.

Line 9 – what is the statutory authority authorizing this requirement: “, and that he or she is prepared to prove them at a hearing”? Consider deleting this phrase.

Line 10 – replace “such” with “a”

Line 17 – replace “and/or” with either “and” or “or”

Line 19 – add a comma after “Section”

Line 20 – replace “person who filed the charge” with “complainant”

Line 21 – when “may” the Board require the licensee to demonstrate fitness? What factors would the Board consider in determining whether to require this demonstration?

Line 23 – when “may” the Board impose a penalty? What factors would the Board consider in determining whether to impose a penalty?

Line 26 – what does “final” mean? Consider deleting this word.

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

21 NCAC 21 .0501 is amended as published in 31: 12 NCR 1238-1239 as follows with changes:

21 NCAC 21 .0501 FILING OF CHARGES AND DISCIPLINARY ACTIONS

(a) Any person may file a complaint against a geologist with the Board against a geologist for disciplinary action against a geologist based on a charge of negligence, incompetence, dishonest practice, or other misconduct ~~or of~~ any in violation of G.S. 89E or of these Rules on forms provided by the Board. These forms are on the Board's website at www.ncblg.org and may be requested from the Board.

(b) The complaint shall set forth the facts upon which the complaint is based. The complainant shall affirm that the facts stated in the complaint are true, and that he or she is prepared to prove them at a hearing.

~~(b)~~ (c) Upon receipt of such charge-complaint or upon its the Board's own initiative, the Board may the Board's Executive Director, Board Chair, and counsel to the Board shall meet to determine whether the Board has jurisdiction over the complaint and whether there is good cause to proceed with an investigation.

(d) If it is determined there are grounds to proceed, the Board's professional staff shall open a case file, notify the complainant that the complaint has been received and a file opened, notify and provide a copy of the complaint to the respondent-licensee named in the complaint and request a response, and initiate an investigation of the allegations in the complaint.

(e) Based upon a review of the complaint and/or the results of the investigation, and consistent with procedures required by G.S. 150B, the Board may suspend or revoke the license or certificate of registration, may issue a reprimand as provided in Rule .0502 of this Section or may, upon a statement of the reasons therefore, dismiss the charge as unfounded or trivial, which statement shall be mailed to the geologist and the person who filed the charge. If the Board determines that a licensee is professionally incompetent, the Board may require the licensee to demonstrate fitness to practice as allowed in G.S. 89E-19(b). In addition to issuing a reprimand or suspending or revoking a license or certificate of registration, the Board, pursuant to G.S. 89E-19, may impose a civil penalty for any violation of G.S. 89E or these Rules.

~~(e)~~(f) The Board shall notify the complainant and the respondent-licensee in any complaint filed with the Board of the disposition of the case and may publish in the Board's newsletter or other public media any final disciplinary action taken against a licensee or registrant or any legal action taken against any person found to be in violation of G.S. 89E or these Rules.

History Note: Authority G.S. 89E-5; 89E-17; 89E-19; 89E-20;

Eff. February 1, 1986;

Amended Eff. April 1, 1989;

Temporary Amendment Eff. November 24, 1999;

Amended Eff. June 1, 2017; April 1, 2003; August 1, 2000;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0502

DEADLINE FOR RECEIPT: Friday, May 12 2017

NOTE WELL: *This request 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 12 – delete “thereafter”

Lines 12-14 – delete the last sentence of Paragraph (b).

Line 16 – delete “merely”

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

1 **21 NCAC 21 .0502 is amended as published in 31: 12 NCR 1239 as follows:**

2
3 **21 NCAC 21 .0502 REPRIMAND**

4 (a) If evidence of a violation is found, but it is determined that a disciplinary hearing is not warranted, the Board
5 may issue a reprimand to the accused party. A record of such reprimand shall be mailed to the accused party, and
6 within 15 days after receipt of the reprimand the accused party may refuse the reprimand and request that a ~~Hearing~~
7 hearing be held pursuant to G.S. 150B. Such refusal and request shall be addressed to the Board and filed with the
8 Executive Director of the Board.

9 (b) Upon timely filing of a notice refusing the reprimand and requesting a hearing, the Board shall determine
10 whether the Board shall conduct the evidentiary hearing or whether it shall refer the matter to the Office of
11 Administrative Hearings for designation of an administrative law judge to conduct the hearing. If the Board elects to
12 conduct the hearing, the legal counsel for the Board shall thereafter prepare and file a Notice of Hearing. If the
13 Board refers the matter to the Office of Administrative Hearings, that agency shall prepare and serve all subsequent
14 notices related to the evidentiary hearing, including the Notice of Hearing.

15 (c) If the Letter of Reprimand is accepted, a copy of the reprimand shall be maintained in the office of the Board. If
16 a party receiving a reprimand wishes merely to file a letter rebutting his or her reprimand, he or she may in writing
17 waive his or her right to hearing and submit a letter of rebuttal to be placed in his or her file.

18
19 *History Note: Authority G.S. 89E-5; 89E-19; 89E-20;*

20 *Eff. February 1, 1986;*

21 *Amended Eff April 1, 1989;*

22 *Temporary Amendment Eff. November 24, 1999;*

23 *Amended Eff. June 1, 2017; April 1, 2003; August 1, 2000;*

24 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
25 *16, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0505

DEADLINE FOR RECEIPT: Friday, May 12 2017

NOTE WELL: *This request 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 3 – add the Rule cite and title.

Consider revising this Rule in its entirety, as follows:

When the Board acts or proposes to act in a manner that affects or will affect a licensee, the Board shall give notice by certified mail to each affected licensee at his or her last known address of the proposed action and of his or her right to a hearing.

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

1 **21 NCAC 21 .0505 is amended as published in 31: 12 NCR 1239 as follows:**

2
3 When the Board, other than in a rulemaking or declaratory ruling proceeding, acts or proposes to act in a manner
4 which will affect the rights, duties, or privileges of a specific identifiable person or persons, those persons have a
5 right to an administrative hearing. When the Board proposes to act in such manner, it shall give ~~to any such person~~
6 ~~or persons~~ notice of their right to a hearing ~~by mailing~~ by certified mail ~~to such person~~ to each licensee at his or her
7 last known address ~~a notice~~ of the proposed action and his or her ~~a notice of a right to a hearing~~.

8
9 *History Note: Authority G.S. 89E-20; 150B-11; 150B-38;*

10 *Eff. February 1, 1986;*

11 *Amended Eff. June 1, 2017; April 1, 1989;*

12 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
13 *16, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0506

DEADLINE FOR RECEIPT: Friday, May 12 2017

NOTE WELL: *This request 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 4 – add a comma after “duties”

Lines 5 and 7 – delete “formal”

Line 8 – replace “should” with “shall”

Line 12 – delete “statement of”

Line 13 – replace “will” with “shall”

Line 13 – define or delete “promptly”

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

21 NCAC 21 .0506 is amended as published in 31: 12 NCR 1239 as follows:

21 NCAC 21 .0506 REQUEST FOR HEARING

(a) When an individual believes his or her rights, duties or privileges have been or may be affected by the Board's administrative action, but has not received notice of a right to an administrative hearing, he or she may file a formal request for a hearing.

(b) The formal request shall bear the notation: RE: REQUEST FOR ADMINISTRATIVE HEARING. That request should contain the following information:

- (1) name and address of the petitioner;
- (2) a concise statement of the action taken by the Board which is challenged;
- (3) a concise statement of the way in which the petitioner has been aggrieved; and
- (4) a clear and specific statement of request for a hearing.

(c) Such a request will be acknowledged promptly and, if deemed appropriate under Rule 21 NCAC 21 .0507, a hearing will be scheduled.

History Note: Authority G.S. 89E-20; 150B-11; 150B-38;

Eff. February 1, 1986;

Amended Eff. June 1, 2017; April 1, 1989;

Pursuant to G.S. 150B 21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0511

DEADLINE FOR RECEIPT: Friday, May 12 2017

NOTE WELL: *This request 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 unnecessary at best – at worst, it purports to modify the law regarding intervention. Either repeal it or replace it with:

The Board shall allow intervention as provided by Rule 24 of the North Carolina Rules of Civil Procedure.

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

1 **21 NCAC 21 .0511 is amended as published in 31: 12 NCR 1239 as follows:**

2
3 **21 NCAC 21 .0511 TYPES OF INTERVENTION**

4 (a) Intervention of Right. A petition to intervene of right, as provided in the North Carolina Rules of Civil
5 Procedure, Rule 24, will be granted if the petitioner meets the criteria of that Rule and his or her petition is timely.

6 (b) Permissive Intervention. A petition to intervene permissively as provided in the North Carolina Rules of Civil
7 Procedure, Rule 24, will be granted if the petitioner meets the criteria of that Rule and the Board determines that:

8 (1) there is sufficient legal or factual similarity between the petitioner's claimed rights, privileges, or
9 duties and those of the parties to the hearings; and

10 (2) permitting intervention by the petitioner as a party would aid the purpose of the hearing.

11
12 *History Note: Authority G.S. 89E-20; 150B-38;*

13 *Eff. February 1, 1986;*

14 *Amended Eff June 1, 2017; April 1, 1989;*

15 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
16 *16, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0513

DEADLINE FOR RECEIPT: Friday, May 12 2017

NOTE WELL: *This request 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 9 – replace “should” with “shall”

Line 10 – replace the parentheses () with brackets []

Line 11 – replace “must” with “shall”

Line 13 – replace “will” with “shall”

Lines 14-16 – combine these two sentences, perhaps as follows:

An affidavit of disqualification shall be considered timely if filed ten days before the commencement of the hearing or at the first opportunity after the party becomes aware of facts set forth in the affidavit.

Lines 20, 23, 24, 26, and 29 – replace “will” with “shall”

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

21 NCAC 21 .0513 is amended as published in 31: 12 NCR 1239-1240 as follows with changes:

21 NCAC 21 .0513 DISQUALIFICATION OF BOARD MEMBERS

(a) Self-disqualification. If for any reason a Board member determines that personal bias or other factors render him or her unable to participate in a contested case hearing and perform all duties in an impartial manner, he or she shall submit, in writing, to the Board, his or her disqualification and the reasons.

(b) Petition for Disqualification. If for any reason any party in a contested case believes that a Board member is personally biased or otherwise unable to participate in a contested case hearing and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the Board. The title of such affidavit should bear the notation: AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (name of case).

(c) Contents of Affidavit. The affidavit must state all facts the party deems relevant to the disqualification of the Board member.

(d) Timeliness and Effect of Affidavit. An affidavit of disqualification will be considered timely if filed ten days before commencement of the hearing. Any other affidavit will be considered timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that the Board member may be disqualified under this Rule. Where a petition for disqualification is filed less than ten days before or during the course of a hearing, the hearing shall continue with the challenged Board member sitting. Petitioner shall have the opportunity to present evidence supporting his or her petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record. The Board, before rendering its decision, shall decide whether the evidence justifies disqualification. In the event of disqualification, the disqualified member will not participate in further deliberation or decision of the case.

(e) Procedure for Determining Disqualification:

- (1) the Board will appoint a Board member to investigate the allegations of the affidavit;
- (2) the investigator will report to the Board the findings of the investigation;
- (3) the Board shall decide whether to disqualify the challenged individual;
- (4) the person whose disqualification is to be determined will not participate in the decision but may be called upon to furnish information to the other members of the Board;
- (5) when a Board member is disqualified prior to the commencement of the hearing or after the hearing has begun, such hearing will continue with the remaining members sitting provided that the remaining members still constitute a majority of the ~~Board.~~ Board; and
- (6) if three or more members of the Board are disqualified pursuant to this Rule, the Board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).

*History Note: Authority G.S. 89E-20; 150B-11; 150B-38; 150B-40;
Eff. February 1, 1986;
Amended Eff. June 1, 2017; April 1, 1989;*

1 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
2 *16, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0514

DEADLINE FOR RECEIPT: Friday, May 12 2017

NOTE WELL: *This request 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 4 – delete “As provided in G.S. 89E-17” and capitalize “Complaints”

Line 4 – what constitutes a “valid” complaint? Can you refer to another rule or a statute?

Line 9 – delete “advise the licensee or corporate registrant”

Lines 10 and 12 – do not capitalize the first words in these lines

Lines 16-18 – replace the semicolon with a period and delete the remainder of the sentence beginning with “however...”

Line 24-25 – do you intend to limit this evaluation to violations of the rules, or is it intended to encompass “the provisions of G.S. 89E, the Board's Rules code of Professional Conduct, professional conduct, or any other rules of this Chapter” as in Paragraph (a)?

Line 26 – delete “, but not limited to,”

Line 28 – replace “combined with” with “added to”

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

21 NCAC 21 .0514 is amended as published in 31: 12 NCR 1240 as follows:

21 NCAC 21 .0514 INVESTIGATION

(a) As provided in G.S. 89E-17, ~~valid~~ complaints received by the Board which are determined to be valid and within the jurisdiction of the Board following review by the Board Chair, the Executive Director, and the Board's Counsel shall be forwarded to an investigator for further inquiry as to whether the acts or omissions alleged violate the provisions of G.S. 89E, the Board's ~~Rules code of Professional Conduct, professional conduct,~~ or any other rules of this Chapter. The Board's ~~executive director~~ Executive Director shall notify the licensee or corporate registrant of the complaint and advise the licensee or corporate registrant that:

(1) ~~He~~ The licensee or corporate registrant has a duty to cooperate fully with the investigation by the Board; and

(2) ~~He~~ The licensee or corporate registrant may submit a written response to the complaint.

(b) The investigator shall collect all information needed to determine whether a violation has occurred and the nature and severity of the violation. Information gathered during the course of an investigation shall be treated by the Board as confidential information in accordance with G.S. 89E-17(c) until the Board takes disciplinary action against the licensee or ~~registrant; registered corporation;~~ however, the Board cannot ensure the confidentiality of any information introduced into evidence in a hearing conducted by the Office of Administrative Hearings upon referral from the Board, because the information becomes part of the public record of that agency at the time of introduction.

(c) After collecting information relevant to the complaint, the investigator shall submit a report ~~consisting that~~ consists of the complaint, information gathered in the course of investigation, and the investigator's conclusion to a peer-review committee for evaluation. The peer-review committee shall consist of at least two licensed geologists. ~~professional geologists each of whom hold a currently valid license issued by the Board. The peer reviewers and investigators may consult to discuss the investigation into the complaint and their conclusions regarding the complaint. The peer reviewers shall prepare a written evaluation that documents whether any violation of the Board's rules has occurred.~~

(d) The investigation report (including, but not limited to, the supporting information relevant to the complaint) and the written evaluation of the peer-review committee shall be submitted to the Executive Director of the Board to be combined with the licensee's written response to the complaint, if any, for further proceedings in accordance with Rule .0515 of this Section.

*History Note: Authority G.S. 89E-5; 89E-17; 89E-20;
Temporary Adoption Eff. November 24, 1999;
Eff. August 1, 2000;
Amended Eff. June 1, 2017; April 1, 2003;
Pursuant to G.S. 150B 21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0515

DEADLINE FOR RECEIPT: Friday, May 12 2017

NOTE WELL: *This request 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 6 – delete the comma

Line 9 – replace “(or a member of the Board designated by the Chair)” with “or his or her designee”

Line 10 – add a comma after “investigation”

Line 16 – replace “by” with “in”

Lines 20-21 – combine these two sentence as follows:

(d) Requests for hearing shall be submitted, in writing, at the Board's office no later than 5:00 p.m. on the 15th day after receipt of notification of proposed disciplinary action.

Line 23 – delete or define “limited”

Line 25 – replace “becomes” with “shall become”

Line 29 – replace “will” with “shall”

Line 30-32 – revise as follows:

... and the licensee or registrant may file a request for hearing, in writing, at the Board's office no later than 5:00 p.m. on the 15th day after receipt of the new notice of proposed disciplinary action.

Line 34 – replace “will” with “shall”

Lines 35-36 – replace “(or a member of the Board designated by the Chair)” with “or his or her designee”

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

Page 2, line 1 – replace “must” with “shall”

Lines 7-10 – revise as follows, if this is what is intended:

The Chair or his or her designee shall not participate in the discussion of the contested case and shall not vote on the final decision for disciplinary action.

Line 10 – consider adding “other than the Chair or his or her designee” after “Board” if this is what is intended.

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

1 **21 NCAC 21 .0515 is amended as published in 31: 12 NCR 1240-1241 as follows:**

2
3 **21 NCAC 21 .0515 DISCIPLINARY PROCEDURE**

4 (a) Upon receipt of an investigation report and evaluation from the Board's investigator and peer review committee
5 in accordance with Rule .0514 of this Section, the Board's Executive Director shall forward to the ~~Chairman~~ Chair
6 of the Board (or to a member of the Board designated by the ~~Chairman~~ Chair) and the Board's counsel, the
7 investigation report, evaluation, and the supporting documentation along with the licensee's or registrant's written
8 response to the complaint, if any.

9 (b) The ~~Chairman~~ Chair (or a member of the Board designated by the ~~Chairman~~ Chair), in consultation with the
10 Board's counsel, shall propose the disciplinary action for the violation(s) revealed by the investigation consistent
11 with the provisions of G.S. 89E-19. The ~~Chairman~~ Chair (or a member of the Board designated by the ~~Chairman~~ Chair)
12 may issue a summary suspension pursuant to G.S. 150B-3(c). The ~~Chairman~~ Chair or his or her designee,
13 may also propose dismissal of the complaint.

14 (c) After review of the investigation report, evaluation, and supporting documentation, the Chairman shall notify the
15 licensee or registrant of the proposed disciplinary action by certified mail sent to the last known address of the
16 licensee or registrant as indicated by the Board's official roster. This notification shall contain a summary of the
17 alleged facts or conduct upon which the proposed disciplinary action is based, the effective date of the proposed
18 disciplinary action, and an explanation of the licensee's or registrant's hearing rights pursuant to G.S. 150B, Article
19 3A. Notification for summary suspensions shall meet the requirements of G.S. 150B-3(c).

20 (d) The licensee or registrant has 15 days from receipt of notification of proposed disciplinary action to file with the
21 Board a written request for hearing. Requests for hearing must be received at the Board's office by 5:00 p.m. on the
22 date due. If the licensee or registrant does not file a written request for hearing with the Board, the Board shall
23 receive the ~~Chairman's~~ Chair's recommendation on disciplinary action at its next meeting. If, after limited review of
24 the facts of the case, a majority of the Board agrees with the ~~Chairman's~~ Chair's recommendation, the proposed
25 disciplinary action becomes a final agency decision. If a majority of the Board does not agree with the ~~Chairman's~~ Chair's
26 Chair's recommendation, the Board shall review of the investigator's report without supporting documentation for
27 the purpose of proposing an appropriate disciplinary action or dismissal. The ~~Chairman~~ Chair shall not participate in
28 the deliberations or the voting with regard to either his or her recommendation or the Board's decision regarding a
29 substitute disciplinary action. A new notice of proposed disciplinary action will be sent to the licensee or registrant,
30 if necessary, in accordance with the procedure set out in Paragraph (c) of this Rule, and the licensee or registrant has
31 15 days from receipt of the new notice of proposed disciplinary action to file with the Board a written request for a
32 hearing. Requests for hearing must be received at the Board's office by 5:00 p.m. on the date due.

33 (e) The licensee or registrant may request a settlement conference; however, neither the request for settlement
34 conference nor the Board's agreement to enter into settlement negotiations will extend the 15-day deadline for
35 requesting an opportunity for a hearing or any other deadlines in the hearing process. The ~~Chairman~~ Chair (or a
36 member of the Board designated by the ~~Chairman~~ Chair) is delegated authority to negotiate a settlement; however,

1 the settlement agreement must be approved by a majority of the members of the Board before the proposed
2 disciplinary action will be rescinded.

3 (f) Upon receipt of written request for hearing, the Board may conduct an administrative hearing as authorized by
4 G.S. 150B-38 or the Board may request the Office of Administrative Hearings to conduct the hearing as authorized
5 by G.S. 150B-40. Hearings shall be conducted in accordance with the rules of this Chapter.

6 (g) A majority of the members of the Board shall render the final agency decision, in accordance with G.S. 150B-
7 42, after a hearing on the proposed disciplinary action. The ~~Chairman~~, Chair, or if applicable the designated
8 member, who proposed the disciplinary action after a full review of the facts available to the investigator and peer
9 review committee shall not participate in the discussion of the contested case and shall not vote on the final decision
10 for disciplinary action. Nothing in this Rule shall prevent members of the Board from participating in the discussion
11 and vote on a final agency decision with regard to proposed disciplinary action if they have reviewed the
12 investigator's report without supporting documentation solely for the purpose of determining whether probable cause
13 existed to support the allegations of violation and for the purpose of proposing an appropriate disciplinary action.

14
15 *History Note: Authority G.S. 89E-5; 89E-19; 89E-20; 150B-3; 150B-38 through 150B-42;*

16 *Temporary Adoption Eff. November 24, 1999;*

17 *Eff. August 1, 2000;*

18 *Amended Eff. June 1, 2017; April 1, 2003;*

19 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
20 *16, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0803

DEADLINE FOR RECEIPT: Friday, May 12 2017

NOTE WELL: *This request 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 4 – delete the underlining before “Any”

Line 6 – place brackets [] around “state the subject area”

Lines 8, 10, 11, 19, 31, and 34 – delete “(s)” and “(es)”

Line 10 – delete the comma

Line 12 – add “proposal’s” before “effect”

Line 23 – replace “within” with “with”

Line 27 – add “the” before “cost”

Lines 27 and 28 – replace “cost factors” with “cost” if this does not change the meaning of the rule.

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

21 NCAC 21 .0803 is amended as published in 31: 12 NCR 1241 as follows:

21 NCAC 21 .0803 PETITION FOR RULEMAKING HEARINGS

(a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule (the "proposed rule") by the Board shall file the petition with the Board. The first page of the petition shall clearly bear the notation: RULEMAKING PETITION RE and then state the subject area. The Petition shall contain the following information:

- (1) the text of the proposed rule(s) for adoption or amendment;
- ~~(2) the statutory authority for the agency to promulgate the rule(s);~~
- ~~(3)(2)~~ a statement of the reasons for adoption or amendment of the proposed ~~rule(s); rule(s), or the repeal~~ of an existing rule(s);
- ~~(4)(3)~~ a statement of the effect on existing rules or orders;
- ~~(5) copies of any documents and data supporting that support the proposed rule(s);~~
- ~~(6) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including which may include cost factors for persons affected by the proposed rule(s);~~
- ~~(7) a statement explaining that explains the computation of the cost factors;~~
- ~~(8) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s); and~~
- ~~(9)(4)~~ the name(s) and address(es) of the ~~petitioner(s);~~ petitioner(s); and
- (5) a request to present the petition to the Board, if desired.

(b) In its review of the proposed rule, the Board shall consider whether it has authority to adopt the rule; the effect of the proposed rule on existing rules, programs, and practices; probable costs and cost factors of the proposed rule; and the impact of the rule on the public and licensees. The petitioner may include the following information within the request:

- (1) the statutory authority for the agency to promulgate the rules(s);
- (2) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);
- (3) a statement explaining the computation of the cost factors;
- (4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s); and
- (5) documents and data supporting the proposed rule(s).

~~(b)(c)~~ An original and eight copies of the petition and supporting documents shall be filed with the Board.

~~(c)(d)~~ Filings that do not failing to contain the information required by this Rule shall not be accepted and accepted. ~~Incomplete filings~~ shall be returned by the ~~Chairman~~ Chair to the person(s) making the filing.

*History Note: Authority G.S. 89E-5; 150B-20;
Eff. February 1, 1986;*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0804

DEADLINE FOR RECEIPT: Friday, May 12 2017

NOTE WELL: *This request 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 3 – add “FOR RULEMAKING” after “PETITIONS”

Consider revising this Rule to mirror Rule .0903, as appropriate.

Lines 4, 7, and 11 – delete the underlining before the first word in these lines

Lines 4 and 15 – delete “(s)”

Line 8 – replace “regularly scheduled” with “regularly-scheduled”

Lines 13-14 and 16 – replace “person(s) who submitted the petition” with “petitioner”

Line 14 – replace the comma with a semicolon

Line 15 – delete the comma

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

1 21 NCAC 21 .0804 is amended as published in 31: 12 NCR 1242 as follows:

2
3 21 NCAC 21 .0804 DISPOSITION OF PETITIONS

4 (a) _The ~~Chairman~~ Chair may request additional information from the petitioner(s), may contact any interested
5 person or persons likely to be affected by the proposed rule and request comments, and may use any other
6 appropriate method ~~for obtaining~~ to obtain additional information.

7 (b) _When deemed complete by the ~~Chairman~~ Chair, petitions for rulemaking shall be presented to the Board for its
8 consideration and determination at a regularly scheduled meeting of the Board within 120 days following
9 submission of the complete petition. The ~~Chairman~~ Chair shall determine the order and duration of discussion
10 regarding the petition, including discussion by members of the public if any.

11 (c) _Within 120 days following submission of the complete petition requesting rulemaking, unless the parties have
12 agreed to an extension of time, the Board shall:

- 13 (1) initiate rulemaking proceedings in accordance with G.S. 150B-20 and notify the person(s) who
14 submitted the petition of the decision in writing, or
15 (2) deny the petition in ~~writing, stating~~ writing with the reason(s) for the denial, and send the written
16 denial to the person(s) who submitted the petition.

17
18 *History Note:* Authority G.S. 89E-5; 150B-20;

19 *Eff. February 1, 1986;*

20 *Amended Eff. June 1, 2017; April 1, 2003; April 1, 1989.*

21 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
22 *16, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .0903

DEADLINE FOR RECEIPT: Friday, May 12 2017

NOTE WELL: *This request 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.

Lines 12 – how does the Board decide whether to allow other persons to present oral arguments? Can you cite to a rule or statute that sets out the factors the Board considers?

Line 13 – replace “may” with “shall”

Line 15 – delete the quotation marks and define or delete “good cause.” Is good cause determined based on the factors in Paragraph (e)? If so, refer to that paragraph.

Line 18 – do you mean to refer to “Paragraph (e)”?

Lines 18-28 – consider revising Paragraph (e) as follows if this does not change the meaning of the rule:

(e) For purposes of Paragraph (d) of this Rule, the Board shall determine whether good cause exists by considering factors such as the following:

- (1) whether the facts are in dispute;
- (2) whether there has been a similar determination in a previous contested case or declaratory ruling;
- (3) whether the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
- (4) whether the factual context put forward as the subject of the declaratory ruling was specifically considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record; or
- (5) whether no genuine controversy exists as to the application of a statute or rule to the specific factual situation presented.

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

Lines 29 – Page 2, line 3 – delete Paragraphs (f) and (g) because they merely assert legal conclusions that should be avoided in rules.

Page 2, line 4 – what statute authorizes either (1) the parties by agreement to alter the time limits set forth in 150B-4 or (2) the Board to change the time limits stated in 150B-4?

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

21 NCAC 21 .0903 is amended as published in 31: 12 NCR 1242 as follows:

21 NCAC 21 .0903 DISPOSITION OF REQUESTS

(a) The Board's ~~Chairman~~ Chair shall make a determination on the completeness of the request for declaratory ruling based on the requirements of Rule .0902 of this Section, and he or she shall make a recommendation to the Board on whether to issue or decline to issue a declaratory ruling.

(b) Before deciding the merits of the request, the Board may:

- (1) request additional written submissions from petitioner(s);
- (2) request a written response from any other person; or
- (3) hear oral argument from the petitioner and other persons on the issues raised by the request.

(c) Upon written request, the party ~~requesting that requested~~ the declaratory ruling and any other person by leave of the Board may be allowed to present oral arguments to the Board at a regularly scheduled meeting or special meeting called for the purpose of considering the request for declaratory ruling. No party may offer testimony or conduct cross-examination before the Board in a declaratory ruling proceeding.

(d) Whenever the Board determines for "good cause" that the issuance of a declaratory ruling is undesirable, the Board may refuse to issue such ruling. The Board shall notify in writing the person ~~requesting that requested~~ the ~~ruling~~, ruling of ~~stating~~ the reasons for the refusal to issue a ruling on the request.

(e) For purposes of Paragraph (e) of this Rule, the Board will ordinarily refuse to issue a ruling on a request for declaratory ruling on finding that:

- (1) the facts are in dispute;
- (2) there has been a similar determination in a previous contested case or declaratory ruling;
- (3) the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
- (4) the factual context put forward as the subject of the declaratory ruling was specifically considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record;
- (5) no genuine controversy exists as to the application of a statute or rule to the specific factual situation presented; or
- (6) other good cause exists for declining to issue the requested ruling.

(f) A declaratory ruling is binding on the Board and on the person(s) ~~requesting that requested~~ it unless it is altered or set aside by the court. The Board may not retroactively change a declaratory ruling, but nothing in this Section prevents the Board from prospectively changing a ruling.

(g) A declaratory ruling shall be deemed to be "in effect" until:

- (1) the statute or rule interpreted by the declaratory ruling is amended, altered, or repealed;
 - (2) the Board changes the declaratory ruling prospectively for good reasons;
 - (3) any court sets aside the ruling in litigation between the Board and the party requesting the ruling;
- or

1 (4) until any court of the Appellate Division of the General Court of Justice shall construe the statute
2 or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the
3 declaratory ruling.

4 (h) The requesting party may agree to allow the Board to issue a ruling on the merits of the request beyond the 60
5 days allowed by G.S. 150B-4.

6
7 *History Note: Authority G.S. 89E-5; 89E-20; 150B-4;*

8 *Eff. February 1, 1986;*

9 *Amended Eff. June 1, 2017; April 1, 2003; April 1, 1989;*

10 *Pursuant to G.S. 105B 21.3A, rules is necessary without substantive public interest Eff. December*
11 *16, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .1101

DEADLINE FOR RECEIPT: Friday, May 12 2017

NOTE WELL: *This request 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.

Lines 4-9 – revise Paragraph (a) as follows:

(a) Each geologist licensed by the Board and each partnership, corporation, or other legal entity authorized to offer or perform geological services in this State shall comply with these Rules of Professional Conduct.

Line 10 – replace the period with a colon

Line 13 – add a comma after “health”

Line 15 – delete or define “as may be appropriate”

Line 18 – replace “must” with “shall”

Lines 20-21 – replace “regulations (including, but not limited to, G.S. 89E and the rules of this Chapter)” with “regulations, including G.S. 89E and the rules of this Chapter”

Line 33 – there appears to be an extra space after “she”

Page 2, line 3 – add a comma after “statements”

Page 2, line 7 – define or delete “propriety”

Page 2, line 8 – replace “will” with “shall”

Page 2, line 9 – replace “which” with “that”

Page 2, line 17 – delete “for action”

Page 2, line 21 – delete the comma

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

Page 2, line 22 – add a comma after “but” and delete “forthwith”

Page 2, line 24 – delete the comma

Page 2, line 28-29 – delete all of the commas

Page 2, line 29 – delete the “to” after “disclosed”

Page 2, line 30 – replace “considerations” with “consideration”

Page 2, line 32 – define “substantial”

Page 3, line 1 – replace “geologic contract” with “geological services contract” or “contract for geological services”

Page 3, line 10 – add a comma after “quality”

Page 3, line 11 – delete both commas

Page 3, line 13 – delete “in or”

Page 3, line 25 – delete the comma

Page 3, line 27 – replace “Rules and may result in the” with “Rules, for”

Page 3, line 28 – add a comma after “Board” and add “for” after “and”

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

1 **21 NCAC 21 .1101 is amended as published in 31: 12 NCR 1242-1244 as follows:**

2
3 **21 NCAC 21 .1101 RULES OF PROFESSIONAL CONDUCT**

4 (a) In order to safeguard the life, health, property and welfare of the public and to establish and maintain a high
5 standard of integrity, skills, and practice in the profession of geology, these ~~rules~~ Rules of ~~professional conduct~~
6 Professional Conduct shall be binding upon every person holding a certificate of license as a geologist, and on all
7 partnerships or corporations or other legal entities authorized to offer or perform ~~geologic~~ geological services in this
8 state. All persons licensed or corporations registered under the provisions of G.S. 89E are charged with having
9 knowledge of the existence of these Rules of ~~professional conduct~~ Professional Conduct.

10 (b) The geologist shall conduct his or her practice in order to protect the public health, safety, and welfare.

11 (1) The geologist shall at all times recognize his or her primary obligation to protect the safety, health,
12 and welfare of the public in the performance of his or her professional duties. If his or her geologic
13 judgment is overruled under circumstances where the safety, health and welfare of the public are
14 endangered, he or she shall inform his or her employer of the possible consequences and notify
15 other proper authority of the situation, as may be appropriate.

16 (2) The geologist shall protect the public health, safety, and welfare by maintaining sufficient personal
17 on-site involvement and continual direction and review of the activities of subordinates that
18 constitute public practice of geology while such activities are in progress. The licensee must
19 provide such supervision and have sufficient knowledge of the project and site conditions
20 necessary to assure accuracy and compliance with all applicable laws and regulations (including,
21 but not limited to, G.S. 89E and the rules of this Chapter).

22 (c) The geologist shall perform his or her services only in areas of his or her competence:

23 (1) The geologist shall undertake to perform geologic assignments only when qualified by education
24 or experience in the specific technical field of geology involved.

25 (2) The geologist may accept an assignment requiring education or experience outside of his or her
26 own field of competence, but only to the extent that his or her services are restricted to those
27 phases of the project in which he or she is qualified. All other phases of such project shall be
28 performed by qualified associates, consultants, or employees.

29 (3) The geologist shall not affix his or her signature and seal to any document dealing with subject
30 matter for which he or she lacks competence by virtue of education or experience or to any such
31 plan or document not prepared under his or her direct supervisory control, except that the geologist
32 may affix his or her seal and signature to drawings and documents depicting the work of two or
33 more professionals provided he or she designates by note under his or her seal the specific subject
34 matter for which he or she is responsible.

35 (d) The geologist shall issue public statements only in an objective and truthful manner:

- 1 (1) The geologist shall be completely objective and truthful in all professional reports, statements, or
2 testimony. He or she shall include all relevant and pertinent information in such reports,
3 statements or testimony.
- 4 (2) The geologist when serving as an expert or technical witness before any court, commission, or
5 other tribunal shall express an opinion only when it is founded upon adequate knowledge of the
6 facts in issue, upon a background of technical competence in the subject matter, and upon honest
7 conviction of the accuracy and propriety of his or her testimony.
- 8 (3) The geologist will issue no statements, criticisms, or arguments on geologic matters connected
9 with public policy which are inspired or paid for by an interested party or parties unless he or she
10 has prefaced his or her comments by explicitly identifying himself, by disclosing the identities of
11 the party or parties on whose behalf he or she is speaking, and by revealing the existence of any
12 pecuniary interest he or she may have in the instant matters.
- 13 (4) The geologist shall not attempt to injure, maliciously or falsely, directly or indirectly, the
14 professional reputation, prospects, practice, or employment of another geologist, nor shall he or
15 she maliciously criticize another geologist's work in public. If he or she believes that another
16 geologist is guilty of misconduct or illegal practice, he or she shall present such information to the
17 Board for action.
- 18 (e) The geologist shall not attempt to supplant another geologist in a particular employment after becoming aware
19 that the other has been selected for the employment.
- 20 (f) The geologist shall avoid conflicts of interest:
- 21 (1) The geologist shall conscientiously avoid conflicts of interest with his or her employer or client,
22 but when unavoidable, the geologist shall forthwith disclose the circumstances to his or her
23 employer or client.
- 24 (2) The geologist shall avoid all known conflicts of interest with his or her employer or client, and
25 shall promptly inform his or her employer or client of any business association, interest, or
26 circumstances which could influence his or her judgment or the quality of his or her services.
- 27 (3) The geologist shall not accept compensation, financial or otherwise, from more than one party for
28 services on the same project, or for services pertaining to the same project, unless the
29 circumstances are fully disclosed to, and agreed to, by all those parties.
- 30 (4) The geologist shall not solicit or accept financial or other valuable considerations from material or
31 equipment suppliers for specifying their products.
- 32 (5) The geologist shall not solicit or accept substantial gratuities, directly or indirectly, from
33 contractors, their agents, or other parties dealing with his or her client or employer in connection
34 with work for which he or she is responsible.
- 35 (6) When in public service as a member, advisor, or employee of a governmental body or department,
36 the geologist shall not participate in considerations or actions with respect to services provided by
37 him or his or her organization in private geological practices.

- 1 (7) The geologist shall not solicit or accept a geologic contract from a governmental body on which a
2 principal or officer of his or her business serves as a member.
- 3 (g) The geologist shall solicit or accept work only on the basis of his or her qualifications:
- 4 (1) The geologist shall not offer to pay, either directly or indirectly, any commission, political
5 contribution, gift, or other consideration in order to secure work, exclusive of securing salaried
6 positions through employment agencies.
- 7 (2) The geologist shall compete for professional employment on the basis of qualification and
8 competence for proper accomplishment of the work. He or she shall not solicit or submit proposals
9 for professional services ~~containing~~ that contain a false, fraudulent, misleading, deceptive, or
10 unfair statement or claim regarding the cost, quality or extent of services to be rendered.
- 11 (3) The geologist shall not falsify or permit misrepresentation of his, or her, or of his or her associates'
12 academic or professional qualifications. He or she shall not misrepresent or exaggerate his or her
13 degree of responsibility in or for the subject matter of prior assignments. Brochures or other
14 presentations incident to the solicitation of employment shall not misrepresent pertinent facts
15 concerning employers, employees, joint ventures, ~~or his~~ or their past accomplishments with the
16 intent and purpose of enhancing his or her qualifications and those of his or her work associates.
- 17 (h) The geologist shall associate only with reputable persons or organizations:
- 18 (1) The geologist shall not knowingly associate with or permit the use of his or her name or firm name
19 in a business venture by any person or firm which he or she knows, or has reason to believe, is
20 engaging in business or professional practices of a fraudulent or dishonest nature.
- 21 (2) If the geologist has knowledge or reason to believe that another person or firm may be in violation
22 of any of these provisions or of the North Carolina Geologist Licensing Act, he or she shall
23 present such information to the Board and furnish such further information or assistance as may be
24 required by the Board.
- 25 (i) Conviction of a felony without restoration of civil rights, or the revocation or suspension of the license of a
26 geologist by another jurisdiction, if for a cause which in the State of North Carolina would constitute a violation of
27 G.S. 89E or of these rules, shall be grounds for a charge of violation of these Rules and may result in the revocation
28 of the certificate of licensure or corporate registration issued by this Board and the imposition of a civil penalty not
29 to exceed five thousand dollars (\$5,000).

30
31 *History Note: Authority G.S. 89E-5; 89E-16;*
32 *Temporary Adoption Eff. November 24, 1999;*
33 *Eff. August 1, 2000;*
34 *Pursuant to G.S. 150B 21.3A, rule is necessary without substantive public interest Eff. December*
35 *16, 2014;*
36 *Amended Eff. June 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board for Licensing of Geologists

RULE CITATION: 21 NCAC 21 .1102

DEADLINE FOR RECEIPT: Friday, May 12 2017

NOTE WELL: *This request 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 4 – add a comma after “deceptive”

Line 5 – add a comma after “experience”

Line 7 – delete “, but are not limited to,”

Lines 8-9 – replace the semicolons with commas

Line 11 – add “the” before “recruitment”

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

Jason Thomas
Commission Counsel
Date submitted to agency: April 28, 2017

21 NCAC 21 .1102 is amended as published in 31: 12 NCR 1244 as follows:

21 NCAC 21 .1102 RULES OF CONDUCT OF ADVERTISING

(a) The geologist shall not make exaggerated, misleading, deceptive or false statements or claims about his or her professional qualifications, experience or performance in his or her brochures, correspondence, listing, or other public communications.

(b) The prohibitions listed in this Rule include, but are not limited to, the use of statements ~~containing~~ that contain a material misrepresentation of fact or omitting a material fact necessary to keep the statement from being misleading; statements intended or likely to create an unjustified expectation; statements containing prediction of future success; or statements containing an opinion as to the quality of services.

(c) Consistent with the foregoing, the geologist may advertise for recruitment of personnel.

(d) Consistent with the foregoing, the geologist may prepare articles for the lay or technical press. Such articles shall not imply credit to the author for work performed by others.

History Note: Authority G.S. 89E-5; 89E-16;

Temporary Adoption Eff. November 24, 1999;

Eff. August 1, 2000;

Pursuant to G.S. 21.3A, rule is necessary without substantive public interest Eff. December 16, 2014;

Amended Eff. June 1, 2017.