

10A NCAC 13C .1401 is amended as published in 33:24 NCR 2352-2356 as follows:

SECTION .1400 - PHYSICAL PLANT CONSTRUCTION

10A NCAC 13C .1401 OPERATING SUITE DEFINITIONS

~~The size and design of the suite shall be in accordance with individual programs, but the following basic elements designed to ensure no flow of through traffic must be incorporated in all facilities:~~

- ~~(1) Operating Room(s). The number shall depend on the projected case load and types of procedures to be performed. Rooms used for surgery shall have adequate space to accommodate necessary equipment and personnel.~~
- ~~(2) Service Areas. The following supporting services shall be provided:~~
 - ~~(a) scrub up facilities with foot or knee controls;~~
 - ~~(b) personnel locker and dressing areas so located that personnel enter from uncontrolled areas and exit directly into a surgical suite. Locker space shall be provided for each employee; and a toilet, shower, and dressing area shall be provided in each personnel dressing room;~~
 - ~~(c) separate rooms for clean and for soiled supplies and equipment;~~
 - ~~(d) anesthesia workroom;~~
 - ~~(e) one clerical control station; and~~
 - ~~(f) a janitor's closet conveniently located to serve only the licensed facility.~~

In addition to the definitions set forth in G.S. 131E-146, the following definitions shall apply in Section .1400 of this Subchapter:

- (1) "Addition" means an extension or increase in floor area or height of a building.
- (2) "Alteration" means any construction or renovation to an existing building other than construction of an addition.
- (3) "Construction documents" means final building plans and specifications for the construction of a facility that a governing body submits to the Construction Section for approval as specified in Rule .0202 of this Subchapter.
- (4) "Construction Section" means the Construction Section of the Division of Health Service Regulation.
- (5) "Division" means the Division of Health Service Regulation of the North Carolina Department of Health and Human Services.
- (6) "Facility" means an ambulatory surgical facility as defined in G.S. 131E-146.
- (7) "FGI Guidelines" means the Guidelines for Design and Construction of Outpatient Facilities that is incorporated by reference in Rule .1402 of this Section.

*History Note: Authority G.S. 131E-145; 131E-146; 131E-149;
Eff. October 14, 1978;*

1 *Amended Eff. December 24, 1979;*
2 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
3 *23, ~~2017~~, 2017;*
4 *Amended Eff. January 1, 2020.*

10A NCAC 13C .1402 is amended as published in 33:24 NCR 2352-2356 as follows:

**10A NCAC 13C .1402 ~~RECOVERY AREA~~ LIST OF REFERENCED GUIDELINES, CODES,
STANDARDS, AND REGULATION**

~~Recovery area with handwashing facilities, secured medication storage space, clerical work space, storage for clerical supplies, linens, and patient care supplies and equipment shall be provided.~~

(a) The FGI Guidelines are incorporated herein by reference, including all subsequent amendments and editions; however, the following chapters of the FGI Guidelines shall not be incorporated herein by reference:

- (1) Chapter 2.3;
- (2) Chapter 2.4;
- (3) Chapter 2.5;
- (4) Chapter 2.6;
- (5) Chapter 2.8;
- (6) Chapter 2.10;
- (7) Chapter 2.11;
- (8) Chapter 2.12;
- (9) Chapter 2.13; and
- (10) Chapter 2.14.

Copies of the FGI Guidelines may be purchased from the Facility Guidelines Institute online at <https://www.fgiguideines.org/guidelines-main/purchase/> at a cost of two hundred dollars (\$200.00) or accessed electronically free of charge at <https://www.fgiguideines.org/guidelines-main/>.

(b) For the purposes of the rules of this Section, the following codes, standards, and regulation are incorporated herein by reference including subsequent amendments and editions. Copies of these codes, standards, and regulation may be obtained or accessed from the online addresses listed:

- (1) the North Carolina State Building Codes with copies that may be purchased from the International Code Council online at <https://shop.iccsafe.org/> at a cost of six hundred sixty-six dollars (\$666.00) or accessed electronically free of charge at <https://shop.iccsafe.org/state-and-local-codes/north-carolina.html>;
- (2) the following National Fire Protection Association standards, codes, and guidelines with copies of these standards, codes, and guidelines that may be accessed electronically free of charge at <https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/List-of-Codes-and-Standards> or may be purchased online at <https://catalog.nfpa.org/Codes-and-Standards-C3322.aspx> for the costs listed:
 - (A) NFPA 22, Standard for Water Tanks for Private Fire Protection for a cost of fifty-four dollars (\$54.00);
 - (B) NFPA 53, Recommended Practice on Materials, Equipment, and Systems Used in Oxygen-Enriched Atmospheres for a cost of fifty-three dollars (\$53.00);

- (C) NFPA 59A, Standard for the Production, Storage, and Handling of Liquefied Natural Gas for a cost of fifty-four dollars (\$54.00);
- (D) NFPA 99, Health Care Facilities Code for a cost of seventy-seven dollars (\$77.00);
- (E) NFPA 101, Life Safety Code for a cost of one hundred and five dollars and fifty cents (\$105.50);
- (F) NFPA 255, Standard Method of Test of Surface Burning Characteristics of Building Materials for a cost of forty-two dollars (\$42.00);
- (G) NFPA 407, Standard for Aircraft Fuel Servicing for a cost of forty-nine dollars (\$49.00);
- (H) NFPA 705, Recommended Practice for a Field Flame Test for Textiles and Films for a cost of forty-two dollars (\$42.00);
- (I) NFPA 780, Standard for the Installation of Lightning Protection Systems for a cost of sixty-three dollars and fifty cents (\$63.50);
- (J) NFPA 801, Standard for Fire Protection for Facilities Handling Radioactive Materials for a cost of forty-nine dollars (\$49.00); and
- (K) Fire Protection Guide to Hazardous Materials for a cost of one hundred and thirty-five dollars and twenty-five cents (\$135.25).
- (3) 42 CFR Part 416.54 Condition of participation: Emergency preparedness with copies of this regulation that may be accessed free of charge at <https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol5/xml/CFR-2017-title42-vol5-sec482-15.xml> or purchased online at <https://bookstore.gpo.gov/products/cfr-title-42-pt-482-end-code-federal-regulationspaper-201-7> for a cost of seventy-seven dollars (\$77.00).

History Note: Authority G.S. 131E-149;

Eff. October 14, 1978;

Amended Eff. December 24, 1979;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, ~~2017~~ 2017;

Amended Eff. January 1, 2020.

10A NCAC 13C .1403 is amended with changes as published in 33:24 NCR 2352-2356 as follows:

10A NCAC 13C .1403 SUPPORTING ELEMENTS GENERAL AND EMERGENCY PREPAREDNESS

~~In addition to those areas covered in Rules .1401 and .1402 of this Section, the facility shall provide space for the following:~~

- ~~(1) the receiving and registering of patients in privacy for obtaining confidential information;~~
- ~~(2) waiting space with public toilets, public telephone, drinking fountain, and wheelchair storage;~~
- ~~(3) preoperative preparation and post operative space for both males and females with dressing rooms and toilet facilities; and~~
- ~~(4) secure storage for patients' personal effects.~~

(a) A new facility or any addition or alterations to an existing facility whose construction documents were approved by the Construction Section on or after July 1, 2020 shall meet the requirements set forth in:

- (1) the rules of this Section; and
- (2) the FGI Guidelines.

(b) An existing facility whose construction documents were approved by the Construction Section prior to July 1, 2020 shall meet those standards established in the rules of this Section that were in effect at the time the construction documents were approved by the Construction Section. Previous versions of the rules of this Section can be accessed online at [\[https://www.ncdhhs.gov/dhsr/const/index.html\]](https://www.ncdhhs.gov/dhsr/const/index.html) <https://info.ncdhhs.gov/dhsr/const/index.html>.

(c) The facility shall develop and maintain an emergency preparedness program as required by 42 CFR Part 416.54 Condition of Participation: Emergency Preparedness. The emergency preparedness program shall be developed with input from the local fire department and local emergency management agency. Documentation required to be maintained by 42 CFR Part 416.54 shall be maintained at the facility for at least three years and shall be made available to the Division during an inspection upon request.

(d) Any existing building converted from another use to a new facility shall meet the requirements of Paragraph (a) of this Rule.

History Note: Authority G.S. 131E-149; 42 CFR Part 416.54;

Eff. October 14, 1978;

Amended Eff. April 1, 2003;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, ~~2017~~, 2017;

Amended Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 13C .1404

DEADLINE FOR RECEIPT: Thursday, December 12, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), consider deleting "The equivalency may be granted by the Division" on line 15 so that it reads "The Division may grant an equivalency to allow an alternative design or functional variation from the requirements in the rules contained in this Section if a governing body..."

Also, in (a), by "may" do you mean "shall"? If you mean may? Will this be done on a case-by-case basis if it found that the safety won't be impacted? If so, please provide some additional information.

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

Amber May
Commission Counsel
Date submitted to agency: November 26, 2019

10A NCAC 13C .1404 is readopted as published in 33:24 NCR 2352-2356 as follows:

10A NCAC 13C .1404 ~~DETAILS AND FINISHES~~ EQUIVALENCY AND CONFLICTS WITH REQUIREMENTS

All details and finishes must meet the following requirements:

~~(1) — Details~~

- ~~(a) — The type of construction shall meet the requirement of the current edition of the North Carolina State Building Code for "Business Occupancy (B)," except that in the construction of new facilities required exit doors to stairs or to the outside shall be no less than 44" wide doors.~~
- ~~(b) — Exit corridors, in addition to meeting the appropriate requirements of the North Carolina State Building Code, shall:
 - ~~(i) — be no less than 7'0" clear width between doors from the recovery area or operating rooms and required exit doors; or~~
 - ~~(ii) — if in a one-story building or on the ground floor of a multi-story building and is less than 7'0" clear width be so arranged as to allow a stretcher to exit from the recovery area or operating room directly into the corridor without turning and move to the required exit without having to make a turn.~~~~
- ~~(c) — Doors between preoperative preparation, operating rooms and recovery areas and recovery rooms and corridors shall be no less than 44" wide. All recovery areas shall have at least one door opening to an exit passage way meeting the requirements of (b)(i) and (b)(ii) of this Rule.~~
- ~~(d) — Items such as drinking fountains, telephone booths, vending machines, and portable equipment shall be located so as not to restrict corridor traffic or reduce the corridor width below the required minimum.~~
- ~~(e) — No doors shall swing into corridors in a manner that might obstruct traffic flow or reduce the required corridor width except doors to spaces such as small closets which are not subject to occupancy.~~
- ~~(f) — Thresholds and expansion joint covers shall be made flush with the floor surface to facilitate use of wheelchairs and carts.~~
- ~~(g) — Single use towel dispensers or air driers shall be provided at all handwashing fixtures except scrub sinks.~~
- ~~(h) — All other rooms shall have not less than 8'0" (2.44 m.) high ceilings except that corridors, storage rooms, toilet rooms, and other minor rooms may be not less than 7' 8" (2.34 m.). Suspended tracks, rails, pipes, etc., located in the path of normal traffic, shall be not less than 7' 6" (2.28 m.) above the floor.~~

~~(2) — Finishes~~

- 1 ~~(a) Floors shall be easily cleanable and have wear resistance appropriate for the locations~~
2 ~~involved. Joints in tile and similar material in such areas shall be resistant to food acids.~~
- 3 ~~(b) Wall bases in operating rooms, soiled workrooms, and other areas subject to frequent wet~~
4 ~~cleaning shall be integral and covered with the floor, tightly sealed within the wall, and~~
5 ~~constructed without voids that can harbor vermin.~~
- 6 ~~(c) Walls shall be washable; and, in the immediate area of plumbing fixtures, the finish shall~~
7 ~~be smooth, moisture resistant, and easily cleaned.~~
- 8 ~~(d) Floor and wall penetrations by pipes, ducts, conduits, etc., shall be tightly sealed to~~
9 ~~minimize entry of rodents and insects. Joints of structural elements shall be similarly~~
10 ~~sealed.~~
- 11 ~~(e) Ceilings in operating rooms shall be readily washable and without crevices that can retain~~
12 ~~dirt particles. Finished ceilings may be omitted in mechanical and equipment spaces,~~
13 ~~shops, general storage areas, and similar spaces except where required for fire rating.~~

14 (a) The Division may grant an equivalency to allow an alternate design or functional variation from the requirements
15 in the rules contained in this Section. The equivalency may be granted by the Division if a governing body submits a
16 written equivalency request to the Division that indicates the following:

- 17 (1) the rule citation and the rule requirement that will not be met;
18 (2) the justification for the equivalency;
19 (3) how the proposed equivalency meets the intent of the corresponding rule requirement; and
20 (4) a statement by the governing body that the equivalency request will not reduce the safety and
21 operational effectiveness of the facility design and layout.

22 The governing body shall maintain a copy of the approved equivalence issued by the Division.

23 (b) If the rules, codes, or standards contained in this Subchapter conflict, the most restrictive requirement shall apply.
24

25 *History Note: Authority G.S. 131E-149;*

26 *Eff. October 14, 1978;*

27 *Amended Eff. November 1, 1989; December 24, 1979. 1979;*

28 *Readopted Eff. January 1, 2020.*

1 10A NCAC 13C .1405 - .1407 are repealed through readoption as published in 33:24 NCR 2352-2356 as follows:

2
3 **10A NCAC 13C .1405 MECHANICAL REQUIREMENTS**

4 **10A NCAC 13C .1406 PLUMBING AND OTHER PIPING SYSTEMS**

5 **10A NCAC 13C .1407 ELECTRICAL REQUIREMENTS**

6
7 *History Note: Authority G.S. 131E-149;*

8 *Eff. October 14, 1978;*

9 *Amended Eff. April 1, 2003; December 24, ~~1979-1979~~;*

10 *Repealed Eff. January 1, 2020.*

10A NCAC 13C .1408 - .1409 are repealed as published in 33:24 NCR 2352-2356 as follows:

10A NCAC 13C .1408 GENERAL

10A NCAC 13C .1409 LIST OF REFERENCED CODES AND STANDARDS

History Note: Authority G.S. 131E-149;

Eff. April 1, 2003;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, ~~2017~~, 2017;

Repealed Eff. January 1, 2020.

1 10A NCAC 13C .1410 is repealed through readoption as published in 33:24 NCR 2352-2356 as follows:

2

3 **10A NCAC 13C .1410 APPLICATION OF PHYSICAL PLANT REQUIREMENTS**

4

5 *History Note: Authority G.S. 131E-149;*

6 *Eff. April 1, ~~2003~~-2003;*

7 *Repealed Eff. January 1, 2020.*

10A NCAC 13F .0203 is repealed through readoption as published in 33:24 NCR 2356-2358 as follows:

10A NCAC 13F .0203 PERSONS NOT ELIGIBLE FOR NEW ADULT CARE HOME LICENSES

History Note: Authority G.S. 131D-2.4; 131D-2.5; 131D-4.5; 131D-2.16; 143B-165;
Temporary Adoption Eff. December 1, 1999;
Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2003;
Amended Eff. June 1, ~~2004-2004~~;
Repealed Eff. January 1, 2020.

10A NCAC 13F .0207 is readopted with changes as published in 33:24 NCR 2356-2358 as follows:

10A NCAC 13F .0207 CHANGE OF LICENSEE

~~When a licensee plans to sell the adult care home business, the following procedure is required. Prior to the sale of an adult care home business, the current and prospective licensee shall meet the requirements of this Rule.~~

(1) The current licensee shall provide written notification of a planned change of licensee to the Division of Health Service Regulation, the county department of social ~~services~~ services, and the residents or their responsible persons at least 30 days prior to the date of the planned change of licensee.

(2) If the prospective licensee plans to purchase the building, the prospective licensee shall provide the Healthcare Planning and Certificate of Need Section of the Division of Health Service Regulation with prior written notice as required by G.S. ~~13E-184(a)(8)~~ 131E-184(a)(8) prior to the purchase of the building.

~~(3) If the licensee is changing but the ownership of the building is not, the applicant for the license shall request in writing an exemption from review from the Certificate of Need Section.~~

~~(4)~~ (3) The prospective licensee shall submit the following license application material to the Division of Health Service Regulation:

(a) the ~~Initial License Application~~ Change Licensure Application for Adult Care Home (7 or more Beds) ~~which that~~ is available on the internet website, ~~http://facility-services.state.nc.us/gepage.htm;~~ [www2.ncdhhs.gov/dhsr/acls/pdf/acchgapp.pdf] https://info.ncdhhs.gov/dhsr/acls/pdf/acchgapp.pdf at no cost ~~or from the Division of Health Service Regulation, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708; and includes the following:~~

(i) facility administrator and building owner information;

(ii) operation disclosure including new licensee information and management company, if any; and

(iii) ownership disclosure including new owners, principles, affiliates, shareholders, and members;

(b) a ~~current~~ fire and building safety inspection report from the local fire ~~marshal;~~ marshal dated within the past 12 months;

(c) a ~~current~~ sanitation report from the sanitation division of the county health ~~department;~~ department dated within the past 12 months; and

(d) a nonrefundable license fee as required by ~~G.S. 131D-2(b)(1).~~ G.S. 131D-2.5.

~~(5) Following the licensing of the facility to the new licensee, a survey of the facility shall be made by program consultants of the Division of Health Service Regulation and an adult home specialist of the county department of social services.~~

History Note: Authority G.S. 131D-2.4; 131D-2.5; 131D-2.16; 143B-165;

1 *Eff. January 1, 1977;*
2 *Readopted Eff. October 31, 1977;*
3 *Amended Eff. April 1, 1984;*
4 *Temporary Amendment Eff. September 1, 2003; July 1, 2003;*
5 *Amended Eff. June 1, ~~2004~~ 2004;*
6 *Readopted Eff. January 1, 2020.*

1 10A NCAC 13F .0214 is repealed through readoption as published in in 33:24 NCR 2356-2358 as follows:

2

3 **10A NCAC 13F .0214 SUSPENSION OF ADMISSIONS**

4

5 *History Note: Authority G.S. 131D-2.7;*

6 *Eff. January 1, ~~1982~~-1982;*

7 *Repealed Eff. January 1, 2020.*

10A NCAC 13F .1206 is readopted as published in 33:24 NCR 2356-2358 as follows:

10A NCAC 13F .1206 ~~ADVERTISING-MARKETING~~

~~The~~ An adult care home may ~~advertise~~ market provided:

- (1) ~~The~~ the name used is as it appears on the ~~license~~-license;
- (2) ~~Only~~ only the services and accommodations for which the home is licensed are ~~used~~- used; and
- (3) ~~The~~ the home is ~~listed under proper classification in telephone books, newspapers or magazines.~~
classified by licensure status.

*History Note: Authority G.S. 131D-2.1; 131D-2.16; 143B-165;
Eff. January 1, 1977;
Readopted Eff. October 31, 1977;
Temporary Amendment Eff. July 1, 2003;
Amended Eff. July 1, ~~2004~~- 2004;
Readopted Eff. January 1, 2020.*

10A NCAC 13G .0207 is readopted with changes as published in 33:24 NCR 2356-2358 as follows:

10A NCAC 13G .0207 CHANGE OF LICENSEE

~~When a licensee wishes to sell or lease the family care home business, the following procedure is required:~~

- ~~(1) The licensee shall notify the county department of social services that a change is desired. When there is a plan for a change of licensee and another person applies to operate the home immediately, the licensee shall notify the county department and the residents or their responsible persons. The county department shall talk with the residents, giving them the opportunity to make other plans if they so desire.~~
- ~~(2) The county department of social services shall submit all forms and reports specified in Rule .0204 (b) of this Subchapter to the Division of Health Service Regulation.~~
- ~~(3) The Division of Health Service Regulation shall review the records of the facility and may visit the home.~~
- ~~(4) The licensee and prospective licensee shall be advised by the Division of Health Service Regulation of any changes which must be made to the building before licensing to a new licensee can be recommended.~~
- ~~(5) Frame or brick veneer buildings over one story in height with resident services and accommodations on the second floor shall not be considered for re-licensure.~~

Prior to the sale of a family care home business, the current and prospective licensee shall meet the requirements of this Rule.

- (1) The current licensee shall provide written notification of a planned change of licensee to the Division of Health Service Regulation, the county department of social services, and the residents or their responsible persons at least 30 days prior to the date of the planned change of licensee.
- (2) The prospective licensee shall submit the following license application material to the Division of Health Service Regulation:
 - (a) the Change Licensure Application for Family Care Home (2 to 6 Beds) that is available on the internet website, www2.ncdhhs.gov/dhsr/acls/pdf/fchgapp.pdf <https://info.ncdhhs.gov/dhsr/acls/pdf/fchgapp.pdf> at no cost and includes the following:
 - (i) facility, administrator and building owner information;
 - (ii) operation disclosure including new licensee information and management company, if any; and
 - (iii) ownership disclosure including new owners, principles, affiliates, shareholders, and members;
 - (b) a fire and building safety inspection report from the local fire marshal dated within the past 12 months;
 - (c) a sanitation report from the sanitation division of the county health department dated within the past 12 months; and

(d) a nonrefundable license fee as required by G.S. 131D-2.5.

History Note: Authority G.S. 131D-2.4; 131D-2.16; 143B-165;
Eff. January 1, 1977;
Readopted Eff. October 31, 1977;
Amended Eff. July 1, 1990; April 1, 1984;
Temporary Amendment Eff. September 1, 2003;
Amended Eff. June 1, ~~2004~~ 2004;
Readopted Eff. January 1, 2020.

1 10A NCAC 13G .0214 is repealed through readoption as published in 33:24 NCR 2356-2358 as follows:

2

3 **10A NCAC 13G .0214 SUSPENSION OF ADMISSIONS**

4

5 *History Note: Authority G.S. 131D-2.7;*

6 *Eff. January 1, 1982;*

7 *Amended Eff. July 1, ~~1990~~. 1990;*

8 *Repealed Eff. January 1, 2020.*

10A NCAC 13G .1207 is readopted as published in 33:24 NCR 2356-2358 as follows:

10A NCAC 13G .1207 ADVERTISING MARKETING

~~The administrator~~ A family care home may use acceptable methods of advertising market provided:

- (1) ~~The~~ the name used is as it appears on the ~~license.~~ license;
- (2) ~~Only~~ only the services and accommodations for which the home is licensed are ~~used.~~ used; and
- (3) ~~The~~ the home is ~~listed under proper classification in telephone books, newspapers or magazines.~~
classified by licensure status.

*History Note: Authority G.S. 131D-2.1; 131D-2.16; 143B-165;
Eff. January 1, 1977;
Readopted Eff. October 31, 1977;
Amended Eff. April 1, ~~1984.~~ 1984;
Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 41C .0701

DEADLINE FOR RECEIPT: December 13, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

What is the purpose of these definitions? As written, they only apply in this Rule. Please consider adding an introduction as follows if it is your intent: "The following definitions apply in this Section:"

If you add an introductory statement as suggested above, please indent and format the definitions as (1), (2), etc.

In the definition at line 8, what does "not elevated" mean if there is no threshold?

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 2, 2019

10A NCAC 41C .0701 is readopted with changes as published in 34:5 NCR 379-380 as follows:

SECTION .0700 - OCCUPATIONAL HEALTH SURVEILLANCE

10A NCAC 41C .0701 DEFINITION

[“Adult” for the purposes of this section means a person age 16 or older.]

"Elevated blood lead level" means a blood lead of ~~40 µg/dL or greater.~~ > 0 µg/dL.

“Non-elevated blood lead level” means all blood lead levels that are not elevated regardless of threshold.

History Note: Authority G.S. 130A-455;

Eff. January 4, 1994; ~~1994~~.

Readopted Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 41C .0702

DEADLINE FOR RECEIPT: December 13, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Throughout this Rule, are you only requiring reporting of these diseases if they are being treated as an occupational disease resulting from exposure to a health hazard in the workplace?

In (a), are these the "serious and preventable occupational diseases and illnesses" the Commission is required to identify pursuant to G.S. 130A-455?

In (a)(3), you only require reporting for ages 16 and above. Just to be sure, did you intentionally not set an age range for the other listed diseases or injuries?

In (a)(4), just to be sure, you are referring to any injury caused by a tractor, farm equipment, etc., and not any specific types of injuries, correct?

In (b), is this information reported in accordance with .0703(b)?

In (d), what do you mean by "reported in the same manner?" Do you mean "reported in the same manner as Paragraph (b) of this Rule?"

In (d), where is your statutory authority to require reporting of the non-existence of a disease or illness?

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 2, 2019

10A NCAC 41C .0702 is amended with changes as published in 34:5 NCR 379-380 as follows:

10A NCAC 41C .0702 REPORTABLE DISEASES, ILLNESSES, AND INJURIES

(a) The following named diseases, illnesses, and injuries are declared to be dangerous to the public health and shall be reported by a physician within the time period specified after the disease, illness, and injury is diagnosed:

- (1) asbestosis - 15 ~~working~~ business days;
- (2) silicosis - 15 ~~working~~ business days;
- (3) elevated blood lead levels for persons adults aged 16 18 years of age and above - 15 ~~working~~ business days;
- (4) injuries caused by tractors, farm equipment, or farm machinery that occur while working on a farm and require medical care – 15 ~~working~~ business days;
- (5) carbon monoxide poisoning - 15 ~~working~~ business days.

(b) All laboratories providing diagnostic service in North Carolina shall report to the Occupational and Environmental Epidemiology Branch within the Division of Public Health elevated blood lead levels for persons adults. adults aged 16 18 years of age and above.

(c) Physicians shall not be required to report elevated blood lead levels for persons adults aged 16 18 years of age and above when a laboratory providing diagnostic service in North Carolina reports elevated blood lead levels.

(d) Non-elevated blood lead levels shall be reported in same manner for surveillance purposes.

History Note: Authority G.S. 130A-455; 130A-456; 130A-457; 130A-458;

Eff. January 4, 1994;

Amended Eff. December 1, 2016;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019; 2019.

Amended Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 41C .0703

DEADLINE FOR RECEIPT: December 13, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), does the age requirement apply to the whole list or only to "elevated blood level?"

In (a)(1), what do you mean by forms "approved by" the Occupational Health Section?

In (a)(2), please review the link provided. Is it correct? The link goes to a page concerning pesticide-related illnesses.

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 2, 2019

10A NCAC 41C .0703 is readopted with changes as published in 34:5 NCR 379-380 as follows:

10A NCAC 41C .0703 METHOD OF REPORTING

(a) When a physician makes a report of a disease, illness, injury, or elevated blood lead level for persons adults aged 16 18 years of age and above pursuant to G.S. 130A-456 or a medical facility makes such a report pursuant to G.S. 130A-457, the report shall be made to the Occupational Health Section as follows:

(1) The report shall be made on the surveillance forms provided by or approved by the Occupational Health Section and shall include the following information:

(A) The name, address, telephone number, date of birth, ~~social security number~~, race, ethnicity, gender, and job title of the person;

(B) The name, address, telephone number, and type of business of the person's employer;

(C) The name of the disease, illness, or injury being reported; and

(D) The name, address, and telephone number of the physician, laboratory, or medical facility.

(2) Surveillance forms are available from the ~~SENSOR Program, Division of Public Health, 1915 Mail Service Center, Raleigh, North Carolina 27699-1915. Occupational and Environmental Epidemiology Branch, Epidemiology Section, Division of Public Health, N.C. Department of Health and Human Services, 1912 Mail Service Center, Raleigh, NC 27699-1912. The form can also be downloaded from the following website:~~
<https://epi.publichealth.nc.gov/oc/pest/reporting.html>.

(b) When a laboratory providing diagnostic service in North Carolina reports laboratory findings related to occupational disease or illness pursuant to G.S. 130A-458, the report shall include:

(1) the specimen collection date;

(2) the person's name, ~~age, date of birth~~, gender, race, and ethnicity; ~~and social security number~~;

(3) the submitting physician/employer name, address, and telephone number; and

(4) the name, address, and telephone number of the laboratory.

History Note: Authority G.S. 130A-455; 130A-456; 130A-458;

Eff. January 4, 1994; ~~1994~~.

Readopted Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 43D – All Rules

DEADLINE FOR RECEIPT: December 13, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Throughout these rules, please capitalize "State" if you are referring to the State of North Carolina. Please do not capitalize "state" if you are referring to any state.

In your history notes, where possible, please provide a more specific citation than all of 7 CFR 246.

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 2, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 43D .0202

DEADLINE FOR RECEIPT: December 13, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a)(3), please compare this definition to the definition of "vendor" in 7 CFR 246.2. That definition does not limit vendors authorized by state agencies to free standing pharmacies or food retailers. Was this difference in definitions intentional?

In (a)(10), at lines 31-32, is it necessary to list "free-standing pharmacies that are chain stores" separately from "free standing pharmacies participating under a WIC corporate agreement?" Chain stores participate under a corporate agreement, correct?

In (a)(18), line 12, please remove the parentheses and incorporate this language into the language of the definition itself.

In (a)(22), when you say "single, fixed location" do you mean this store is not a chain? Or could this definition also refer to a single store location that is part of a chain?

In (a)(24), there is an extra space between the quotation marks and "Support."

In (a)(28), is it necessary to say "intentionally or unintentionally?"

In (a)(28), based on the definition of "shelf price" in (a)(19), why is it necessary to say both "charging more for supplemental food provided to a WIC customer than to a non-WIC customer" and charging more than the current shelf price?"

In (b), line 6, just to be sure, is this phone number still accurate and can people still call to obtain a copy of the CFR?

In your history note, please add a "42" before USC 1786.

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 2, 2019

1 10A NCAC 43D .0202 is amended as published in 34:5 NCR 380-395 as follows:

2
3 **10A NCAC 43D .0202 DEFINITIONS**

4 (a) For the purposes of this Subchapter, all definitions set forth in 7 C.F.R. Part 246.2 are hereby incorporated by
5 reference, including subsequent amendments and editions, with the following additions and modifications:

- 6 (1) An "administrative appeal" is an appeal in accordance with Section .0800 of this Subchapter through
7 which a local WIC agency, potential local WIC agency, authorized WIC vendor, or WIC vendor
8 applicant may appeal the adverse actions listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii), and (a)(3)(i).
- 9 (2) An "authorized store representative" includes an owner, manager, assistant manager, head cashier,
10 or chief fiscal officer.
- 11 (3) An "authorized WIC vendor" is a food retailer or free-standing pharmacy that has executed a
12 currently effective North Carolina WIC Vendor Agreement, as set forth in 7 C.F.R 246.12(h)(3).
- 13 (4) A "chain store" is a store that is owned or operated by a corporation, partnership, cooperative
14 association, or other business entity that has 20 or more stores owned or operated by the business
15 entity.
- 16 (5) An "Electronic Benefit Transfer (EBT) Processor" is an entity contracted by a government agency
17 for the implementation, maintenance, and operation of the State WIC agency's WIC EBT system
18 that acts as the agent of the State WIC agency to process and settle EBT transactions.
- 19 (6) A "fair hearing" is the informal dispute resolution process in Section .0900 of this Subchapter
20 through which any individual may appeal a State or local agency action that results in a claim against
21 the individual for repayment of the cash value of issued benefits by which the individual is not
22 eligible or results in the individual's denial of participation or disqualification from the WIC
23 Program, as set forth in Rule .0410 of this Subchapter. This process must be complied with prior to
24 requesting a contested case hearing in accordance with G.S. 150B, as set forth in 7 CFR 246.9.
- 25 (7) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.
- 26 (8) "Food benefits" are the prescribed amounts of WIC authorized foods and formulas or a fixed dollar
27 amount prescribed to WIC customers to receive fruits and vegetables.
- 28 (9) "Food benefit balance" means the unspent food benefits for the current month that are available to
29 use by the cardholder.
- 30 ~~(8)~~(10) "Free-standing pharmacy" means a pharmacy that does not operate within another retail store. Free-
31 standing pharmacy includes free-standing pharmacies that are chain stores and free-standing
32 pharmacies participating under a WIC corporate agreement.
- 33 ~~(9)~~(11) The "local WIC agency" is the local agency that enters into an agreement with the Division of Public
34 Health to operate the Special Supplemental Nutrition Program for Women, Infants and Children.
- 35 ~~(10)~~(12) A "local WIC program plan" is a written compilation of information on the local WIC agency
36 policies concerning program operation, including administration, nutrition education, personnel

functions, costs and other information prepared by the local WIC agency and submitted to the Nutrition Services Branch.

~~(11)~~(13) A "personal identification number" (PIN) is a numeric password selected and used by a WIC participant to authenticate the participant to the EBT system.

~~(12)~~(14) A "point of sale terminal" (POS) is an electronic device used to process EBT card payments at authorized vendor locations.

~~(13)~~(15) A "predominantly WIC vendor" is an "above-50-percent vendor" as defined in 7 C.F.R. 246.2.

~~(14)~~(16) A "product look-up (PLU) code" is an identification number placed on produce sold at authorized vendor locations.

(17) "Redeemed food benefits" means the benefits that have been used by the WIC customer.

~~(15)~~(18) "Redemption" is the process by which a vendor ~~deposits for~~ receives payment ~~from the State agency~~ (or its financial agent) for food benefits ~~a food instrument or cash value voucher~~ transacted at that vendor location, ~~and the State agency (or its financial agent) makes payment to the vendor for the food instrument or cash value voucher.~~

~~(16)~~(19) "Shelf price" is the price a vendor charges a non-WIC customer for a WIC supplemental food.

~~(17)~~(20) "SNAP-eligible food sales" means "food sales" as defined in 7 C.F.R. 246.2, which are those foods that can be purchased with Supplemental Nutrition Assistance Program ("SNAP") benefits.

~~(18)~~(21) The "State agency" is the Nutrition Services Branch, Women's and Children's Health Section, Division of Public Health, North Carolina Department of Health and Human Services.

~~(19)~~(22) "Store" means a food retailer or free-standing pharmacy operating at a single, fixed location.

~~(20)~~(23) "Supplemental food" or "WIC supplemental food" is a food that satisfies the requirements of 10A NCAC 43D .0501.

~~(21)~~(24) "Support costs" are clinic costs, administrative costs, and nutrition education costs.

~~(22)~~(25) "Transaction" is the process by which a WIC customer tenders ~~a food instrument or a cash value voucher to a food benefits at an authorized~~ vendor in exchange for authorized supplemental foods.

~~(23)~~(26) "Universal Product Code (UPC)" means an identification code printed on the packaging of WIC approved foods sold at WIC authorized vendor locations.

~~(24)~~(27) "Vendor applicant" is a store that has submitted an application to become an authorized WIC vendor but is not yet authorized.

~~(25)~~(28) A "vendor overcharge" is intentionally or unintentionally charging more for supplemental food provided to a WIC customer than to a non-WIC customer or charging more than the current shelf price for supplemental food provided to a WIC customer.

~~(26)~~(29) A "WIC corporate agreement" is a single WIC Vendor Agreement with a corporate entity that has 20 or more stores authorized as WIC vendors under the Agreement.

~~(27)~~(30) "WIC customer" means a WIC participant, parent, or caretaker of an infant or child participant, proxy for the eligible participant, or compliance investigator who ~~tenders a food instrument or a cash value voucher to~~ transacts food benefits at a vendor in exchange for WIC supplemental food.

(28)(31) "WIC program" means the Special Supplemental Nutrition Program for Women, Infants, and Children authorized by 42 U.S.C. 1786 of the Child Nutrition Act of 1966 as amended.

(b) A copy of 7 C.F.R. Part 246 is available for inspection at the Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section, Nutrition Services Branch, 5601 Six Forks Road, Raleigh, North Carolina 27609. Copies are available at no cost from the Supplemental Nutrition Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302, by calling (703) 305-2730 or online at <https://www.ecfr.gov/cgi-bin/text-idx?SID=a42889f84f99d56ec18d77c9b463c613&node=7:4.1.1.1.10&rgn=div5>.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246; U.S.C. 1786; Eff. July 1, 1981; Amended Eff. December 6, 1991; November 1, 1990; July 1, 1989; Temporary Amendment Eff. May 17, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2004; Temporary Amendment Eff. July 1, 2006; Amended Eff. October 1, 2017; February 1, 2013; October 1, 2009; April 1, 2007; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017; 2017. Amended Eff. March 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 43D .0408

DEADLINE FOR RECEIPT: December 13, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), what is an agency's "maximum caseload" and how is this determined?

(a) repeats the language of 7 CFR 246.7(f)(1). Why is (a) necessary?

In (c), what do you mean by "in a manner that ensures applicants in a higher priority group are first given an opportunity to receive food benefits?" Can a local WIC agency enroll individuals in any manner they choose as long as it gives higher priority groups the first opportunity to receive food benefits?

In (c), line 9, you use the term "priority group" but 7 CFR 246.7 uses the term "priority level." Was this intentional?

In (c), since you incorporated 7 CFR 246.7(e)(4) by reference, does this mean the Department use the priority levels in 7 CFR 246.7(e)(4)(i)-(vii) without any expansions or other changes?

Please consider adding 7 CFR 246.7(e)(4) to your history note.

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 2, 2019

1 10A NCAC 43D .0408 is amended as published in 34:5 NCR 380-395 as follows:

2
3 **10A NCAC 43D .0408 WAITING LIST**

4 (a) If a local WIC agency is serving its maximum caseload or spending its maximum food money and additional
5 participants cannot be issued food ~~instruments,~~benefits, a waiting list must be established in accordance with 7 C.F.R.
6 246.7.

7 (b) Local WIC agencies maintaining a waiting list shall continue to provide WIC program benefits to all individuals
8 enrolled in the program until the expiration of their certification period.

9 (c) Local WIC agencies shall enroll individuals in a manner which ensures that applicants in a higher priority group
10 are first given an opportunity to receive food ~~instruments,~~benefits in accordance with 7 C.F.R. 246.7(e)(4) which is
11 incorporated by reference with all subsequent amendments and editions.

12
13 *History Note: Authority G.S. 130A-361;*

14 *Eff. July 1, 1981;*

15 *Amended Eff. October 1, 2009; November 1, 1990; July 1, 1989;*

16 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
17 *23, 2017; ~~2017~~.*

18 *Amended Eff. March 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 43D .0501

DEADLINE FOR RECEIPT: December 13, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 6, please change "which" to "that."

In (a), as I read it, 246.10 allows States to establish the criteria for supplemental foods in addition to what is required by 246.10. Just to be clear, does the State follow Table 4 in 246.10 with no changes other than those listed in (b)?

In (b), I was unable to find the requirement for the Department of Agriculture to approve the exclusions from the food package. Where is this required?

In (c), line 18, do you mean "may" or "shall?"

In (c), line 20, what do you mean by "participant acceptance?"

In (c), does the exclusion of additional foods require approval from the Department of Agriculture?

In your history note, please consider providing a reference to 7 CFR 246.10 instead of all of 7 CFR 246.

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 2, 2019

1 10A NCAC 43D .0501 is amended as published in 34:5 NCR 380-395 as follows:

2
3 **SECTION .0500 – WIC PROGRAM FOOD PACKAGE**
4

5 **10A NCAC 43D .0501 SUPPLEMENTAL FOODS**

6 (a) The foods which may be provided to WIC program participants are specified in 7 C.F.R. 246.10, which is
7 incorporated by reference including any subsequent amendments and editions. This material is available for inspection
8 at the Department of Health and Human Services, Division of Public Health, 5601 Six Forks Road, Raleigh, North
9 Carolina 27609 and may be obtained from Nutrition Services at no cost.

10 (b) The following exclusions from the food package have been adopted by the North Carolina WIC ~~program~~Program
11 and approved by the United States Department of Agriculture, Food and Nutrition Service:

- 12 (1) ~~shredded, diced, grated and organic cheese;~~
13 (2) ~~eggs other than white, fresh, grade A large;~~
14 ~~(3)(1)~~ mackerel and sardines;
15 (4) ~~organic foods other than fruits and vegetables obtained with cash value vouchers;~~
16 ~~(5)(2)~~ goat milk; and
17 ~~(6)(3)~~ dried fruits and vegetables.

18 (c) The state agency may exclude foods other than those described in Paragraph (b) of this Rule if it determines such
19 foods to be inappropriate for provision as supplemental foods through the WIC ~~program~~Program as a result of their
20 cost, nutritional composition, packaging, statewide availability, participant acceptance, or promotion in a manner
21 which is contrary to the purpose of the program as contained in 7 C.F.R. 246.1.

22
23 *History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;*

24 *Eff. July 1, 1981;*

25 *Amended Eff. October 1, 1993; October 1, 1990; July 1, 1989; October 1, 1988;*

26 *Temporary Amendment Eff. July 1, 2002;*

27 *Amended Eff. October 1, 2009; August 1, 2004;*

28 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
29 *23, 2017; ~~2017~~.*

30 *Amended Eff. March 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 43D .0701

DEADLINE FOR RECEIPT: December 13, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

At line 6, what is a "uniform retail distribution system?"

At line 6, does this mean North Carolina only operates a retail system and not a home delivery, direct distribution, or EBT system as listed in 7 CFR 246.12(b)?

At lines 7-8, is the second sentence necessary? Is this internal management or does your regulated public need to know this? Are you requiring local agencies to provide automated data processing systems? If so, please make that clear.

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 2, 2019

1 10A NCAC 43D .0701 is amended as published in 34:5 NCR 380-395 as follows:

2
3 **SECTION .0700 - WIC PROGRAM FOOD DELIVERY SYSTEM**

4
5 **10A NCAC 43D .0701 THE NORTH CAROLINA AUTOMATED WIC SYSTEM**

6 The WIC program shall provide supplemental foods through a uniform retail distribution system in accordance with
7 7 C.F.R. 246.12. An automated data processing system shall be utilized to promote the provision of and accounting
8 for food ~~instruments and cash value vouchers~~ benefits issued to participants.

9
10 *History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246;*

11 *Eff. July 1, 1981;*

12 *Amended Eff. October 1, 2009; April 1, 2001;*

13 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
14 *23, 2017; ~~2017~~.*

15 *Amended Eff. March 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 43D .0702

DEADLINE FOR RECEIPT: December 13, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In your Submission for Permanent Rule Form, please provide the updated rule name without strikethroughs and underlines.

In (a), line 6, please delete or define "appropriate."

At line 7, how are foods "prescribed?"

In (b), lines 8-9, what exactly are you requiring when you require local WIC agencies to offer benefits "in a manner which prevents theft?"

At line 8, please change "which" to "that."

At line 10, who is an "authorized individual?" Are you referring to the list in (d)?

In (c), lines 12-13, what do you mean by "in a manner which promotes coordination with WIC program certification" etc.?

At line 13 is "nutrition education" one term or should the rule read "nutrition, education?"

At line 13, please add a comma after "other health services."

At line 14, what "services" are you referring to?

At line 14, define "family members."

In (d), define "proxy."

In (d), line 16, who is the "compliance investigator" you're referring to?

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

Ashley Snyder
Commission Counsel

Date submitted to agency: December 2, 2019

1 10A NCAC 43D .0702 is amended as published in 34:5 NCR 380-395 as follows:

2
3 **10A NCAC 43D .0702 ISSUANCE OF FOOD INSTRUMENTS ~~AND CASH VALUE~~**
4 **~~VOUCHERS~~BENEFITS**

5 (a) Local WIC agencies shall issue WIC program food ~~instruments and cash value vouchers~~benefits to program
6 participants in a manner which ensures that participants can receive the appropriate supplemental foods that have been
7 prescribed for them.

8 (b) Local WIC agencies shall issue food ~~instruments and cash value vouchers~~benefits in a manner which prevents
9 theft and shall retain documentation of ~~the disposition of the food instruments and cash value vouchers~~issuance. The
10 documentation of issuance shall include the dated signature of the authorized individual receiving the food ~~instruments~~
11 ~~or cash value vouchers~~benefits, ~~unless the food instruments or cash value vouchers are mailed.~~

12 (c) Participants shall be given appointments to receive food ~~instruments or cash value vouchers~~benefits in a manner
13 which promotes coordination with WIC program certification, nutrition education, other health services and the
14 services being received by other family members.

15 (d) Food ~~instruments and cash value vouchers~~benefits shall be issued only to the participant, the participant's parent,
16 the participant's caretaker, a proxy, or a compliance investigator.

17
18 *History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;*

19 *Eff. July 1, 1981;*

20 *Amended Eff. April 1, 2001;*

21 *Temporary Amendment Eff. July 1, 2002;*

22 *Amended Eff. October 1, 2009; August 1, 2004;*

23 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
24 *23, 2017; ~~2017~~.*

25 *Amended Eff. March 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 43D .0703

DEADLINE FOR RECEIPT: December 13, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In your Submission for Permanent Rule Form, please provide the updated rule name without strikethroughs and underlines.

In (a), by "First Date to Spend" and "Last Date to Spend" do you mean "First Date to Use" and "Last Date to Use" as used in 7 CFR 246.12?

In (a), lines 5-6, is "certification period" defined?

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 2, 2019

1 10A NCAC 43D .0703 is amended as published in 34:5 NCR 380-395 as follows:

2
3 **10A NCAC 43D .0703 USE OF FOOD INSTRUMENTS AND CASH VALUE VOUCHERS BENEFITS**

4 (a) Participants may transact food ~~instruments and cash value vouchers~~ benefits on any day on or between the "First
5 Date to Spend" and "Last Date to Spend" ~~printed on the food instrument or cash value voucher~~ for their certification
6 period.

7 (b) Food ~~instruments and cash value vouchers~~ benefits shall be transacted only at authorized WIC vendors in
8 accordance with the terms of the signed WIC Vendor Agreement and WIC program rules, regulations, and statutes.
9 Authorized WIC vendors shall not be reimbursed for food ~~instruments and cash value vouchers~~ benefits that are not
10 properly transacted as set forth in Rule .0708 of this Section. ~~Stores that are not authorized WIC vendors shall not be~~
11 ~~reimbursed for food instruments and cash value vouchers transacted at their store.~~

12 (c) ~~Printed food instruments and cash value vouchers shall be deposited at the vendor's bank.~~ Authorized WIC
13 Vendors ~~vendors that use EBT~~ shall have their bank account credited with payments for completed EBT transactions.
14 Food ~~instruments and cash value vouchers~~ benefits shall not be assigned, transferred, sold, or otherwise negotiated.

15
16 *History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;*

17 *Eff. July 1, 1981;*

18 *Amended Eff. April 1, 2001; November 1, 1990; July 1, 1989;*

19 *Temporary Amendment Eff. July 1, 2002;*

20 *Amended Eff. October 1, 2017; October 1, 2009; August 1, 2004;*

21 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
22 *23, 2017; ~~2017~~.*

23 *Amended Eff. March 1, 2020.*

10A NCAC 43D .0704 is repealed as published in 34:5 NCR 380-395 as follows:

10A NCAC 43D .0704 VALIDITY OF WIC FOOD INSTRUMENTS AND CASH-VALUE VOUCHERS

History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;
Eff. July 1, 1981;
Amended Eff. July 1, 1989; July 1, 1985;
Temporary Amendment Eff. May 17, 2000;
Amended Eff. April 1, 2001;
Temporary Amendment Eff. July 1, 2002;
Amended Eff. October 1, 2009; August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December
23, 2017; ~~2017~~.
Repealed Eff. March 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 43D .0705

DEADLINE FOR RECEIPT: December 13, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In your Submission for Permanent Rule Form, please provide the updated rule name without strikethroughs and underlines.

In (2), line 11, under what circumstances are "sufficient" funds available?

In (2), line 12, what procedures are you referring to? Do you mean "the Rules of this Subchapter" instead of "procedures?"

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 2, 2019

10A NCAC 43D .0705 is amended as published in 34:5 NCR 380-395 as follows:

**10A NCAC 43D .0705 PAYMENT OF WIC FOOD INSTRUMENTS ~~AND CASH VALUE~~
~~VOUCHERS~~BENEFITS**

The State of North Carolina shall:

- (1) accept EBT transactions for North Carolina WIC food instruments and cash value vouchers benefits through the Federal Reserve and commercial banking systems;
- ~~(2) ensure that WIC food instruments and cash value vouchers are valid in accordance with Rule .0704 of this Subchapter;~~
- ~~(3)~~(2) provide payment for all valid WIC food ~~instruments and cash value vouchers benefits~~. To the extent that sufficient funds are available in the WIC disbursing account, payment shall be provided according to established Department of Health and Human Services procedures for payment of WIC food ~~instruments and cash value vouchers benefits~~.
- ~~(4) ensure that every invalid WIC food instrument or cash value voucher is stamped to indicate the reason for invalidity;~~
- ~~(5) ensure that invalid WIC food instruments and cash value vouchers are returned to the banks from which they were received, according to established banking procedures.~~

*History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246;
Eff. July 1, 1981;
Amended Eff. October 1, 2009; April 1, 2001;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017; ~~2017~~.
Amended Eff. March 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 43D .0706

DEADLINE FOR RECEIPT: December 13, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (1), under what circumstances are supplemental food sales not yet available?

In (1), line 6, can military commissaries participate in the WIC program? I do not see military commissaries mentioned anywhere else.

At line 14, define "new vendor." Specifically, are vendors that were previously disqualified and are not authorized again considered to be "new vendors?"

In (2), lines 19-33, what are the "peer groups" in North Carolina? 7 CFR 246.12(g)(4) requires the State to establish the peer group system.

In (5), what are the peer groups and how does the State determine whether the peer group designation is appropriate?

In (6), how does the State agency determine whether an applicant is "expected" to be predominately a WIC vendor?" What factors are considered?

In (7), line 20, please change "must" to "shall."

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 2, 2019

10A NCAC 43D .0706 is amended as published in 34:5 NCR 380-395 as follows:

10A NCAC 43D .0706 VENDOR PEER GROUPS

Vendor applicants and authorized vendors shall be placed into peer groups in accordance with as follows:

- (1) When annual WIC supplemental food sales are not yet available, vendor applicants and authorized vendors, excluding chain stores, stores under a WIC corporate agreement, military commissaries, and free-standing pharmacies, shall be placed into peer groups based on the number of cash registers in the store and the geographic location of the store until annual WIC supplemental food sales become available. ~~The following are the peer groups based on the number of cash registers in the store:~~

~~Peer Group I — zero to two cash registers;~~

~~Peer Group II — three to five cash registers; and~~

~~Peer Group III — six or more cash registers.~~

WIC sales figures of new vendors shall be reviewed six months from authorization. A vendor whose first six months of WIC sales exceed twenty five thousand dollars (\$25,000) shall be placed in a peer group ~~in accordance with the dollar thresholds of Item (2) of this Rule.~~ based on redemption.

- (2) Authorized vendors for which annual WIC supplemental food sales are available, ~~excluding~~ including chain stores, stores under a WIC corporate agreement, military commissaries, and free-standing pharmacies, shall be placed into peer ~~groups~~ groups, as follows, ~~except as provided in Item (9) of this Rule:~~

~~Peer Group I — two thousand dollars (\$2,000) to twenty five thousand dollars (\$25,000) annually in WIC supplemental food sales at the store;~~

~~Peer Group II — greater than twenty five thousand dollars (\$25,000) but not exceeding seventy five thousand dollars (\$75,000) annually in WIC supplemental food sales at the store;~~

~~Peer Group III — greater than seventy five thousand dollars (\$75,000) but not exceeding three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store; and~~

~~Peer Group IV — greater than three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store.~~

as set forth in 7 CFR 246.12(g)(4) and 7 CFR 246.12(h)(3), which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>.

- ~~(3) — Chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), military commissaries, and free standing pharmacies, including free standing pharmacy chain stores and free standing pharmacies participating under a WIC corporate agreement, shall be placed into peer groups as follows:~~

~~Peer Group IV—chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), and military commissaries; and~~
~~Peer Group V—free standing pharmacies, including free standing pharmacy chain stores and free standing pharmacies participating under a WIC corporate agreement.~~

(4)(3) "Annual WIC supplemental food sales" is the dollar amount an authorized vendor redeems in WIC ~~food instruments and cash value vouchers~~ food benefits within a 12-month period.

(5)(4) In determining a vendor's peer group designation based on annual WIC supplemental food ~~sales~~ sales, under Item (2) of this Rule, the state agency shall look at the most recent 12-month period of redemption data.

(6)(5) The state agency may reassess an authorized vendor's peer group designation at any time during the vendor's agreement period and place the vendor in a different peer group if upon reassessment the state agency determines that the vendor is no longer in the appropriate peer group.

(7)(6) If the state agency determines that a vendor applicant is expected to be a predominantly WIC vendor as defined in Rule .0202 of this Subchapter, the vendor application shall be denied. The store must wait 90 days to reapply for vendor authorization. The state agency shall apply the methodology set forth in 7 CFR 246.12(g)(4)(i)(E) for determining whether a vendor applicant is expected to be a predominantly WIC vendor.

(8)(7) If at any time during a vendor's authorization the state agency determines that the vendor has become a predominantly WIC vendor as defined in Rule .0202 of this Subchapter, the vendor's WIC Vendor Agreement shall be terminated. The store must wait 90 days to reapply for vendor authorization. The state agency shall apply the methodology set forth in 7 CFR 246.12(g)(4)(i)(F) for determining whether an authorized vendor has become a predominantly WIC vendor.

(9)(8) A vendor applicant previously authorized in a peer group ~~under Item (2) of this Rule~~ based on annual WIC supplemental food sales that is being reauthorized following the nonrenewal or termination of its agreement or disqualification or withdrawal from the WIC Program shall be placed into the same peer group the vendor applicant was previously ~~in in, under Item (2) of this Rule~~, provided that no more than one year has passed since the nonrenewal, termination, disqualification or withdrawal. If more than one year has passed, the vendor applicant shall be placed into a peer group ~~in accordance with Item (1) of this Rule~~ using criteria for new vendor applicants as set forth in Item (1) of this Rule.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;

Eff. July 1, 1981;

Amended Eff. August 1, 1995; October 1, 1993; May 1, 1991; December 1, 1990;

Temporary Amendment Eff. June 23, 2000; May 17, 2000;

Amended Eff. April 1, 2001;

Temporary Amendment Eff. September 1, 2002; July 1, 2002;

1 *Amended Eff. November 1, 2005; August 1, 2004;*
2 *Temporary Amendment Eff. July 1, 2006;*
3 *Amended Eff. February 1, 2013; October 1, 2009; February 1, 2008; April 1, 2007;*
4 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
5 *23, 2017; ~~2017~~.*
6 *Amended Eff. March 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 43D .0707

DEADLINE FOR RECEIPT: December 13, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (1), are the contents or substantive requirements of the WIC Vendor Application in rule in accordance with 150B-2(8a)?

In (2), is the corporate agreement a form? If so, are its contents or substantive requirements in rule?

In (4)(a), line 6, do you need to say "at least?" Rules always set minimum requirements.

In (4)(b), line 12, who sends the written notice? Is it the State or local agency?

At lines 13-14, is the timeline to resubmit prices within 30 days of the date the written notice was sent? When does the clock start on the 30 days?

In (4)(b), line 20, what is a notice of denial? Does it disqualify a vendor?

In (16)(a), line 1, consider deleting "the" before "SNAP."

In (16)(a) and (b), what is the meaning of "is continuing" at the end of each Subparagraph?

In (16), line 12, please delete or define "prematurely."

In (19), what are the criteria established by the State WIC Programs EBT processor? Are these criteria in rule?

At line 28, please change "must" to "shall."

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 2, 2019

10A NCAC 43D .0707 is amended as published in 34:5 NCR 380-395 as follows:

10A NCAC 43D .0707 VENDOR APPLICANTS

To become authorized as a WIC vendor, a vendor applicant shall comply with the following vendor selection criteria:

- (1) A vendor applicant shall complete a WIC Vendor Application, a WIC Price List, as set forth in Item (4) of this Rule, and a WIC Vendor Agreement, as set forth in 7 C.F.R. 246.12(h)(3). A vendor applicant shall submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List, as set forth in Item (4) of this Rule.
- (2) A vendor applicant, at the time of application and throughout the term of authorization, shall submit all completed forms to the local WIC agency, except that a corporate entity operating under a WIC corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists to the State agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store.
- (3) A vendor applicant shall purchase all infant formula, exempt infant formula, and WIC-eligible nutritionals directly from:
 - (a) The sources specified in 42 U.S.C 1786(h)(8)(A)(ix), which is incorporated by reference with all subsequent amendments and editions;
 - (b) Retail food stores that purchase directly from the sources referenced in Sub-item (3)(a) of this Item; or
 - (c) A source on another state's list of approved infant formula sources as verified by that state's agency.

A vendor applicant shall make available to the State or local WIC agency invoices or receipts documenting purchases of all infant formula, exempt infant formula, and WIC-eligible nutritionals. Receipts and invoices shall satisfy the requirements of Sub-items ~~(32)(a)(24)(a)~~ through ~~(32)(e)(24)(c)~~ of Rule .0708 of this Section. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for failure to purchase infant formula, exempt infant formula, or WIC-eligible nutritionals from the sources specified in this Item. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for providing infant formula, exempt infant formula, or WIC-eligible nutritionals to WIC customers that was not purchased from the sources specified in this Item.
- (4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List shall not exceed the maximum price set by the State agency for each supplemental food within that vendor applicant's peer group, except as provided in Sub-item (4)(b) of this Item. The maximum price for each supplemental food shall be established as follows:

- (a) The most recent ~~WIC Price Lists~~ prices submitted through the EBT system by authorized vendors within the same peer group shall be used to determine the maximum price for each supplemental food. The maximum price shall be ~~the 97th percentile of two standard deviations above the average~~ current highest shelf ~~prices for price of~~ each supplemental food within a vendor peer group. The State agency shall reassess the maximum price set for each supplemental food at least four times a year. ~~For two of its price assessments, the State agency shall use the WIC Price Lists which shall be submitted by all vendors by April 1 and October 1 each year in accordance with Item (34) of Rule .0708 of this Section. The other two price assessments shall be based on WIC Price Lists requested from a sample of vendors within each peer group in January and July of each year.~~
- (b) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the State agency for that applicant's peer group, the agency shall send the applicant written notice. Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it will charge the State WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the State agency, the vendor applicant shall be deemed to have met the requirements of Item (4) of this Rule. If any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the State agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, the agency shall send the applicant a written notice of denial. The vendor applicant shall wait 90 days from the date of receipt of the written denial to reapply for authorization.
- (5) A vendor applicant shall pass an announced monitoring review by the local WIC agency to determine whether the store has minimum inventory of supplemental foods as specified in Item ~~(25)~~(17) of Rule .0708 of this Section. A vendor applicant that fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the application shall be denied in writing and the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application.
- (6) A vendor applicant shall either attend, or cause a manager or another authorized store representative to attend, WIC Vendor Training provided by the local WIC agency prior to vendor authorization and ensure that the vendor applicant's employees receive instruction in WIC program procedures and requirements.
- (7) An applicant shall mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case at all times.
- (8) The store shall be at a single, fixed location within North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site where WIC supplemental foods are selected by the WIC customer.

- (9) A vendor applicant shall use point of sale (POS) terminals to support the WIC Program that are deployed in accordance with the minimum lane coverage provisions of 7 C.F.R. 246.12(z)(2)(ii).
- (10) The store shall be open throughout the year for business with the public at least six days a week for at least 40 hours per week between 8:00 a.m. and 11:00 p.m.
- (11) The store shall not use the acronym "WIC" or the WIC logo, including facsimiles, in total or in part, in the official name under which the business is registered or in the name under which it does business.
- (12) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC agency. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for submitting false, erroneous, or misleading information.
- (13) The owner(s), officer(s), or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the State WIC program, or the local WIC program serving the county where the vendor applicant conducts business. A vendor applicant shall not have an employee who ~~handles, transacts, deposits, or stores WIC food instruments or cash value vouchers~~ handles or transacts WIC food benefits who is employed, or has a spouse, child, or parent who is employed by the State WIC program or the local WIC program serving the county where the vendor applicant conducts business. Such situations present a conflict of interest.
- (14) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice, as set out in 7 C.F.R 246.12(g)(3)(ii). For purposes of this Item, "convicted" or "conviction" includes:
- (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or adjudicating body, tribunal, or official, either civilian or military;
 - (c) a plea of no contest, nolo contendere, or the equivalent; or
 - (d) entry of a prayer for judgment continued following a conviction as defined in this Item is the same as a conviction for purposes of this Item.
- (15) A vendor applicant shall not be authorized if it is currently disqualified from the Supplemental Nutrition Assistance Program ("SNAP") or it has been assessed a SNAP civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired.
- (16) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:

- (a) a SNAP vendor that is disqualified from participation in the SNAP or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or
- (b) another WIC vendor that is disqualified from participation in the WIC Program or has been assessed a monetary or civil money penalty pursuant to G.S. 130A-22(c1), Paragraph (e) or Paragraph (f) of Rule .0710 of this Section as the result of violation of Paragraphs (a) or (b) of Rule .0710 of this Section and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing.

The requirements of this Item shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Item shall not be met even if such transfer or conveyance of financial interest in a SNAP vendor under Sub-item (16)(a) of this Item prematurely ends the disqualification period applicable to that SNAP vendor. The requirements of this Item shall apply until the time the SNAP vendor disqualification otherwise would have expired.

- (17) A vendor applicant, excluding free-standing pharmacies, shall have SNAP authorization for the store as a prerequisite for WIC vendor authorization and shall provide its SNAP authorization number to the State agency.
- (18) A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired. A vendor applicant shall not be authorized as a WIC vendor if any of the vendor applicant's owner(s), officer(s) or manager(s) currently has or previously had a financial interest in a WIC vendor that was assessed a claim by the WIC Program and the claim has not been paid in full.
- (19) A vendor applicant shall enter into contract with the State WIC Program's EBT processor or a third party processor certified according to criteria established by the State WIC Program's EBT processor prior to WIC authorization and comply with all requirements detailed in the EBT or third party processor's Vendor Agreement.

For a food retailer or free-standing pharmacy to participate in the WIC Program, a current WIC Vendor Agreement must be signed by the vendor, the local WIC agency, and the State agency. If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 7 C.F.R. 246.12(g)(3); 7 C.F.R. 246.12(g)(3)(ii); 7 C.F.R. 246.12(h)(3)(xix); 7 C.F.R. 246.12(t); 42 U.S.C. 1786; Eff. February 1, 2013; Amended Eff. October 1, 2017; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017; ~~2017~~.

1

Amended Eff. March 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 43D .0708

DEADLINE FOR RECEIPT: December 13, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (1), line 6, please capitalize "Rules."

Are lines 20-22 necessary? See 7 CFR 246.12(h)(3)(xi).

In (11), line 13, please change "must" to "shall."

In the chart on page 4, should the infant formula row say "soy-based or lactose free" based upon the text on page 4, lines 2-3.

Page 4, line 4, does this sentence mean free-standing pharmacies shall only supply exempt formula or does it mean a free-standing pharmacy shall only be required to supply the exempt formula upon request? Please clarify.

In (20)(g), please add a comma after "manager."

In (20)(g), what requirements have to be met for staff to be "fully trained?"

In (20)(j), please add a comma after "sizes."

In (24), line 11, please change "must" to "shall."

In (25), line 27, please add a comma after "tax documents."

Please review the CFR citation in (31), line 21. Did you intend to refer to 7 CFR 246.12(h)(3)(iii)?

In (32), what is the vendor peer group criteria? The referenced CFRs indicate the State sets the criteria.

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

Ashley Snyder
Commission Counsel

Date submitted to agency: December 2, 2019

10A NCAC 43D .0708 is amended as published in 34:5 NCR 380-395 as follows:

10A NCAC 43D .0708 AUTHORIZED VENDORS

By signing the WIC Vendor Agreement, the vendor agrees to:

- (1) Process WIC Program food ~~instruments and cash value vouchers~~ benefits in accordance with the terms of the WIC Vendor Agreement and 42 U.S.C. 1786, 7 C.F.R. 246.1-246.28, and the rules of this Subchapter;
- (2) Accept WIC Program food ~~instruments and cash value vouchers~~ benefits in exchange for WIC supplemental foods. Supplemental foods are those foods that satisfy the requirements of 10A NCAC 43D .0501;
- (3) ~~Provide only the authorized supplemental foods listed on the printed food instrument, or authorized fruits and vegetables with a printed cash value voucher. Determine the charges to the WIC Program and complete the "Pay Exactly" box on the printed food instrument, or printed cash value voucher, as set forth in Item (4) of this Rule, prior to obtaining the signature of the WIC customer. When transacting EBT, the vendor shall provide~~ Provide to the WIC customer only the approved supplemental foods, fruits, and vegetables contained in the authorized product list (APL) after it has been determined that the WIC customer has an available balance on the date of the transaction. The WIC customer is not required to get all of the supplemental foods listed on ~~the printed food instrument or the full dollar value of the printed cash value voucher.~~ his or her food benefit balance. However, a WIC customer may obtain more fruits and vegetables than the full dollar value of a ~~cash value voucher~~ his or her cash-value benefit if the WIC customer pays the difference, as set forth in 7 C.F.R. 246.12(h)(3)(xi);
- (4) ~~Enter in the "Pay Exactly" box on the printed food instrument or printed cash value voucher only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental food provided and shall not charge or collect sales taxes for the supplemental food provided. Vendors that utilize EBT shall only transmit~~ Transmit only the current shelf price of all WIC-approved supplemental foods purchased in the correct sizes, quantities, and the total dollar amount of all WIC-approved supplemental foods purchased in the EBT ~~system;~~ system and shall not charge or collect sales taxes for the supplemental food provided;
- (5) Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less;
- (6) Accept payment from the State WIC Program only up to the maximum price set by the State agency for each supplemental food within that vendor's peer group. The maximum price for each supplemental food shall be based on the maximum prices set by the State agency for each supplemental food, as described in Sub-item (4)(a) of Rule .0707 of this ~~Section, listed on the food instrument.~~ Section. A request for payment submitted over the maximum price allowed by the State agency will only be paid up to the maximum price for that supplemental food;

- (7) Accept payment from the State WIC Program only up to the full dollar value of the cash-value ~~voucher; benefit;~~
- (8) Not charge the State WIC Program more than the maximum price set by the State agency under Item (4)(a) of Rule .0707 of this Section for each supplemental food within the vendor's peer group;
- (9) Provide to WIC customers infant formula, exempt infant formula, and WIC eligible nutritionals purchased only from the sources specified in Item (3) of Rule .0707 of this Section. Providing infant formula, exempt infant formula, or WIC eligible nutritionals that has not been purchased from the sources specified in Item (3) of Rule .0707 of this Section shall result in termination of the WIC Vendor Agreement;
- (10) For free-standing pharmacies, provide only exempt infant formula and WIC-eligible nutritionals;
- (11) Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must wait 180 days to reapply for authorization;
- ~~(12) Accept WIC Program food instruments and cash value vouchers only on or between the "First Date to Spend" and the "Last Date to Spend" dates;~~
- ~~(13) Prior to obtaining the WIC customer's signature on the printed food instrument and cash value voucher, enter in the "Date Transacted" box the month, day, and year the WIC food instrument or cash value voucher is exchanged for supplemental food;~~
- ~~(14)(12) Ensure that the WIC customer signs the food instrument or cash value voucher in the presence of the cashier. Vendors that utilize EBT shall ensure~~ Ensure that a personal identification number (PIN) is used by the WIC customer to complete the EBT transaction in lieu of a signature;
- ~~(15)(13) Ensure that the WIC customer enters the PIN to initiate the EBT transaction. The vendor shall not enter the PIN for the WIC customer;~~
- ~~(16) Refuse to transact any food instrument or cash value voucher that has been altered;~~
- ~~(17)(14) Not transact food instruments or cash value vouchers~~ benefits in whole or in part for cash, credit, unauthorized foods, or non-food items;
- ~~(18)(15) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments or cash value vouchers, benefits,~~ except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An "identical authorized supplemental food" means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;
- ~~(19) Imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the printed food instrument or cash value voucher to enable the vendor number to be read during the WIC Program's editing process;~~

- (20) ~~Imprint the vendor's bank deposit stamp or the vendor's name, address, and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement on the printed food instrument or cash value voucher;~~
- (21) ~~Deposit WIC program printed food instruments and cash value vouchers in the vendor's bank. All North Carolina WIC program printed food instruments and cash value vouchers must be deposited in the vendor's bank within 60 days of the "First Date to Spend" on the printed food instrument or cash value voucher;~~
- (22) ~~Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by the Agreement and be responsible for the unauthorized use of the authorized WIC vendor stamp;~~
- (23) ~~Maintain storage of the authorized WIC vendor stamp so only the staff designated by the vendor owner or manager have access to the stamp and report loss of this stamp within two business days to the local WIC agency;~~
- (24)(16) Notify the local WIC agency of misuse (attempted or actual) of WIC Program food instruments or cash value vouchers; benefits;
- (25)(17) Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. Free-standing pharmacies are not required to maintain a minimum inventory of supplemental foods. The following items and sizes constitute the minimum inventory of supplemental foods for vendors in Peer Groups I through III of Item (1), vendors in Vendor Peer Groups I through IV of Item (2), and vendors in Vendor Peer Group IV of Item (3) of Rule .0706 of this Section: vendors:

| Food Item | Type of Inventory | Quantities Required |
|----------------------|---|---------------------|
| Milk | Whole fluid: gallon | 2 gallons |
| | -and- Skim/lowfat fluid: gallon | 6 gallons |
| Cheese | 1 pound package | 2 packages |
| Cereals | 2 types: whole grain (minimum package size 12 ounce) | 6 packages total |
| Eggs | Grade A, large, white: 1 dozen size carton | 2 dozen |
| Juices | Single strength: 48 ounce container | 4 containers |
| | 64 ounce container | 4 containers |
| Dried Peas and Beans | 1 pound package | 2 packages |

| | | |
|---|--|--|
| Peanut Butter | 16 to 18 ounce container | 2 containers |
| Tuna | 5 to 6 ounce can | 6 cans |
| Bread/Tortillas | 16 ounce loaf of bread or package of tortillas | 2 loaves or 2 packages OR 1 loaf and 1 package |
| Rice | 14 to 16 ounce package | 2 packages |
| Infant Cereal | 8 ounce box | 6 boxes |
| Infant Fruits and Vegetables | 3.5 to 4 ounce container 1 type of fruit and 1 type of vegetable | 64 ounces |
| Infant Formula | milk-based powder; 11.0 to 14.0 ounce | 8 cans |
| | -and- soy-based powder; 11.0 to 14.0 ounce Brands must be the primary contract infant formulas | 4 cans |
| Fruits | 14 to 16 ounce can: 2 varieties | 10 cans total |
| Vegetables (Excludes foods in Dried Peas and Beans category) | 14 to 16 ounce can: 2 varieties | 10 cans total |

1 All ~~vendors~~ vendors, except free-standing pharmacies, in Vendor Peer Groups I through III of Item (1), Peer Groups I
2 through IV of Item (2), and Vendor Peer Groups IV and V of Item (3) of Rule .0706 of this Section shall supply milk,
3 soy-based or lactose-free infant formula in 32 ounce ready-to-feed or lactose-free powder within 48 hours of request
4 by the State or local WIC agency; agency. Free-standing pharmacies shall only supply exempt infant formula or WIC-
5 eligible nutritionals within 48 hours of request;

6 ~~(26)~~(18) Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration
7 date;

8 ~~(27)~~(19) Permit the purchase of supplemental food without requiring other purchases;

9 ~~(28)~~(20) Comply with the following EBT provisions:

- 10 (a) Sign the WIC Vendor Agreement of the EBT Processor selected by the State WIC Program
11 or a third-party processor that has been certified according to criteria established by the
12 EBT Processor selected by the State WIC Program. Failure by a vendor to sign and retain
13 a WIC Vendor Agreement with the State WIC Program's EBT Processor or a third-party
14 processor that has been certified by the State WIC Program's EBT Processor shall result in
15 termination of the WIC Vendor Agreement. Vendors shall notify the WIC Program within
16 24 hours of any periods of time during which they do not maintain an Agreement with the

- 1 State WIC Program's EBT Processor or a third-party processor that has been certified by
2 the State WIC Program's EBT Processor;
- 3 (b) Process EBT transactions in accordance with the terms of the North Carolina WIC Vendor
4 Agreement, WIC Program State Rules, federal regulations, and statutes;
- 5 (c) Maintain Point of Sale (POS) terminals used to support the WIC Program in accordance
6 with the minimum lane provisions of 7 C.F.R. 246.12(z)(2);
- 7 (d) Maintain a North Carolina EBT Processor certified in-store EBT system that is available
8 for WIC redemption processing during all hours the store is open;
- 9 (e) Request the North Carolina EBT Processor re-certify its in-store system if the vendor alters
10 or revises the system in any manner that impacts the EBT redemption or claims processing
11 system after initial certification is completed;
- 12 (f) For vendors with integrated systems, obtain EBT card readers to support EBT transactions
13 within their store(s). The vendor shall ensure that the EBT card readers they obtain meets
14 all EBT and North Carolina EBT Processor requirements;
- 15 (g) Require an owner, manager or other authorized store representative to complete training
16 on WIC EBT procedures. The vendor shall ensure that all cashiers and staff are fully trained
17 on WIC EBT requirements, including training in the acceptance and processing of WIC
18 EBT transactions;
- 19 (h) Require the WIC customer to approve the WIC transaction. Vendors shall ensure that the
20 vendor's staff does not approve the WIC transactions for WIC customers under any
21 circumstances;
- 22 (i) Release supplemental food to WIC customers when the transaction has been completed to
23 include receipt of transaction approval by the EBT processing system, printing of the
24 receipt, and updated balance of the WIC customer's account;
- 25 (j) Scan or manually enter Universal Product Codes (UPC) only from approved supplemental
26 foods being purchased by the WIC customer in the types, sizes and quantities available on
27 the WIC customer's EBT account. The vendor shall not scan codes from UPC codebooks
28 or reference sheets;
- 29 (k) Return any EBT card found on the vendor's property and unclaimed for 24 hours to the
30 WIC Program. The vendor shall not hold or use a WIC customer's EBT card and PIN for
31 any purpose whatsoever;
- 32 (l) Connect the vendor's in-store system for each outlet covered by the WIC Vendor agreement
33 to the State's WIC EBT system at least once each 24-hour period to download
34 reconciliation files and the WIC Authorized Product UPC/Product Look-Up (PLU) list.
- 35 ~~(29)~~(21) Attend, or cause a manager or other authorized store representative to attend, annual vendor training
36 upon notification by the local WIC agency. Failure to attend annual vendor training by September
37 30 of each year shall result in termination of the WIC Vendor Agreement;

- 1 ~~(30)~~(22) Inform and train vendor's cashiers and other staff on WIC Program requirements;
- 2 ~~(31)~~(23) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit
- 3 vendor violations;
- 4 ~~(32)~~(24) Allow monitoring and inspection by State and local WIC Program staff of the store premises and
- 5 procedures to ensure compliance with the agreement and State, and federal WIC Program rules,
- 6 regulations, and applicable law. This includes providing access to all program-related records,
- 7 including access to all WIC food instruments and cash-value vouchers at the store; vendor records
- 8 pertinent to the purchase and sale of WIC supplemental foods, including invoices, receipts, copies
- 9 of purchase orders, and any other proofs of purchase; federal and state corporate and individual
- 10 income tax and sales and use tax returns and all records pertinent to these returns; and books and
- 11 records of all financial and business transactions. These records must be retained by the vendor for
- 12 a period of three years or until any audit pertaining to these records is resolved, whichever is later.
- 13 Notwithstanding any other provision of this Rule and Rules .0707 and .0710 of this Section, failure
- 14 or inability to provide these records for an inventory audit or providing false records for an inventory
- 15 audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Subparagraph (a)(1) of Rule
- 16 .0710 of this Section. Invoices, receipts, purchase orders, and any other proofs of purchase for WIC
- 17 supplemental foods shall include:
- 18 (a) the name of the seller and be prepared entirely by the seller without alteration by the vendor
- 19 or on the seller's business letterhead;
- 20 (b) the date of purchase and the date the authorized vendor received the WIC supplemental
- 21 food at the store if different from the date of purchase; and
- 22 (c) a description of each WIC supplemental food item purchased, including brand name, unit
- 23 size, type or form, and quantity;
- 24 ~~(33)~~(25) Maintain a record of all SNAP-eligible food sales and provide to the State agency upon request a
- 25 statement of the total amount of revenue derived from SNAP-eligible food sales and written
- 26 documentation to support the amount of sales claimed by the vendor, such as sales records, financial
- 27 statements, reports, tax documents or other verifiable documentation;
- 28 ~~(34)~~(26) Submit a current completed WIC Price List when signing this agreement, and by April 1 and October
- 29 1 of each year. The vendor also agrees to submit a WIC Price List within two weeks of any written
- 30 request by the State or local WIC agency;
- 31 ~~(35)~~(27) Reimburse the State agency in full or agree to a repayment schedule with the State agency within
- 32 30 days of written notification of a claim assessed due to a vendor violation that affects payment to
- 33 the vendor or a claim assessed due to the unauthorized use of the WIC vendor stamp-vendor. Failure
- 34 to reimburse the State agency in full or agree to a repayment schedule within 30 days of written
- 35 notification of a claim shall result in termination of the WIC Vendor Agreement. The State agency
- 36 shall deny payment or assess a claim in the amount of the full purchase price of each food instrument
- 37 or cash value voucher invalid under Subparagraphs (a)(2), (a)(5), (a)(6) or (a)(7) of Rule .0704 of

~~this Section. Denial of payment by the State agency or payment~~ Payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under Rule .0710 of this Section for the vendor violation(s);

~~(36)(28)~~ Not seek restitution from the WIC customer for reimbursement paid by the vendor to the State agency or for WIC food ~~instruments or cash value vouchers~~ benefits not paid or partially paid by the State agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food ~~instruments or cash value vouchers~~ benefits;

~~(37)(29)~~ Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food ~~instruments or cash value vouchers~~ benefits;

~~(38)(30)~~ Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in store location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in store location of more than three miles from the store's previous location, cessation of operations, withdrawal from the WIC Program, or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the State agency. Change of ownership, change in store location, ceasing operations, withdrawal from the WIC Program, or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store;

~~(39)~~ ~~Return the authorized WIC vendor stamp to the local WIC agency upon termination of the WIC Vendor Agreement or disqualification from the WIC Program;~~

~~(40)(31)~~ Not discriminate on the basis of WIC participation, such as failing to offer WIC customers the same courtesies, as set forth in 7 C.F.R. 246.12(g)(3)(iii), offered to other customers or requiring separate WIC lines;

~~(41)(32)~~ Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store shall reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant is subject to the vendor peer group criteria ~~of Rule .0706 of this Section set forth in 7 CFR 246.12(g)(4), 7 CFR 246.12(h)(3),~~ and the vendor selection criteria of Rule .0707 of this Section; and

~~(42)(33)~~ Comply with all the requirements for vendor applicants of Items (3), (4), and (7) through (17), and (19) of Rule .0707 of this Section throughout the term of authorization. The State agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The State agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Items (3), (4), (8), (9), (10), (11), (12), (13), (14), (16), (17), or (19) of Rule .0707 of this Section during the vendor's period of authorization, and terminate the agreement of or sanction or both any vendor that fails to comply with Items (7), (15), (17), or (19) of Rule .0707 of this Section during the vendor's period of authorization.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;

1 *Eff. March 1, 2013;*
2 *Amended Eff. October 1, 2017;*
3 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
4 *23, 2017;*
5 *Amended Eff. March 1, 2020; July 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 43D .0710

DEADLINE FOR RECEIPT: December 13, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a)(1), line 12, please say "Rule .0708 of this Section."

In (a)(3), please add a comma after "transacting."

In (b)(13), within what period does this apply? Is it within a 12-month period?

In (c), does providing a gift card in exchange for benefits fall under (c)(1)(A) or (c)(1)(G)?

In (c)(1)(I), please delete or define "properly."

In (c)(1)(I), what does it mean to fail to properly transact WIC food benefits? Under what circumstances does this occur?

In (c)(2)(F), what are considered to be unauthorized uses of the acronym or logo?

In (f)(3)(A) and (B), did you intend to reference 160A-1(2) instead of 160A-2?

In (j), line 33, by "procedures" are you referring to "this Rule" or "the Rules of this Section?"

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 2, 2019

1 10A NCAC 43D .0710 is amended as published in 34:5 NCR 380-395 as follows:

2
3 **10A NCAC 43D .0710 VENDOR VIOLATIONS AND SANCTIONS**

4 (a) Title 7 C.F.R. 246.12(l)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments
5 and editions. In accordance with 7 C.F.R. 246.12(l)(1)(i), the State agency shall not allow imposition of a civil money
6 penalty in lieu of disqualification for a vendor permanently disqualified. A pattern, as referenced in 7 CFR 246.12
7 (l)(1)(iii)(B) through (F) and 246.12(l)(1)(iv)(A), shall be established as follows:

- 8 (1) claiming reimbursement for the sale of an amount of a specific supplemental food item that exceeds
9 the store's documented inventory of that supplemental food item for six or more days within a 60-
10 day period. The six or more days do not have to be consecutive days within the 60-day period.
11 Failure or inability to provide records or providing false records required under Item ~~(32)(24)~~ of
12 Rule .0708 for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and
13 this Subparagraph;
- 14 (2) two occurrences of vendor overcharging within a 12-month period;
- 15 (3) two occurrences of receiving, transacting or redeeming food ~~instruments or cash value vouchers~~
16 benefits outside of authorized channels, including the use of an unauthorized vendor or an
17 unauthorized person within a 12-month period;
- 18 (4) two occurrences of charging for supplemental food not received by the WIC customer within a 12-
19 month period;
- 20 (5) two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages,
21 tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21
22 U.S.C. 802, in exchange for food ~~instruments or cash value vouchers~~ benefits within a 12-month
23 period; or
- 24 (6) three occurrences of providing unauthorized food items in exchange for food ~~instruments or cash~~
25 ~~value vouchers, benefits~~, including charging for supplemental food provided in excess of those listed
26 on the food ~~instrument~~ benefit balance within a 12-month period.

27 (b) Title 7 C.F.R. 246.12(l)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except
28 as provided in 7 C.F.R. 246.12 (l)(1)(xii), a vendor shall be disqualified from the WIC Program for the following
29 state-established violations in accordance with the number of occurrences and sanctions set forth below:

- 30 (1) One year for two occurrences within a 12-month period of discrimination on the basis of WIC
31 participation as referenced in Item ~~(40)(31)~~ of Rule .0708. Each date this violation is detected is a
32 separate occurrence;
- 33 (2) One year for three occurrences within a 12-month period of failure to properly transact a WIC food
34 ~~instrument or cash value voucher by not completing the date and purchase price on the WIC food~~
35 ~~instrument or cash value voucher before obtaining the WIC customer's signature, by not obtaining~~
36 ~~the WIC customer's signature in the presence of the cashier, or by accepting a WIC food instrument~~
37 ~~or cash value voucher prior to the "Issue Date" or after the "Participant Must Use By" dates on the~~

~~food instrument or cash value voucher.~~ benefits by manually entering the EBT card number or entering the PIN into the POS instead of the WIC participant, scanning the UPC or PLU codes from UPC codebooks or reference sheets when completing a WIC participant's EBT transaction, not entering the correct quantity and item price, or not providing the WIC participant with a receipt that shows the items purchased and the participant's remaining food benefit balance. Except as provided in 7 C.F.R. 246.12(l)(3)(iv), each ~~improperly transacted food instrument or cash value voucher~~ improper transaction is a separate occurrence;

(3) One year for three occurrences within a 12-month period of requiring a cash purchase to transact ~~a WIC food instrument or cash value voucher.~~ benefits. Except as provided in 7 C.F.R. 246.12(l)(3)(iv), each ~~transacted food instrument or cash value voucher~~ transaction requiring a cash purchase is a separate occurrence;

(4) 270 days for three occurrences within a 12-month period of contacting a WIC customer in an attempt to recoup funds for ~~a food instrument or cash value voucher.~~ benefits or contacting a WIC customer outside the store regarding the transaction or redemption of ~~a WIC food instrument or cash value voucher.~~ benefits. Each contact with any WIC customer is a separate occurrence, whether each contact is with the same or different WIC customers;

(5) 180 days for three occurrences within a 12-month period of failure to provide program-related records referenced in Item ~~(32)(24)~~ of Rule .0708 when requested by WIC staff, except as provided in Item ~~(32)(24)~~ of Rule .0708 and Subparagraph (a)(1) of this Rule for failure or inability to provide records for an inventory audit. Each request for records is a separate occurrence, whether each request is for the same or different records;

(6) 180 days for three occurrences within a 12-month period of failure to provide the information referenced in Item ~~(33)(25)~~ of Rule .0708 when requested by WIC staff. Each request for information is a separate occurrence, whether each request is for the same or different information;

(7) 180 days for three occurrences within a 12-month period of failure to stock the minimum inventory specified in Item ~~(25)(17)~~ of Rule .0708. Each date this violation is detected is a separate occurrence;

(8) 90 days for three occurrences within a 12-month period of stocking WIC supplemental foods outside of the manufacturer's expiration date. Each date this violation is detected is a separate occurrence;

(9) 90 days for three occurrences within a 12-month period of failure to allow monitoring of a store by WIC staff. Each attempt to monitor the store is a separate occurrence;

(10) 90 days for five occurrences within a 12-month period of failure to submit a WIC Price List as required by Item ~~(34)(26)~~ of Rule .0708. Each written request by the state or local WIC agency for submission of a WIC Price List is a separate occurrence, whether each request is for the same or different WIC Price Lists;

(11) 60 days for three occurrences within a 12-month period of failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case. Each date this violation is detected is a separate occurrence; ~~and~~

(12) 60 days for five occurrences within a 12-month period of requiring the purchase of a specific brand when more than one WIC supplemental food brand is available. Except as provided in 7 C.F.R. 246.12(l)(3)(iv), each ~~transacted food instrument or cash value voucher~~ transaction requiring the purchase of a specific brand when more than one WIC supplemental food brand is available is a separate ~~occurrence~~ occurrence;

(13) 180 days for three occurrences of failure to make EBT point of sale equipment accessible to WIC customers to ensure that EBT transactions are completed in accordance with Rule .0708; and

(14) 90 days for three occurrences within a 12-month period of failure to comply with minimum lane coverage criteria required by 7 CFR 246.12(z)(2) and Rule .0708(20)(c) of this Section;

If during the course of a single investigation the state agency determines that a vendor has committed multiple state-established violations, the disqualification periods shall be cumulative, provided that the total period of disqualification shall not exceed one year for state-established violations investigated as part of a single investigation, as defined in Paragraph (c) of this Rule.

(c) For investigations pursuant to this Section, a single investigation is:

(1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the following violations:

(A) buying or selling food ~~instruments or cash value vouchers~~ benefits for cash (trafficking);

(B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food ~~instruments or cash value vouchers~~ benefits;

(C) selling alcohol or alcoholic beverages or tobacco products in exchange for food ~~instruments or cash value vouchers~~ benefits;

(D) vendor overcharging;

(E) receiving, transacting, or redeeming food ~~instruments or cash value vouchers~~ benefits outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person;

(F) charging for supplemental food not received by the WIC customer;

(G) providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food ~~instruments or cash value vouchers~~ benefits;

(H) providing unauthorized food items in exchange for food ~~instruments or cash value vouchers~~ benefits, including charging for supplemental food provided in excess of those listed on the food ~~instrument~~ benefit balance;

(I) failure to properly transact a WIC food ~~instrument or cash value voucher~~ benefits;

(J) requiring a cash purchase to transact a WIC food ~~instrument or cash value voucher~~ benefits; or

(K) requiring the purchase of a specific brand when more than one WIC supplemental food brand is available.

- 1 (2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect the
2 following violations:
- 3 (A) failure to stock the minimum inventory specified in Item ~~(25)~~(17) of Rule .0708;
- 4 (B) stocking WIC supplemental food outside of the manufacturer's expiration date;
- 5 (C) failure to allow monitoring of a store by WIC staff;
- 6 (D) failure to provide program-related records referenced in Item ~~(32)~~(24) of Rule .0708 when
7 requested by WIC staff;
- 8 (E) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have
9 the prices posted on the shelf or display case; ~~or~~
- 10 (F) unauthorized use of the "WIC" acronym or the ~~logo~~-logo;
- 11 (G) failure to ensure that EBT point of sale equipment is accessible to the WIC customer; or
- 12 (H) failure to comply with minimum lane coverage criteria required by 7 CFR 246.12(z)(2)
13 and Rule .0708(20)(c) of this Section.
- 14 (3) Any other method used by the state or local agency to detect the following violations by a vendor
15 within a 12-month period:
- 16 (A) failure to attend annual vendor training;
- 17 (B) failure to submit a WIC Price List as required by Item ~~(34)~~(26) of Rule .0708;
- 18 (C) discrimination on the basis of WIC participation as referenced in Item ~~(40)~~(31) of Rule
19 .0708.
- 20 (D) contacting a WIC customer in an attempt to recoup funds for food ~~instruments or cash-~~
21 ~~value vouchers benefits~~ or contacting a WIC customer outside the store regarding the
22 transaction or redemption of WIC food ~~instruments or cash value vouchers benefits~~;
- 23 (E) nonpayment of a claim assessed by the state agency;
- 24 (F) providing false, erroneous, or misleading information to the state or local WIC agency;
- 25 (G) claiming reimbursement for the sale of an amount of a specific supplemental food item
26 which exceeds the store's documented inventory of that supplemental food item for a
27 specific period of time, or failure or inability to provide records or providing false records
28 required under Item ~~(32)~~(24) of Rule .0708 for an inventory audit;
- 29 (H) failure to purchase infant formula, exempt infant formula or WIC-eligible medical foods
30 from the sources specified in Item (3) of Rule .0707; or
- 31 (I) providing WIC customers infant formula, exempt infant formula, or WIC eligible medical
32 food that was not purchased from the sources specified in Item (3) of Rule .0707.
- 33 (d) The SNAP disqualification provisions in 7 C.F.R. 246.12(l)(1)(vii) are incorporated by reference with all
34 subsequent amendments and editions.
- 35 (e) The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and 246.12(l)(8) are incorporated by reference with
36 all subsequent amendments and editions. The existence of any of the factors listed in Parts (f)(3)(A), (f)(3)(B) or
37 (f)(3)(C) of this Rule shall show adequate participant access provided there is no geographic barrier, such as an

1 impassable mountain or river, to using the other authorized WIC vendors referenced in these Parts. The agency shall
2 not consider other indicators of inadequate participant access when any of these factors exist.

3 (f) The following provisions apply to monetary and civil money penalties assessed in lieu of disqualification of a
4 vendor:

5 (1) The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all
6 subsequent amendments and editions, provided that the vendor's average monthly redemptions shall
7 be calculated by using the six-month period ending with the month immediately preceding the
8 month during which the notice of administrative action is dated.

9 (2) The state agency may also impose monetary penalties in accordance with G.S. 130A-22(c1) in lieu
10 of disqualification of a vendor for the state-established violations listed in Paragraph (b) of this Rule
11 when the state agency determines that disqualification of a vendor would result in participant
12 hardship in accordance with Subparagraph (f)(3) of this Paragraph.

13 (3) In determining whether to disqualify a WIC vendor for the state-established violations listed in
14 Paragraph (b) of this Rule, the agency shall not consider other indicators of hardship if any of the
15 following factors, which show lack of hardship, are found to exist:

16 (A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-
17 2, and another WIC vendor is located within seven miles of the noncomplying vendor;

18 (B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2,
19 and another WIC vendor is located within three miles of the noncomplying vendor; or

20 (C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local
21 agency at which WIC participants ~~pick up their food instruments or cash value~~
22 vouchers are certified to receive WIC food benefits.

23 (4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated by
24 reference with all subsequent amendments and editions. These provisions also apply to a vendor
25 that fails to pay a monetary penalty imposed under G.S. 130A-22(c1).

26 (g) The provisions of 7 C.F.R. 246.12(l)(1)(viii) prohibiting voluntary withdrawal from the WIC Program or
27 nonrenewal of the WIC Vendor Agreement as an alternative to disqualification are incorporated by reference with all
28 subsequent amendments and editions.

29 (h) The provisions of 42 USC 1786 (f)(26) and 7 CFR 246.12(l)(3) regarding vendor notification of violations are
30 incorporated by reference with all subsequent amendments and editions.

31 (i) The state agency may offset payments to an authorized vendor if the vendor fails to reimburse the state agency in
32 accordance with Item ~~(35)(27)~~ of Rule .0708.

33 (j) In accordance with 7 C.F.R. 246.12(l)(7) or 246.12(u)(5) or both, North Carolina's procedures for dealing with
34 abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or
35 other remedies that may be applicable under any federal or state law.

36 ~~(k) Notwithstanding other provisions of this Rule and Rules .0707 and .0708, for the purpose of providing a one time~~
37 ~~payment to a non-authorized store for WIC food instruments or cash value vouchers accepted by the store, an~~

~~agreement for a one time payment need only be signed by the store manager and the state agency. The store may request such one time payment directly from the state agency. The store manager shall sign an agreement indicating that the store has provided foods as prescribed on the food instrument or as allowed with the cash value voucher, charged current shelf prices or less than current shelf prices, not charged sales tax, and verified the identity of the WIC customer. Any agreement entered into in this manner shall automatically terminate upon payment of the food instruments or cash value vouchers. After entering into an agreement for a one time payment, a non authorized store shall not be allowed to enter into any further one time payment agreements for WIC food instruments or cash value vouchers accepted thereafter.~~

~~(k)~~ Except as provided in 7 C.F.R. 246.18(a)(2), an authorized WIC vendor shall be given at least 15 days advance written notice of any adverse action which affects the vendor's participation in the WIC Program. The vendor appeal procedures shall be in accordance with 10A NCAC 43D .0800.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;

Eff. February 1, 2013;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017;

Amended Eff. March 1, 2020; January 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 43D .0908

DEADLINE FOR RECEIPT: December 13, 2019

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), who is the agency official? Is this a local or State agency official?

In (a), line 4, please add a comma after "WIC agency."

In (d)(1), please delete or define "simplified."

In (d)(4), please delete or define "short and plain."

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 2, 2019

1 10A NCAC 43D .0908 is amended as published in 34:5 NCR 380-395 as follows:

2
3 **10A NCAC 43D .0908 NOTICE OF HEARING**

4 (a) The agency official shall notify the ~~aggrieved party, appellant, or his or her representative,~~ the local WIC agency
5 and the Nutrition Services Branch in writing that a request for a hearing has been received. ~~received and shall appoint~~
6 ~~a time, date, and place for the hearing within 10 days of receipt of the request.~~

7 (b) Notice of the date, time, and place of the hearing shall be given to all parties at least 10 days in advance of the
8 hearing.

9 (c) The notice to the aggrieved party shall include a stamped envelope with the return address of the agency official
10 with a request that it be returned indicating whether the date, time, and place for the hearing is satisfactory. If a
11 response is not received at least 2472 hours prior to the time proposed for the hearing, it shall be assumed that the
12 date, time, and place are satisfactory.

13 (d) The notice shall contain:

- 14 (1) a simplified explanation of the procedure for the hearing;
15 (2) a statement of the date, hour, place and nature of the hearing;
16 (3) a reference to the particular sections of the statutes and rules involved; and
17 (4) a short and plain statement of the factual allegations.

18 (e) If the ~~aggrieved party, appellant, or his or her representative,~~ indicates that ~~he-she~~ he or she desires another time
19 and date, the agency official shall set a new time and date for the hearing. The hearing shall be accessible to the
20 ~~appellant, appellant, or his or her representative.~~

21 (f) The hearing shall be held within ~~three weeks~~ 21 days from the date ~~of the receipt of the agency official receives~~
22 the request.

23
24 *History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786;*

25 *Eff. July 1, 1981;*

26 *Amended Eff. November 1, 1990;*

27 *Temporary Amendment Eff. July 1, 2002;*

28 *Amended Eff. July 1, 2004;*

29 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
30 *23, 2017; 2017.*

31 *Amended Eff. March 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0114

DEADLINE FOR RECEIPT: Friday, December 13, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 5, what is "necessary"? Is this what is required by individual rules in the Chapter? And please note the same question for "explanations"

On line 5, how will an interview be submitted via an online website? Is the intent that they be conducted online, or that there is a transcript to send?

On line 6, why do you need "official"? And what is the website address?

On line 7, under what circumstances will the Board request this?

On line 8, I am merely asking – do you need to retain "required or requested"? Why not state "Any failure to submit documents to complete..."?

In the History Note, why are you citing to G.S. 74C-12?

On line 13 of the History Note, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

1 14B NCAC 16 .0114 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in
2 34.04 NCR 290 as follows:

3
4 **14B NCAC 16 .0114 APPLICATION COMPLETION DEADLINE**

5 All necessary photographs, record checks, proof of insurance, explanations, interviews, or requested documents shall
6 be submitted online through the Board's official website by any applicant for a permit, license, registration, or
7 certificate within 60 days of the Board's receipt of the application form or a request from Board staff, whichever is
8 later. Any failure to submit required or requested documents to complete the application process within this 60-day
9 period shall void the application and require re-application.

10
11 *History Note: Authority G.S. 74C-2; 74C-5; 74C-8; 74C-8.1; 74C-12;*

12 *Eff. January 1, 2015;*

13 *Transferred and Recodified from 12 NCAC 07D .0116 Eff. July 1, 2015; December 1, 2019;*

14 *Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0201

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

In (a), line 5, do you want to state, "The Board's website" rather than "provided by the Board"?

And what is this website address?

In (a)(1), line 7, what do you mean by "classifiable"?

And I take it the address of the Board office is what is in Rule 14B .0102?

In (a)(3), line 14, where are these designated? Does your regulated public know?

In (a)(4), line 16, insert a comma after "fee," so it reads "fee, along with a four dollar..."

And I take it that this fee is allowed under G.S. 150B-19(5)(e)?

What is your authority for (a)(6)?

In (b), line 23, how is this provided? And I take it the contents of this form is what are set forth in lines 24-26?

And I take it this Paragraph is to implement G.S. 74C-8(b)(7)?

In (c), line 28, how is this form provided? And is the form simply a log to fill in the information required by this Paragraph?

In (e), how is it determined which party the applicant will meet with? Who determines it? And if it's not always a Board representative, then why on line 35 does it refer to a Board representative? (See that on line 32, you refer to a "Board representative" as one possible individual to meet with out of three possibilities, but then on line 35, you refer only to a Board representative.)

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

On lines 33 and 34, do not insert "Chapter" See Rule 26 NCAC 02C .0109(b)(1).

In the History Note, why are you citing to G.S. 74C-12?

On Page 2, line 5 of the History Note, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

1 14B NCAC 16 .0201 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in
2 34.04 NCR 290 as follows:

3
4 **14B NCAC 16 .0201 APPLICATION FOR LICENSES AND TRAINEE PERMITS**

5 (a) Each applicant for a license or trainee permit shall submit an original online application on the website provided
6 by and one copy of the application to the Board. The application shall be accompanied by:

- 7 (1) one set of classifiable fingerprints on an applicant fingerprint ~~card~~; card that shall be mailed
8 separately to the Board's office;
- 9 (2) one head and shoulders digital photograph of the applicant in ~~JPG~~ JPG, JPEG, or PNG format of
10 acceptable sufficient quality for identification, taken within six months prior to ~~submission online~~
11 application and submitted by ~~e-mail to PPSASL_Photos@ncdps.gov or by compact disc;~~ uploading
12 the photograph online with the application submission;
- 13 (3) upload online a certified statement of the results of a statewide criminal history records search by
14 the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the
15 applicant has resided within the preceding 60 months;
- 16 (4) the applicant's non-refundable application ~~fee;~~ fee along with a four dollar (\$4.00) convenience fee
17 and credit card transaction fee;
- 18 (5) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation
19 to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected
20 online by the Private Protective Services Board; and
- 21 (6) an Equifax credit check run within 30 days of the license application submission ~~date.~~ date, which
22 will be submitted to the Board's investigator during the application process.

23 (b) Applications for trainee permits shall be accompanied by a notarized statement on a form provided by the Board
24 and signed by the applicant and his or her prospective supervisor, stating that the trainee applicant shall at all times
25 work with and under the direct supervision of that ~~supervisor.~~ supervisor and the form shall be uploaded as part of the
26 online application process.

27 (c) Private investigator trainees applying for a license shall make available for inspection a log of experience on a
28 form provided by the Board.

29 (d) Each applicant must ~~provide~~ upload evidence of high school graduation either by diploma, G.E.D. certificate, or
30 other proof.

31 (e) Each applicant for a license shall meet personally with either a Board investigator, the Screening Committee, the
32 Director, or a Board representative designated by the Director prior to being issued a license. The applicant shall
33 discuss the provisions of G.S. Chapter 74C and the administrative rules in this Chapter during the personal meeting.
34 The applicant shall sign a form provided by the Board indicating that he or she has reviewed G.S. Chapter 74C and
35 the administrative rules in this Chapter with the ~~board's~~ Board's representative.

36
37 *History Note: Authority G.S. 74C-2; 74C-5; 74C-8; 74C-8.1; 74C-12;*

1 *Eff. June 1, 1984;*
2 *Amended Eff. May 1, 2012; July 1, 2011; August 1, 1998; December 1, 1995; July 1, 1987;*
3 *December 1, 1985;*
4 *Transferred and Recodified from 12 NCAC 07D .0201 Eff. July 1, 2015;*
5 *Amended Eff. November 1, 2017; December 1, 2019;*
6 *Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0202

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

In Box 9B, please delete the two sentences relating to fees, as this Rule is not establishing or increasing a fee.

In (a), line 5, insert a comma after "license"

In the History Note, line 32, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

14B NCAC 16 .0202 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in 34.04 NCR 290 as follows:

14B NCAC 16 .0202 FEES FOR LICENSES AND TRAINEE PERMITS

(a) Application, license and trainee permit fees are as follows:

- (1) one hundred and fifty dollars (\$150.00) non-refundable application fee;
- (2) two hundred fifty dollar (\$250.00) annual fee for a new or renewal license, unless the applicant is requesting a new license be issued because of a transfer to a new company, which shall require a one hundred dollar (\$100.00) fee for issuance of the new license with the original expiration date in the new company name;
- (3) two hundred fifty dollar (\$250.00) annual trainee permit fee;
- (4) fifty dollars (\$50.00) new or renewal fee per year of the license term for each license in addition to the basic license;
- (5) twenty five dollars (\$25.00) duplicate license fee per year of the license term;
- (6) one hundred dollars (\$100.00) late renewal fee in addition to the renewal fee;
- (7) one hundred dollars (\$100.00) temporary permit fee;
- (8) fifty dollars (\$50.00) branch office license fee per year of the license term; and
- (9) fifty dollars (\$50.00) special limited guard and patrol licensee fee.

(b) Fees shall be paid as follows:

- (1) ~~if the application is submitted by hand delivery, U.S. Mail, or delivery service, payment shall be in the form of a check or money order made payable to the Private Protective Services Board; or~~
- (2) ~~if the application is submitted online, payment shall be online by credit card, e-check card or other form of electronic funds transfer.~~

History Note: Authority G.S. 74C-9;

Eff. June 1, 1984;

Amended Eff. July 1, 1987; December 1, 1985;

Temporary Amendment Eff. January 1, 1990 for a period of 180 days to expire on July 1, 1990;

ARRC Objection Lodged January 18, 1990;

Amended Eff. July 1, 2010; June 1, 2009; January 1, 2004; February 1, 1995; July 1, 1990;

Transferred and Recodified from 12 NCAC 07D .0202 Eff. July 1, 2015;

Amended Eff. January 1, 2018; December 1, 2019;

Readopted Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0203

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

In (a), line 6, do you want to state, "The Board's website" rather than "provided by the Board"?

And what is this website address?

On line 6, I am only asking – you use "online" here but not in Rule .0201(a), line 6. Is this difference intentional? I am guessing so, as you are inserting "online" in (b)(1), but I wanted to ask.

In (a)(1), line 10, and (b)(3), line 26, I recommend mirroring the language in Rule .0201 and replacing "a quality sufficient" with "sufficient quality"

I also not in (a)(1) and (b)(3), in similar rules, you say, "taken within six months prior to" Do you want to mirror that language here?

In (a)(2), line 14, and (b)(4), line 30, where are these designated? Does your regulated public know?

In (a)(3), line 16, and (b)(5), line 32, please insert a comma after "fee" And I take it that this fee is allowed under G.S. 150B-19(5)(e)?

In (a)(4), line 18, as stated in G.S. 74C-10(g), this doesn't apply to trainees, correct? I suggest clarifying this.

In (b)(2), line 23, what do you mean by "classifiable"?

In (b)(7), line 37, insert a comma after "Investigations"

In the History Note, Page 2, line 11, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

1 14B NCAC 16 .0203 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in
2 34.04 NCR 290 as follows:

3
4 **14B NCAC 16 .0203 RENEWAL OR RE-ISSUE OF LICENSES AND TRAINEE PERMITS**

5 (a) Each applicant for renewal of a license or trainee permit shall submit an ~~original online and one copy of the~~
6 ~~renewal form~~ application on the website provided by the Board. This ~~form~~ online application shall be submitted to
7 ~~the Director~~ not less than 30 days prior to expiration of the applicant's current license or trainee permit and shall be
8 accompanied by:

- 9 (1) ~~a one~~ head and shoulders digital color photograph of the applicant in ~~JPG~~ JPG, JPEG, or PNG format
10 of a quality sufficient for identification, taken within six months of the online application and ~~e-mail~~
11 ~~to PPSASL Photos@ncdps.gov or by compact disc; submitted by uploading the photograph online~~
12 with the application submission;
13 (2) upload online a statement ~~statements~~ of the result of a ~~local~~ statewide criminal history records search
14 by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where
15 the applicant has resided within the preceding 24 months;
16 (3) the applicant's renewal ~~fee; and~~ fee along with a four dollar (\$4.00) convenience fee and credit card
17 transaction fee; and
18 (4) proof of liability insurance as set out in G.S. 74C-10(e).

19 (b) If a licensee has maintained a license at least two years and then allows the license to expire, the license may be
20 re-issued if application is made within three years of the expiration date and the following documentation is submitted
21 to the Board:

- 22 (1) an online Application For Reinstatement of an Expired License;
23 (2) one set of classifiable fingerprints on an applicant fingerprint ~~card; card that shall be mailed~~
24 separately to the Board's office;
25 (3) one head and shoulders digital color photograph of the applicant in ~~JPG~~ JPG, JPEG, or PNG format
26 of a quality sufficient for identification, taken within six months of the online application and
27 ~~submitted by e-mail to PPSASL Photos@ncdps.gov or by compact disc; submitted by uploading~~
28 the photograph online with the application submission;
29 (4) upload online a statement ~~statements~~ of the result of a ~~local~~ statewide criminal history records search
30 by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where
31 the applicant has resided within the preceding 60 months;
32 (5) the applicant's non-refundable application ~~fee; fee along with a four dollar (\$4.00) convenience fee~~
33 and credit card transaction fee;
34 (6) proof of liability insurance as set out in G.S. 74C-10(e); and
35 (7) ~~a separate check or money order made payable~~ payment to the State Bureau of Investigations to
36 cover the cost of criminal record checks performed by the State Bureau of ~~Investigations,~~
37 Investigations with payment to be paid online through the Board's online application process.

(c) A member of the armed forces whose license is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall receive that same extension of time to pay the license renewal fee and complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

History Note: Authority G.S. 74C-5; 74C-8; 74C-8.1; 74C-9;
Eff. June 1, 1984;
Amended Eff. October 1, 2013; May 1, 2012; October 1, 2010; November 1, 2007; January 4, 1994;
July 1, 1987; December 1, 1985;
Transferred and Recodified from 12 NCAC 07D .0203 Eff. July 1, 2015;
Amended Eff. November 1, 2017; December 1, 2019;
Readopted Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0205

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

In (a), line 6, do you want to state, "The Board's website" rather than "provided by the Board"?

Also on line 6, what is required in this form? Is it what is stated on lines 8-13?

On line 7, replace "which" with "that"

On line 8, replace "call for such information as" with "require"

Consider making the language on lines 8-13 into a list, like so:

"This application for license shall require:

- (1) the firm, association, or corporation name;*
- (2) the address..."*

On line 10, insert a comma after "suspension"

On line 12, please replace "ten" with "10"

In (b), lines 14-15, why not delete "further qualify by filing with its application for a license" and replace it with "file"?

On line 15, please capitalize "State" since you mean NC.

On line 16, I suggest breaking up this very long sentence by inserting a period after the citation. Then state "The corporation shall also file a consent...."

On line 17, replace "which" with "that"

On line 17, what is "duly" certified here?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

On line 18, who are the “proper” officers?

On line 18, replace “said” with “the”

In (c), line 20, consider replacing “ascertain” with “determine”

And I take it the language on line 20 is to ensure compliance with G.S. 74C-8(c)?

On line 20, please remove the comma after “directors”

On lines 21-28, this is reciting G.S. 74C-8(d)(2), but it slightly differs from statute in that this sets forth what is good character, whereas the statute states what is not good character. Why do you need to set this forth here, rather than relying upon the statute?

If you need to retain the language, on line 27, end the sentence after “drug.” Then begin the sentence, “For” Also, delete “means and” The sentence will state, “For the purposes of this Rule, “conviction” includes the entry of a plea...”

In (d), you state that upon satisfactory completion of the background investigation, the license “may” be issued. Under what circumstances will the Board not issue a license if the background investigation is satisfactory?

On line 30, define or delete “conspicuously” Or are you relying upon the term as used in G.S. 74C-9(b) for this term?

On line 30, “State of North Carolina” is redundant. Please either state “State” or “North Carolina” but not both.

In (e), what is the point of this? Construed by whom?

In (f), lines 33 and 34, please replace “in addition to the licensed issued to” with “and”

On line 34, please delete “Therefore” and begin the sentence “The”

In the History Note, Page 2, line 3, delete the errant “December 1, 2019;” Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

1 14B NCAC 16 .0205 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in
2 34.04 NCR 290 as follows:

3
4 **14B NCAC 16 .0205 COMPANY BUSINESS LICENSE**

5 (a) Any firm, association, or corporation required to be licensed pursuant to G.S. 74C-2(a) shall ~~submit~~ upload on the
6 website provided by the Board an application for a company business license on a form provided by the Board. Only
7 a sole proprietorship which is owned and operated by an individual licensee shall be exempt from this Rule. This
8 application for license shall call for such information as the firm, association, or corporation name; the address of its
9 principal office within the State; any past conviction for criminal offenses of any company director, or officer;
10 information concerning the past revocation, suspension or denial of a business or professional license to any director,
11 or officer; a list of all directors and officers of the firm, association, or corporation; a list of all persons, firms,
12 associations, corporations or other entities owning ten percent or more of the outstanding shares of any class of stock;
13 and the name and address of the qualifying agent.

14 (b) In addition to the items required in Paragraph (a) of this Rule, an out-of-state corporation shall further qualify by
15 filing with its application for a license, a copy of its certificate of authority to transact business in this state issued by
16 the North Carolina Secretary of State in accordance with G.S. 55-15-01 and a consent to service of process and
17 pleadings which shall be authenticated by its corporate seal and accompanied by a duly certified copy of the resolution
18 of the board of directors authorizing the proper officer or officers to execute said consent.

19 (c) After filing a completed written application with the Board, the Board shall conduct a background investigation
20 to ascertain if the qualifying agent is in a management position. The Board shall also determine if the directors, or
21 officers have the requisite good moral character as defined in G.S. 74C-8(d)(2). It shall be prima facie evidence of
22 good moral character if a director or officer has not been convicted by any local, State, federal, or military court of
23 any crime involving the use, carrying, or possession of a firearm; conviction of any crime involving the use,
24 possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic
25 beverage; conviction of a crime involving assault or an act of violence; conviction of a crime involving breaking or
26 entering, burglary, larceny, or any offense involving moral turpitude; or does not have a history of addiction to alcohol
27 or a narcotic drug; provided that, for purposes of this Rule, "conviction" means and includes the entry of a plea of
28 guilty or no contest or a verdict rendered in open court by a judge or jury.

29 (d) Upon satisfactory completion of the background investigation, a company business license may be issued. This
30 license shall be conspicuously displayed at the principle place of business within the State of North Carolina.

31 (e) The company business license shall be issued only to the business entity and shall not be construed to extend to
32 the licensing of its officers and employees.

33 (f) The issuance of the company business license is issued to the firm, association, or corporation in addition to the
34 license issued to the qualifying agent. Therefore, the qualifying agent for the firm, association, or corporation which
35 has been issued the company business license shall be responsible for assuring compliance with G.S. 74C.

36
37 *History Note: Authority G.S. 74C-2(a); 74C-5;*

1 *Eff. April 1, 1993;*
2 *Amended Eff. February 1, 1995;*
3 *Transferred and Recodified from 12 NCAC 07D .0205 Eff. July 1, 2015; December 1, 2019;*
4 *Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0502

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

I note that in the Submission for Permanent Rule form, Box 9B, you state that you are amending the Rule to allow for online submission of the application. However, you are not doing that here; instead, you are only updating the list of approved schools in (1).

On line 5, delete the comma after "of" and insert a comma after "Chapter"

In Item (1), line 9, I suggest inserting a comma after "Polygraphists"

And how will the Board approve these schools? Is that addressed by other rules in the Chapter?

In Item (3), lines 16 and 18, I suggest replacing "such" with "the"

In Item (4), line 21, delete the comma after "trainee"

In Item (6), line 26, how is this checklist provided by the Board? And what are the contents? Are they provided for in another Rule or law?

In the History Note, line 31, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 2, 2019

14B NCAC 16 .0502 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in 34.04 NCR 290 as follows:

14B NCAC 16 .0502 POLYGRAPH TRAINEE PERMIT REQUIREMENTS

In addition to the requirements of, Section .0200 of this Chapter the following requirements shall apply to polygraph trainees:

- (1) The applicant shall successfully complete a formal course of instruction at any polygraph school approved by the American Polygraph Association, the American Association of Police Polygraphists or the Board. A list of approved schools can be found at: ~~<http://www.ncdoj.gov/AboutDOJ/Law—EnforcementTrainingandStandards/PrivateProtectiveServices/LicensingProcess.aspx>~~; <https://www.ncdps.gov/list-polygraph-schools>;
- (2) The applicant shall be directly supervised by a polygraph examiner approved by the Board and that examiner shall supervise no more than three trainees at any given time;
- (3) An individual currently enrolled in a polygraph school may conduct examinations as a part of the course curriculum provided such examinations are on school premises, under the direct one-on-one supervision of a polygraph licensee, and the school provides written notice to the client that such examinations are being conducted by students and not by licensed polygraph examiners. The school shall maintain a copy of such written notification;
- (4) Trainees who wish to apply for a license must submit an application to the Board in accordance with Rule .0201 of this Chapter. Applicants meeting license qualifications within one year of the issuance of a trainee, permit shall not be required to pay an additional application fee;
- (5) Any request for renewal of a trainee permit or for issuance of a polygraph license shall be accompanied by an evaluation report of the trainee's performance submitted by the trainee's supervisor; and
- (6) In addition to the final evaluation report, supervisors shall submit five monthly evaluation reports over the duration of the traineeship on a checklist provided by the Board.

*History Note: Authority G.S. 74C-5;
Eff. June 1, 1984;
Amended Eff. May 1, 2014; December 1, 1985;
Transferred and Recodified from 12 NCAC 07D .0502 Eff. July 1, 2015; December 1, 2019;
Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0701

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

In (a), line 5, do you want to mirror the language in Rule .0801 and state "Each unarmed security employer"? (In Rule .0801, you state, "Each armed security employer" and since the name of the rule is not part of the rule, this would clarify which employer you are referring to.)

Also on line 5, state "his or her"

Also on line 5, how is this done? Is it via a website? If so, what is this website address?

In (a)(1), line 7, what do you mean by "classifiable"? Is this language to mimic G.S. 74C-11(a)(1)?

And I take it on line 8 that the address of the Board office is what is in Rule 14B .0102?

In (a)(2), I note that this language differs slightly from the language in Rule .0201(a)(2). (For example, the term "submission" on line 11 is not used in Rule .0201) I take it this difference is intentional?

In (a)(3), line 14, where are these designated? Does your regulated public know?

On line 15, what is your authority to require a 60-month period? G.S. 74C-11(a)(2) requires only through 48 months.

§ 74C-11. Probationary employees and registration of regular employees; unarmed security guard required to have registration card.

(a) All licensees may employ unarmed security guards as probationary employees for 20 consecutive calendar days. Upon completion of the probationary period and the desire of the licensee to hire an unarmed security guard as a regular employee, the licensee shall register the employee who will be engaged in providing private protective services covered by this Chapter with the Board within 30 days after the probationary

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

employment period ends, unless the Director, in the Director's discretion, extends the time period, for good cause. Before a probationary employee engages in private protective services, the employee shall complete any training requirements, and the licensee shall conduct a criminal record check on the employee, as the Board deems appropriate. The licensee shall submit a list of the probationary employees to the Director on a monthly basis. The list shall include the name, address, social security number, and dates of employment of the employees.

To register an employee after the probationary period ends, a licensee must give the Board the following:

- (1) Set(s) of classifiable fingerprints on standard F.B.I. applicant cards; recent photograph(s) of acceptable quality for identification; and
- (2) Statements of any criminal records obtained from the appropriate authority in each area where the employee has resided within the immediately preceding 48 months.

In (a)(4), line 16, insert a comma after "fee," so it reads "fee, along with a four dollar..."

In (a)(7), line 23, what is "successfully" here?

On line 24, when will this training not be applicable?

What are the documents in (a)(8)? What are the contents? Where are these found?

In (b), line 27, I suggest inserting a "the" before "affidavit", so it reads, "application, including the affidavit, in the ..."

In (d), line 34, replace "specified in" with "required by"

In the History Note, Page 2, line 5, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

1 14B NCAC 16 .0701 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in
2 34.04 NCR 290 as follows:

3
4 **14B NCAC 16 .0701 APPLICATION FOR UNARMED SECURITY GUARD REGISTRATION**

5 (a) Each employer or his designee shall submit ~~and sign an application form~~ an online application for the registration
6 of each employee to the Board. This online submission form shall be accompanied by:

- 7 (1) one set of classifiable fingerprints on an applicant fingerprint ~~card~~; card that shall be mailed
8 separately to the Board's office;
- 9 (2) ~~two one~~ one head and shoulders color digital ~~photograph~~ photographs of the applicant in ~~JPG~~ JPG,
10 JPEG, or PNG format of ~~acceptable~~ sufficient quality for identification, taken within six months
11 prior to online application submission and submitted by ~~e-mail to PPSASL Photos@ncdps.gov or~~
12 ~~by compact disc~~; uploading the photograph online with the application submission;
- 13 (3) ~~a certified statement~~ upload online a statement of the results of a statewide criminal history records
14 search ~~from~~ by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each
15 state where the applicant has resided within the preceding 60 months;
- 16 (4) the applicant's non-refundable registration ~~fee; and~~ fee along with a four dollar (\$4.00) convenience
17 fee and credit card transaction fee;
- 18 (5) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation
19 to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected
20 online by the Private Protective Services ~~Board~~; Board;
- 21 (6) one original signed SBI release of information form that shall be uploaded online with the original
22 mailed to the Board's administrative office;
- 23 (7) a statement signed by a certified trainer that the applicant has successfully completed the training
24 requirements of Rule .0707 of this Section if applicable; and
- 25 (8) a completed affidavit form and public notice statement form.

26 (b) The employer of each applicant for registration shall give the applicant a copy of the application and the completed
27 affidavit form and shall retain a copy of the ~~application~~ application, including affidavit, in the ~~individual's~~ guard's
28 personnel file in the employer's office.

29 (c) The applicant's copy of the application and completed affidavit form shall serve as a temporary registration card
30 that shall be carried by the applicant when he or she is working within the scope of his or her employment and ~~that~~
31 shall be exhibited upon the request of any law enforcement officer or authorized representative of the Board.

32 ~~(d) A statement signed by a certified trainer that the applicant has successfully completed the training requirements~~
33 ~~of Rule .0707 of this Section shall be submitted to the Director with the online application.~~

34 ~~(e)(d)~~ A copy of the statement specified in ~~Paragraph (d)~~ Subparagraph (a)(7) of this Rule shall be retained by the
35 licensee in the individual applicant's personnel file in the employer's office.

36
37 *History Note: Authority G.S. 74C-5; 74C-8.1; 74C-11;*

1 *Eff. June 1, 1984;*
2 *Amended Eff. May 1, 2012; July 1, 2011; August 1, 1998; December 1, 1995; June 1, 1994;*
3 *February 1, 1990; May 1, 1988;*
4 *Transferred and Recodified from 12 NCAC 07D .0701 Eff. July 1, 2015;*
5 *Amended Eff. November 1, 2017; December 1, 2019;*
6 *Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0702

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

In (a), I am confused – is the \$4 an extra fee, or is it included in the fee amounts in (a)(1) through (4)? If this is in addition to the fee, then why not state "along with" like you did in previous rules?

And I take it you are relying upon G.S. 150B-19(5) as authority to set this fee?

In (b), I am only noting that in Rule .0202 you use slightly different language, and state "Fees shall be paid online" I take it the difference here is intentional?

In the History Note, line 25, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

1 14B NCAC 16 .0702 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in
2 34.04 NCR 290 as follows:

3
4 **14B NCAC 16 .0702 FEES FOR UNARMED SECURITY GUARD REGISTRATION**

5 (a) Fees for unarmed security guards are as ~~follows:~~ follows, to include a four dollar (\$4.00) convenience fee and
6 credit card transaction fee:

- 7 (1) thirty dollar (\$30.00) non-refundable initial registration fee;
8 (2) thirty dollar (\$30.00) annual renewal, or reissue fee;
9 (3) fifteen dollar (\$15.00) transfer fee; and
10 (4) twenty-five dollars (\$25.00) late renewal fee to be paid within 90 days from the date the registration
11 expires and to be paid in addition to the renewal fee.

12 (b) Fees shall be ~~paid as follows:~~

- 13 (1) ~~if the application is submitted by hand delivery, U.S. Mail, or delivery service, payment shall be in~~
14 ~~the form of a check or money order made payable to the Private Protective Services Board; or~~
15 (2) ~~if the application is submitted online, payment shall be by credit card, e-check card or other~~
16 ~~form of electronic funds transfer.~~

17
18 *History Note: Authority G.S. 74C-9;*
19 *Eff. June 1, 1984;*
20 *Amended Eff. December 1, 1985;*
21 *Temporary Amendment Eff. January 1, 1990 for a Period of 180 Days to Expire on July 1, 1990;*
22 *ARRC Objection Lodged January 18, 1990;*
23 *Amended Eff. July 1, 2010; May 1, 2010; December 1, 2003; July 1, 1990;*
24 *Transferred and Recodified from 12 NCAC 07D .0702 Eff. July 1, 2015;*
25 *Amended Eff. January 1, 2018; December 1, 2019;*
26 *Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0705

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

In (b), line 8, what is an "authorized representative of the Board"?

In (c), line 9, define "immediately"

Also on line 9, what is "information relating to the holder's eligibility to continue holding such a card"?

In (d), line 11, so that I'm clear – is this fee what is in Rule .0702(a)(3)?

In the History Note, line 19, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

1 14B NCAC 16 .0705 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in
2 34.04 NCR 290 as follows:

3
4 **14B NCAC 16 .0705 UNARMED SECURITY GUARD REGISTRATION IDENTIFICATION CARDS**

5 (a) The registration identification card shall be carried by the registrant when performing the duties of a private
6 protective services employee.

7 (b) The registration identification card shall be exhibited upon the request of any law enforcement officer or any other
8 authorized representative of the Board.

9 (c) Registration identification card holders shall immediately notify the Board upon receipt of any information relating
10 to the holder's eligibility to continue holding such a card.

11 (d) The guard transfer online form and fee shall be submitted to the Board by the employer within 10 days of the
12 beginning of employment.

13 (e) Upon revocation or suspension by the Board, a holder shall return the registration identification card to the
14 administrator within 10 days of the date of the revocation or suspension.

15
16 *History Note: Authority G.S. 74C-5; 74C-11;*

17 *Eff. June 1, 1984;*

18 *Amended Eff. December 1, 1985;*

19 *Transferred and Recodified from 12 NCAC 07D .0705 Eff. July 1, 2015; December 1, 2019;*

20 *Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0706

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 2, there is no need to strike the part of the name you are repealing. Please submit a new form with just the new name. (Please note, continue to show the change on the Rule itself)

Also on the form in Box 3, please check "Amendment" in addition to readoption.

In (a), line 6, do you want to state, "The Board's website" rather than "provided by the Board"?

And what is this website address?

In (a)(2), line 13, where are these designated? Does your regulated public know?

In (a)(3), line 15, please insert a comma after "fee" And I take it that this fee is allowed under G.S. 150B-19(5)(e)?

On line 16, should this be "transaction" (singular) to mirror the language in the other rules?

In (a)(4), lines 19 and 20, what are these forms? What are the contents? How does one get them?

In the History Note, Page 2, line 5, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

14B NCAC 16 .0706 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in 34.04 NCR 290 as follows:

14B NCAC 16 .0706 RENEWAL ~~OR REISSUE~~ OF UNARMED SECURITY GUARD REGISTRATION

(a) Each applicant for renewal of a registration identification card or his or her employer shall complete ~~a~~ an online form on the website provided by the Board. This online form shall be submitted not fewer than ~~30~~ 90 days prior to the expiration of the applicant's current registration and shall be accompanied by:

- (1) ~~two one~~ head and shoulders color digital ~~photograph~~ photographs of the applicant in ~~JPG~~ JPG, JPEG, or PNG format of ~~acceptable~~ sufficient quality for identification, taken within six months prior to ~~submission~~ online application and submitted by ~~e-mail to PPSASL-Photos@ncdps.gov or by compact disc;~~ uploading the photograph online with the application submission;
- (2) upload online a statement of the results of a statewide ~~statements of any~~ criminal history records search record obtained from ~~by~~ the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 12 months;
- (3) the applicant's renewal fee; fee along with the four dollar (\$4.00) convenience fee and credit card transactions fee; and
- (4) ~~the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.~~ upload a completed affidavit form and public notice statement form.

~~(b) Each applicant for reissue of a registration identification card shall complete, and his or her employer shall sign, a form provided by the Board. This form shall be submitted to the Board and accompanied by:~~

- ~~(1) two head and shoulders color digital photographs of the applicant in JPG format of acceptable quality for identification, taken within six months prior to submission and submitted by e-mail to PPSASL-Photos@ncdps.gov or by compact disc; and~~
- ~~(2) the applicant's reissue fee.~~

~~(b)(e)~~ The employer of each applicant for a registration renewal ~~or reissue~~ shall give the applicant a copy of the online application that shall and a copy of the completed affidavit form to serve as a record of application for renewal ~~or reissue~~ and shall retain a copy of the ~~application~~ application, including affidavit, in the ~~individual's guard's~~ individual's personnel file in the employer's office.

~~(c)(d)~~ Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall receive that same extension of time to pay the registration renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

History Note: Authority G.S. 74C-5; 74C-11;

1 *Eff. June 1, 1984;*
2 *Amended Eff. May 1, 2012; October 1, 2010; December 1, 1995; February 1, 1990; July 1, 1987;*
3 *December 1, 1985;*
4 *Transferred and Recodified from 12 NCAC 07D .0706 Eff. July 1, 2015;*
5 *Amended Eff. November 1, 2017; December 1, 2019;*
6 *Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0801

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

In (a), I note that the language here differs slightly from Rule .0701. For example, on line 6, it says "shall submit an online application for the registration..." And on line 7, it states, "online application" rather than "online form" Is this difference intentional?

In (a)(1), line 9, what is "classifiable"?

In (a)(3), where are these designated? Does your regulated public know?

What is the difference between the fee in (a)(4) and (a)(7)?

In (a)(5), line 19, what is "successfully"?

On line 20, delete the "and"

In (a)(6), what is your authority to set this age limit, given G.S. 93B-9?

In (a)(7), line 22, please insert a comma after "Section"

In (a)(9), what are these forms? What are the contents of them? How are they obtained?

On Page 2, Paragraph (e), what does this mean? What is it intended to accomplish?

In the History Note, line 4, why are you citing to G.S. 74C-9? You do not cite to this in Rule .0701. If you need to retain it, please correct the citation and remove the space between "74" and "C" in 74C-9.

Also in the History Note, line 9, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 2, 2019

14B NCAC 16 .0801 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in 34.04 NCR 290 as follows:

14B NCAC 16 .0801 APPLICATION/ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

(a) Each armed security guard employer or his or her designee shall ~~submit and sign~~ complete an online application form for the registration of each armed security guard applicant to the Board. This online form shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant fingerprint ~~card~~; card that shall be mailed separately to the Board's office;
- (2) ~~two~~ one head and shoulders color digital photograph ~~photographs~~ of the applicant in ~~JPG~~ JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to ~~submission~~ online application and submitted by ~~e-mail to PPSASL Photos@ncdps.gov or by compact disc;~~ uploading the photograph online with the application submission;
- (3) ~~a certified statement~~ upload online a statement of the results of a statewide criminal history records search ~~from~~ by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 60 months;
- (4) the applicant's non-refundable registration fee; ~~and~~
- (5) a statement signed by a certified trainer that the applicant has successfully completed the training requirements of Rule .0807 of this Section; and
- (6) a certification by the applicant that he or she is at least 21 years of ~~age~~; age;
- (7) the registration fee required by Rule .0802 of this Section along with a four dollar (\$4.00) convenience fee and credit card transaction fee;
- (8) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected online by the Private Protective Services Board; and
- (9) a completed affidavit form and public notice statement form.

(b) The employer of each applicant for registration shall give the applicant a copy of the online application, the completed affidavit form, and proof of completion of a Board approved firearms course and shall retain a copy of the ~~application~~ application, including affidavit and proof of course completion, in the ~~individual's guard's~~ individual's personnel file in the employer's office.

(c) The applicant's copy of the ~~application~~ application, affidavit, and proof of completion of a Board approved firearms course shall serve as a temporary registration card that shall be carried by the applicant when he or she is working within the scope of his or her employment and ~~that~~ shall be exhibited upon the request of any law enforcement officer or authorized representative of the Board.

(d) Applications submitted without proof of completion of a Board approved firearms training course shall not serve as temporary registration cards.

(e) The provisions of Paragraphs (a), (b), and (c) of this Rule also apply to any employee whose employment is terminated within 30 days of employment.

History Note: Authority G.S. 74C-5; 74 C-9; 74C-13;
Eff. June 1, 1984;
Amended Eff. May 1, 2012; April 1, 2008; August 1, 1998; December 1, 1995; February 1, 1990;
May 1, 1988; July 1, 1987;
Transferred and Recodified from 12 NCAC 07D .0801 Eff. July 1, 2015;
Amended Eff. November 1, 2017; December 1, 2019;
Readopted Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0802

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

In (a), I am confused – is the \$4 an extra fee, or is it included in the fee amounts in (a)(1) through (4)? If this is in addition to the fee, then why not state "along with" like you did in previous rules?

And I take it you are relying upon G.S. 150B-19(5) as authority to set this fee?

In (b), I am only noting that you are using "paid online" like you state in Rule .0202, but it is different from Rule .0702, which states "Fees shall be submitted online." Did you want all three to read the same?

In the History Note, line 23, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

14B NCAC 16 .0802 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in 34.04 NCR 290 as follows:

14B NCAC 16 .0802 FEES FOR ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

(a) Fees for armed security guard firearm registration permits are as ~~follows:~~ follows, to include a four dollar (\$4.00) convenience fee and credit card transaction fee:

- (1) thirty dollars (\$30.00) non-refundable initial registration fee;
- (2) thirty dollars (\$30.00) annual renewal, or reissue fee; and
- (3) fifteen dollar (\$15.00) application fee.

(b) Fees shall be paid ~~as follows:~~

- ~~(1) if the application is submitted by hand delivery, U.S. Mail, or delivery service, payment shall be in the form of a check or money order made payable to the Private Protective Services Board; or~~
- ~~(2) if the application is submitted online, payment shall be online by credit card, ~~e-check~~ card or other form of electronic funds transfer.~~

History Note: Authority G.S. 74C-9;

Eff. June 1, 1984;

Amended Eff. December 1, 1985;

Temporary Amendment Eff. January 1, 1990 for a Period of 180 Days to Expire on July 1, 1990;

ARRC Objection Lodged January 18, 1990;

Amended Eff. July 1, 2010; December 1, 2003; July 1, 1990;

Transferred and Recodified from 12 NCAC 07D .0802 Eff. July 1, 2015;

Amended Eff. January 1, 2018; December 1, 2019;

Readopted Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0806

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Please note, this Rule is not being readopted, as it was already readopted effective November 1, 2019. As such:

On the Submission for Permanent Rule form:

- *Box 3, please check "Amendment" and delete "Readoption"*
- *Box 6, give only the Register information for the amendment, which was the August 15, 2019 publication date and August 30, 2019 hearing.*
- *In Box 9B, delete the reference to the readoption.*

In the Rule:

- *Change the Introductory Statement to reflect that this is an amendment only.*
- *You are not reflecting the language that is currently in the NC Administrative Code. Go to the Code and pull that version of the Rule, and then show all changes you want to make to that language. (For example, you are missing all of Paragraph (e) that you added, effective November 1)*
- *Be sure to include the updated History Note from the Code.*

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

14B NCAC 16 .0806 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in 34.04 NCR 290 as follows:

14B NCAC 16 .0806 RENEWAL OF ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

(a) Each applicant for renewal of an armed security guard firearm registration permit identification card or his or her employer shall complete ~~a~~ an online form on the website provided by the Board. This online form shall be submitted not more than 90 days nor fewer than 30 days prior to expiration of the applicant's current armed registration and shall be accompanied by:

- (1) ~~two one~~ one head and shoulders color digital photograph ~~photographs~~ of the applicant in ~~JPG~~ JPG, JPEG, or PNG format of acceptable quality for identification, taken within six months prior to ~~submission~~ online application and submitted by ~~e-mail to PPASL-Photos@ncdps.gov or by compact disc;~~ uploading the photograph online with the application submission;
- (2) ~~statement~~ upload online a statement of the results of a statewide of any criminal record history search obtained ~~from~~ by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 12 months;
- (3) the applicant's renewal ~~fee and fee~~ along with the four dollar (\$4.00) convenience fee and credit card transaction fee;
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected online by the Private Protective Services ~~Board.~~ Board; and
- (5) a statement signed by a certified trainer that the applicant has successfully completed the training requirements of Rule .0807 of this Section; and
- (6) a completed affidavit form and public notice statement form.

(b) The employer of each applicant for a registration renewal shall give the applicant a copy of the online application ~~and the completed affidavit form that shall~~ to serve as a record of application for renewal and shall retain a copy of the application in the ~~individual's~~ guard's personnel file in the employer's office.

~~(c) Applications for renewal shall be accompanied by a statement signed by a certified trainer that the applicant has successfully completed the training requirements of Rule .0807 of this Section.~~

~~(d)~~ (c) Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall receive that same extension of time to pay the registration renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

*History Note: Authority G.S. 74C-5; 74C-11; 74C-13;
Eff. June 1, 1984;*

1 *Amended Eff. May 1, 2012; October 1, 2010; December 1, 1995; February 1, 1990; December 1,*
2 *1985;*
3 *Transferred and Recodified from 12 NCAC 07D .0806 Eff. July 1, 2015;*
4 *Amended Eff. January 1, 2018; November 1, 2017; December 1, 2019;*
5 *Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0902

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

I note that this language differs slightly from other application rules, such as Rule .0201. For example, on line 6, you do not say "The online application" like you do in Rule .0201. I take it these differences are intentional?

On line 6, how is this online application made? Is there a website you wish to add?

In (a)(1), line 7, what is "classifiable"?

In (a)(3), how does your regulated public know which services have been designated

In (a)(5), line 19, insert a comma after "fee"

In (a)(6), line 21, did you mean Rule .0901(a)(3) and (4)? Please insert the correct citation.

On line 22, insert a comma after "Section" and replace "indicating" with "stating"

In the History Note, line 35, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

1 14B NCAC 16 .0902 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in
2 34.04 NCR 290 as follows:

3
4 **14B NCAC 16 .0902 APPLICATION FOR FIREARMS TRAINER CERTIFICATE**

5 Each applicant for a firearms trainer certificate shall submit an ~~original and one copy of the~~ online application to the
6 Board. The application shall be accompanied by:

- 7 (1) one set of classifiable fingerprints on an applicant fingerprint ~~card;~~ card that shall be mailed
8 separately to the Board's office;
- 9 (2) one head and shoulders color digital photograph of the applicant in ~~JPG~~ JPG, JPEG, or PNG format
10 of adequate sufficient quality for identification, taken within six months prior to online submission
11 and submitted by ~~e-mail to PPSASL-Photos@ncdps.gov or by compact disc~~ uploading online with
12 the application submission;
- 13 (3) ~~a certified statement~~ upload online a statement of the ~~result~~ results of a statewide criminal history
14 records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each
15 state where the applicant has resided within the preceding 60 months;
- 16 (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation
17 to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected
18 online by the Private Protective Services Board;
- 19 (5) the applicant's non-refundable ~~registration fee;~~ application fee along with a four dollar (\$4.00)
20 convenience fee and credit card transaction fee;
- 21 (6) a certificate of successful completion of the training required by Rule .0901(3) and (4) of this
22 ~~Section. This training shall have been completed~~ Section indicating the training was completed
23 within 60 days of the submission of the application; application and uploaded online as part of the
24 online application process; and
- 25 (7) the actual cost charged to the Private Protective Services Board by the North Carolina Justice
26 Academy to cover the cost of the firearms training course given by the N.C. Justice Academy and
27 collected as part of the online application process by the Private Protective Services Board.

28
29 *History Note: Authority G.S. 74C-5; 74C-8.1(a); 74C-13;*
30 *Eff. June 1, 1984;*
31 *Amended Eff. August 1, 1998; December 1, 1995; July 1, 1987; December 1, 1985;*
32 *Temporary Amendment Eff. July 17, 2001;*
33 *Amended Eff. January 1, 2013; May 1, 2012; August 1, 2002;*
34 *Transferred and Recodified from 12 NCAC 07D .0902 Eff. July 1, 2015;*
35 *Amended Eff. November 1, 2017; December 1, 2019;*
36 *Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0903

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

Also on the form, in Boxes 7 and 9B, you state that this Rule establishes or increases a fee. However, you are not doing so with the proposed changes.

In (b), I am only noting that you are using "paid online" like you state in Rules .0202 and .0802, but it is different from Rule .0702, which states "Fees shall be submitted online." Did you want all of these Rules to read the same?

In the History Note, line 19, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

1 14B NCAC 16 .0903 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in
2 34.04 NCR 290 as follows:

3
4 **14B NCAC 16 .0903 FEES FOR TRAINER CERTIFICATE**

5 (a) Trainer certificate fees are as follows:

- 6 (1) forty dollar (\$40.00) non-refundable initial application fee for firearms trainer applicants;
7 (2) twenty-five dollar (\$25.00) non-refundable initial application fee for an unarmed trainer applicant;
8 (3) twenty-five dollar (\$25.00) biennial fee for a renewal or replacement trainer certificate.

9 (b) Fees shall be paid ~~as follows:~~

- 10 ~~(1) if the application is submitted by hand delivery, U.S. Mail, or delivery service, payment shall be in~~
11 ~~the form of a check or money order made payable to the Private Protective Services Board; or~~
12 ~~(2) if the application is submitted online, payment shall be online by credit card, e-check card or other~~
13 ~~form of electronic funds transfer.~~

14
15 *History Note: Authority G.S. 74C-9;*
16 *Eff. June 1, 1984;*
17 *Amended Eff. January 1, 2005; January 1, 2004;*
18 *Transferred and Recodified from 12 NCAC 07D .0903 Eff. July 1, 2015;*
19 *Amended Eff. January 1, 2018; December 1, 2019;*
20 *Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0904

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Please note, this Rule is not being readopted, as it was already readopted effective November 1, 2019. As such:

On the Submission for Permanent Rule form:

- *Box 3, please check "Amendment" and delete "Readoption"*
- *Box 6, give only the Register information for the amendment, which was the August 15, 2019 publication date and August 30, 2019 hearing.*
- *In Box 9B, delete the reference to the readoption.*

In the Rule:

- *Change the Introductory Statement to reflect that this is an amendment only.*
- *You are not reflecting the language that is currently in the NC Administrative Code. Go to the Code and pull that version of the Rule, and then show all changes you want to make to that language. (For example, you are missing all of Paragraphs (c) and (d) that you added, effective November 1)*
- *Be sure to include the updated History Note from the Code.*

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

1 14B NCAC 16 .0904 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in
2 34.04 NCR 290 as follows:

3
4 **14B NCAC 16 .0904 RENEWAL OF A FIREARMS TRAINER CERTIFICATE**

5 (a) Each applicant for renewal of a firearms trainer certificate shall complete ~~a~~ an online renewal form on the website
6 provided by the Board and available on its website at www.ncdps.gov/PPS. Board. This form shall be submitted online
7 not less than 30 days prior to the expiration of the applicant's current certificate and shall be accompanied by:

- 8 (1) ~~certification~~ uploaded online a certificate of the successful completion of a firearms trainer refresher
9 course approved by the Board and the Secretary of Public Safety consisting of a minimum of eight
10 hours of classroom and practical range training in safety and maintenance of the applicable firearm
11 (i.e. handgun, shotgun or rifle), range operations, control and safety procedures, and methods of
12 firing. This training shall be completed within 180 days of the submission of the renewal application;
13 (2) ~~a certified statement~~ uploaded online a statement of the ~~result~~ results of a criminal history records
14 search ~~from~~ by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each
15 state where the applicant has resided within the preceding 48 months;
16 (3) the applicant's renewal ~~fee;~~ fee along with the four dollar (\$4.00) convenience fee and credit card
17 transaction fee; and
18 (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation
19 to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected
20 online by the Private Protective Services Board.

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

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

28 *Eff. June 1, 1984;*

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

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

32 *Amended Eff. February 1, 2016; October 1, 2015;*

33 *Amended Eff. November 1, 2017; December 1, 2019;*

34 *Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0909

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Please note, this Rule is not being readopted, as it was already readopted effective November 1, 2019. As such:

On the Submission for Permanent Rule form:

- *Box 3, please check "Amendment" and delete "Readoption"*
- *Box 6, give only the Register information for the amendment, which was the August 15, 2019 publication date and August 30, 2019 hearing.*
- *In Box 9B, delete the reference to the readoption.*

In the Rule:

- *Change the Introductory Statement to reflect that this is an amendment only.*
- *You are not reflecting the language that is currently in the NC Administrative Code. Go to the Code and pull that version of the Rule, and then show all changes you want to make to that language. Please recall, you added a new Paragraph (e) and you had to change language to satisfy RRC objection. This language must be included in the version you are proposing to amend.*
- *Be sure to include the updated History Note from the Code.*

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

1 14B NCAC 16 .0909 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in
2 34.04 NCR 290 as follows:

3
4 **14B NCAC 16 .0909 UNARMED TRAINER CERTIFICATE**

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

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

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

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

29 (c) In lieu of the experience requirement of Subparagraph (a)(2) of this Rule and completing the training course set
30 forth in Subparagraph (a)(3) of this Rule, an applicant may establish that the applicant satisfies the conditions set forth
31 in G.S. 93B-15.1(a) for an unarmed trainer and two years of verifiable experience within the past five years in the
32 U.S. Armed forces as an unarmed guard trainer.

33 (d) In addition to the requirements of Section .0200 of this Chapter, an applicant for an unarmed guard trainer
34 certificate that is the spouse of an active duty member of the U.S. Armed Forces shall establish that the applicant
35 satisfies the conditions set forth in G.S. 93B-15.1(b).

36 (e) An Unarmed Trainer Certificate shall expire two years after the date of issuance.
37

1 *History Note:* *Authority G.S. 74C-8; 74C-9; 74C-11; 93B-15.1;*
2 *Eff. October 1, 2004;*
3 *Amended Eff. October 1, 2013; January 1, 2013; January 1, 2008;*
4 *Transferred and Recodified from 12 NCAC 07D .0909 Eff. July 1, 2015;*
5 *Amended Eff. October 1, 2015; December 1, 2019;*
6 *Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0910

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

On line 5, how is this submitted? Is there a website you wish to include?

In Item (1), line 7, please insert a comma after "Section"

In Item (2), consider stating "required training."

In the History Note, line 16, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

14B NCAC 16 .0910 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in 34.04 NCR 290 as follows:

14B NCAC 16 .0910 APPLICATION FOR AN UNARMED TRAINER

Each applicant for an unarmed trainer certificate shall submit an online application to the Board. The application shall be accompanied by:

- (1) the certified trainer application fee established in Rule .0903(a)(2) of this ~~Section and~~ Section along with a four dollar (\$4.00) convenience fee and credit card transaction fee; and
- (2) a certificate of successful completion of the training required. This training shall have been completed within 120 days of the submission of the application or current certificate of other acceptable certification as set forth in Rule .0909(b) of this Section.

*History Note: Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13;
Eff. October 1, 2004;
Amended Eff. January 1, 2013;
Transferred and Recodified from 12 NCAC 07D .0910 Eff. July 1, 2015; December 1, 2019;
Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0911

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

In (a), line 6, why are you saying, "a website provided by the Board"? Can you not provide a url?

In (a)(2), line 10, is this requirement for 16 hours (and what that entails, including how it is Board approved) in another Rule?

In (a)(3), line 13, what are the contents of this form?

In the History Note, why are you citing to G.S. 74C-9 and 74C-13 (as that pertains to armed licensees and this rule is for unarmed trainers)?

Also in the History Note, line 23, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

14B NCAC 16 .0911 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in 34.04 NCR 290 as follows:

14B NCAC 16 .0911 RENEWAL OF AN UNARMED TRAINER CERTIFICATE

(a) Each applicant for renewal of an unarmed trainer certificate shall complete ~~a board~~ an online renewal ~~form~~ form on the website provided by the Board. This form shall be submitted online not less than 30 days prior to the expiration of the applicant's current certificate. In addition, the applicant shall include the following:

- (1) the renewal fee set forth in Rule .0903(a)(3) of this ~~Section~~; Section and collected online as part of the application process;
- (2) ~~certification~~ a certificate of completion of a minimum of 16 hours of Board approved armed or unarmed instruction performed during the current unarmed trainer certification period; and
- (3) a statement verifying the classes taught during the current unarmed trainer certification period on a form ~~prescribed~~ provided by the Board. Board as part of the online application process.

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

History Note: Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13;

Eff. August 1, 2004;

Amended Eff. January 1, 2013; October 1, 2010; January 1, 2008;

Transferred and Recodified from 12 NCAC 07D .0911 Eff. July 1, 2015; December 1, 2019;

Readopted Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0912

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

In the History Note, line 10, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

1 14B NCAC 16 .0912 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in
2 34.04 NCR 290 as follows:

3
4 **14B NCAC 16 .0912 ROSTERS OF UNARMED TRAINER CLASSES**

5 Each unarmed trainer shall ~~send to the Board training officer, by e-mail,~~ upload on the Board's website all rosters of
6 classes taught during the current unarmed trainer certification period by June 30 and by December 31 of each year.

7
8 *History Note: Authority G.S. 74C-5; 74C-13;*

9 *Eff. January 1, 2013;*

10 *Transferred and Recodified from 12 NCAC 07D .0912 Eff. July 1, 2015; December 1, 2019;*

11 *Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .1301

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

In (a), I note that the language here differs slightly from Rule .0801. For example, on line 7, you state, "online form" but in Rule .0801, it says "online submission" Should these read the same?

In (a)(1), line 8, what is "classifiable"?

In (a)(3), where are these designated? Does your regulated public know?

In (a)(4), line 17, please insert a comma after "fee"

In (a)(6), line 22, what is "successfully"?

On line 23, when will this training not be applicable? And please insert a comma after "Section"

In (a)(7), what are these forms? What are the contents of them? How are they obtained?

In the History Note, Page 2, line 2, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

14B NCAC 16 .1301 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in 34.04 NCR 290 as follows:

14B NCAC 16 .1301 APPLICATION FOR UNARMED ARMORED CAR SERVICE GUARD REGISTRATION

(a) Each armored car employer or his designee shall submit ~~and sign~~ an online application form for the registration of each unarmed armored car service guard employee to the Board. This online form shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant fingerprint ~~card~~; card that shall be mailed separately to the Board's office;
- (2) ~~two one~~ head and shoulders color digital ~~photograph~~ photographs of the applicant in ~~JPG~~ JPG, JPEG, or PNG format of ~~acceptable~~ sufficient quality for identification, taken within six months prior to online ~~submission~~ application and submitted by ~~e-mail to PPSASL Photos@ncdps.gov or by compact disc;~~ uploading the photograph online with the application submission;
- (3) ~~a certified statement~~ upload online a statement of the result of a statewide criminal history records search ~~from~~ by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 60 months;
- (4) the applicant's non-refundable registration ~~fee; and fee along with a four dollar (\$4.00) convenience fee and credit card transaction fee;~~
- (5) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected online by the Private Protective Services ~~Board.~~ Board;
- (6) a statement signed by a certified trainer that the applicant has successfully completed the training requirements of Rule .1307 of this Section if applicable; and
- (7) a completed affidavit form and public notice statement form.

(b) The employer of each applicant for registration shall give the applicant a copy of the online application and completed affidavit and shall retain a copy of the ~~application~~ application, including affidavit, in the ~~individual's guard's~~ personnel file in the employer's office.

(c) The applicant's copy of the application and completed affidavit form shall serve as a temporary registration card that shall be carried by the applicant when he or she is working is within the scope of his or her employment and ~~that~~ shall be exhibited upon the request of any law enforcement officer or authorized representative of the Board.

~~(d) A statement signed by a certified trainer that the applicant has successfully completed the training requirements of Rule .1307 of this Section shall be submitted to the Director with the application.~~

~~(e)(d)~~ A copy of the statement specified in ~~Paragraph (d)~~ Subparagraph (a)(6) of this Rule shall be retained by the licensee in the individual applicant's personnel file in the employer's office.

*History Note: Authority G.S. 74C-3; 74C-5; 74C-8.1(a);
Eff. January 1, 2013;*

- 1 *Transferred and Recodified from 12 NCAC 07D .1401 Eff. July 1, 2015;*
- 2 *Amended Eff. November 1, 2017; December 1, 2019;*
- 3 *Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .1302

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

In (a), I am confused – is the \$4 an extra fee, or is it included in the fee amounts in (a)(1) through (4)? If this is in addition to the fee, then why not state "along with" like you did in previous rules?

And I take it you are relying upon G.S. 150B-19(5) as authority to set this fee?

In the History Note, line 21, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

1 14B NCAC 16 .1302 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in
2 34.04 NCR 290 as follows:

3
4 **14B NCAC 16 .1302 FEES FOR UNARMED ARMORED CAR SERVICE GUARD REGISTRATION**

5 (a) Fees for unarmed armored car service guards are as ~~follows:~~ follows, to include a four dollar (\$4.00) convenience
6 fee and credit card transaction fee:

- 7 (1) thirty dollar (\$30.00) non-refundable initial registration fee;
8 (2) thirty dollar (\$30.00) annual renewal, or reissue fee;
9 (3) fifteen dollar (\$15.00) transfer fee; and
10 (4) twenty-five dollars (\$25.00) late renewal fee to be paid within 90 days from the date the registration
11 expires and to be paid in addition to the renewal fee.

12 (b) Fees shall be paid ~~as follows:~~

- 13 ~~(1) if the application is submitted by hand delivery, U.S. Mail, or delivery service, payment shall be in~~
14 ~~the form of a check or money order made payable to the Private Protective Services Board; or~~
15 ~~(2) if the application is submitted online, payment shall be and by credit card, e-check card or other~~
16 ~~form of electronic funds transfer.~~

17
18 *History Note: Authority G.S. 74C-3; 74C-5; 74C-9;*

19 *Eff. January 1, 2013;*

20 *Transferred and Recodified from 12 NCAC 07D .1402 Eff. July 1, 2015;*

21 *Amended Eff. January 1, 2018; December 1, 2019;*

22 *Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .1306

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

In (a), line 7, how is this form provided? Do you not wish to refer to the "website provided by the Board" like in other Rules or the url itself?

In (a)(1), how will the regulated public know what service was designated?

On line 11, delete the "and" after "months;"

In (a)(2), line 12, why are you including the "along with the \$4 fee" when that appears to be required by Rule .1302?

If you need to retain the language, please insert a comma after "fee"

In (a)(3), line 19, should this read "uploading the photograph online with the application submission"? This would make it mirror language in other rules.

In (a)(4), what are these forms? What are the contents? How are these provided by the Board?

Since you are making (b) part of Paragraph (a), you will need to make (c) into (b) and (d) into (c).

In (c), line 24, consider inserting an "and" before "affidavit"

In the History Note, line 35, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

1 14B NCAC 16 .1306 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in
2 34.04 NCR 290 as follows:

3
4 **14B NCAC 16 .1306 RENEWAL OR REISSUE OF UNARMED ARMORED CAR SERVICE GUARD**
5 **REGISTRATION**

6 (a) Each applicant for renewal of an unarmed armored car service guard registration identification card or his or her
7 employer shall complete ~~a~~ an online form provided by the Board. This online form shall be submitted not fewer than
8 ~~30~~ 90 days prior to the expiration of the applicant's current registration and shall be accompanied by:

- 9 (1) ~~statements of any~~ upload online a statement of the results of a statewide criminal record history
10 records search obtained from the reporting service designated by the Board pursuant to G.S. 74C-
11 8.1(a) for each state where the applicant has resided within the preceding 12 months; and
12 (2) the applicant's renewal ~~fee.~~ fee along with a four dollar (\$4.00) convenience fee and credit card
13 transaction fee.

14 ~~(b) Each applicant for reissue of a registration identification card shall complete, and his or her employer shall sign,~~
15 ~~a form provided by the Board. This form shall be submitted to the Board and accompanied by:~~

- 16 ~~(1)(3) two one~~ head and shoulders color digital photographs photograph of the applicant in ~~JPG~~ JPG,
17 JPEG, or PNG format of ~~acceptable~~ sufficient quality for identification, taken within six months
18 prior to ~~submission~~ online application and submitted by ~~e-mail to PPSASL-Photos@ncdps.gov or~~
19 ~~by compact disc;~~ uploaded online with application submission; and
20 (2) ~~the applicant's reissue fee.~~
21 (4) a completed affidavit form and public notice statement form.

22 (c) The employer of each applicant for a registration renewal or reissue shall give the applicant a copy of the
23 ~~application~~ online application, including the completed affidavit form, that shall serve as a record of application for
24 renewal or reissue and shall retain a copy of the ~~application-online application, including affidavit,~~ in the individual's
25 guard's personnel file in the employer's office.

26 (d) Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an
27 extension of time to file a tax return shall receive that same extension of time to pay the registration renewal fee and
28 to complete any continuing education requirements prescribed by the Board. A copy of the military order or the
29 extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be
30 furnished to the Board.

31
32 *History Note: Authority G.S. 74C-3; 74C-5; 78C-8.1(a);*
33 *Eff. January 1, 2013;*
34 *Transferred and Recodified from 12 NCAC 07D .1406 Eff. July 1, 2015;*
35 *Amended Eff. November 1, 2017; December 1, 2019;*
36 *Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .1401

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

In (a)(1), line 9, what is "classifiable"?

In (a)(3), where are these designated? Does your regulated public know?

In (a)(4), why do you need the new language regarding the \$4 fee when it is captured in Rule .1402? If you do need to retain it, please insert a comma after "Fee"

In (a)(5), line 20, what is "successfully"?

In (a)(8), what are these forms? What are the contents of them? How are they obtained?

In (d), line 37, just so I am clear – any firearms training will do, and there is no time limit for it?

On Page 2, Paragraph (e), what does this mean? What is it intended to accomplish?

In the History Note, line 7, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

1 14B NCAC 16 .1401 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in
2 34.04 NCR 290 as follows:

3
4 **14B NCAC 16 .1401 APPLICATION/ARMED ARMORED CAR SERVICE GUARD FIREARM**
5 **REGISTRATION PERMIT**

6 (a) Each armored car employer or his or her designee shall submit ~~and sign~~ an online application form for the
7 registration of each armed armored car service guard applicant to the Board. This online form shall be accompanied
8 by:

- 9 (1) one set of classifiable fingerprints on an applicant fingerprint ~~card~~; card that shall be mailed
10 separately to the Board's office;
11 (2) ~~two one~~ head and shoulders color digital ~~photograph~~ photographs of the applicant in ~~JPG~~ JPG,
12 JPEG, or PNG format of ~~acceptable~~ sufficient quality for identification, taken within six months
13 prior to ~~submission~~ online application and submitted by ~~e-mail to PPSASL Photos@ncdps.gov or~~
14 ~~by compact disc;~~ uploading the photograph online with application submission;
15 (3) ~~a certified statement~~ upload online a statement of the result of a statewide criminal history records
16 search from the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state
17 where the applicant has resided within the preceding 60 months;
18 (4) the applicant's non-refundable registration ~~fee~~; fee along with a four dollar (\$4.00) convenience fee
19 and credit card transaction fee;
20 (5) a statement signed by a certified trainer that the applicant has successfully completed the training
21 requirements of Rule .1407 of this Section; ~~and~~
22 (6) a certification by the applicant that he or she is at least 18 years of ~~age~~; age;
23 (7) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation
24 to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected
25 online by the Private Protective Services Board; and
26 (8) a completed affidavit form and public notice statement form.

27 (b) The employer of each applicant for registration shall give the applicant a copy of the online application and
28 completed affidavit form and shall retain a copy of the ~~application~~ application, including affidavit, in the ~~individual's~~
29 guard's personnel file in the employer's office.

30 (c) The applicant's copy of the ~~application~~ application, affidavit and training certification shall serve as a temporary
31 registration card that shall be carried by the applicant when he or she is working within the scope of his or her
32 employment and ~~that~~ shall be exhibited upon the request of any law enforcement officer or authorized representative
33 of the Board.

34 (d) ~~Applications~~ Online applications submitted without proof of completion of a Board approved firearms training
35 course shall not serve as temporary registration cards unless the armored car employer has obtained prior approval
36 from the Director. The Director shall grant prior approval if the armored car employer provides proof that the applicant
37 has received prior firearms training.

(e) The provisions of Paragraphs (a), (b), and (c) of this Rule also apply to any employee whose employment is terminated within 30 days of employment.

History Note: Authority G.S. 74C-3; 74C-5; 74C-8.1(a); 74C-13;
Eff. January 1, 2013;
Transferred and Recodified from 12 NCAC 07D .1501 Eff. July 1, 2015;
Amended Eff. November 1, 2017; December 1, 2019;
Readopted Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .1402

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

In (a), I am confused – is the \$4 an extra fee, or is it included in the fee amounts in (a)(1) through (4)? If this is in addition to the fee, then why not state "along with" like you did in previous rules?

And I take it you are relying upon G.S. 150B-19(5) as authority to set this fee?

In the History Note, line 20, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 2, 2019

14B NCAC 16 .1402 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in 34.04 NCR 290 as follows:

**14B NCAC 16 .1402 FEES FOR ARMED ARMORED CAR SERVICE GUARD FIREARM
REGISTRATION PERMIT**

(a) Fees for armed armored car service guard firearm registration permits are as ~~follows:~~ follows, to include a four dollar (\$4.00) convenience fee and credit card transaction fee:

- (1) thirty dollars (\$30.00) non-refundable initial registration fee;
- (2) thirty dollars (\$30.00) annual renewal, or reissue fee; and
- (3) fifteen dollars (\$15.00) application fee.

(b) Fees shall be paid ~~as follows:~~

- ~~(1) if the application is submitted by hand delivery, U.S. Mail, or delivery service, payment shall be in the form of a check or money order made payable to the Private Protective Services Board; or~~
- ~~(2) if the application is submitted online, payment shall be by credit card, e-check card or other form of electronic funds transfer.~~

*History Note: Authority G.S. 74C-3; 74C-5; 74C-9; 74C-13;
Eff. January 1, 2013;
Transferred and Recodified from 12 NCAC 07D .1502 Eff. July 1, 2015;
Amended Eff. January 1, 2018; December 1, 2019;
Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .1406

DEADLINE FOR RECEIPT: Friday, December 13, 2019

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 3, please check "Amendment" in addition to readoption.

In (a), line 7, how is this form provided? Do you not wish to refer to the "website provided by the Board" like in other Rules or the url itself?

I am simply asking – did you intentionally set a different timeframe in this Rule for renewal than the one you established in Rule .1306?

In (a)(2), how will the regulated public know what service was designated?

In (a)(3), line 17, why are you including the "along with the \$4 fee" when that appears to be required by Rule .1402 already?

If you need to retain the language, please insert a comma after "fee"

In (a)(5), line 22, what is "successfully" here?

In (a)(6), what are these forms? What are the contents? How are these provided by the Board?

In (b), line 26, should this mirror the language in Rule .1306 and state "including the completed affidavit form"?

On line 27, consider inserting an "and" before "affidavit"

In the History Note, Page 2, line 3, delete the errant "December 1, 2019;" Do not show it as a change, as you did not publish it – just delete it.

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

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 2, 2019

14B NCAC 16 .1406 is proposed for readoption as published in 33:15 NCR 1544 and amendment as published in 34.04 NCR 290 as follows:

**14B NCAC 16 .1406 RENEWAL OF ARMED ARMORED CAR SERVICE GUARD FIREARM
REGISTRATION PERMIT**

(a) Each applicant for renewal of an armed armored car service guard firearm registration permit identification card ~~or~~ his or her employer or designee shall complete ~~a~~ an online form provided by the Board. This online form shall be submitted not more than 90 days nor fewer than 30 days prior to expiration of the applicant's current armed registration and shall be accompanied by:

- (1) ~~two one~~ head and shoulders color digital ~~photograph~~ photographs of the applicant in ~~JPG~~ JPG, JPEG, or PNG format of ~~acceptable~~ sufficient quality for identification, taken within six months prior to ~~submission~~ online application and submitted by ~~e-mail to PPSASL Photos@ncdps.gov or by compact disc;~~ uploading the photograph online with the application submission;
- (2) ~~a certified statement~~ upload online a statement of the result of a statewide criminal history records search ~~from~~ by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 12 months;
- (3) the applicant's renewal ~~fee;~~ and fee along with a four dollar (\$4.00) convenience fee and credit card transaction fee;
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected online by the Private Protective Services ~~Board.~~ Board;
- (5) a statement signed by a certified trainer that the applicant has successfully completed the training requirements of Rule .0807 of the Section; and
- (6) a completed affidavit form and public notice statement form.

(b) The employer of each applicant for a registration renewal shall give the applicant a copy of the online application ~~that shall~~ and completed application, including affidavit, to serve as a record of application for renewal and shall retain a copy of the ~~application~~ application, including affidavit, in the individual's guard's personnel file in the employer's office.

~~(c) Applications for renewal shall be accompanied by a statement signed by a certified trainer that the applicant has successfully completed the training requirements of Rule .1407 of this Section.~~

~~(d)~~(c) Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall receive that same extension of time to pay the registration renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

History Note: Authority G.S. 74C-3; 74C-5; 74C-8.1(a); 74C-13;

1 *Eff. January 1, 2013;*
2 *Transferred and Recodified from 12 NCAC 07D .1506 Eff. July 1, 2015;*
3 *Amended Eff. November 1, 2017; December 1, 2019;*
4 *Readopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Certified Public Accountant Examiners

RULE CITATION: 21 NCAC 08G .0401

DEADLINE FOR RECEIPT: December 12, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a)(3), is the determination of whether an activity increases the professional competency of the CPA left to the discretion of the CPA or does the Board make this determination?

Given (a)(3) and (b), why is (c) necessary?

In (d), the proposed amendment converts CPE hours to minutes. In G.S. 93-12(8b)(b), your statutory authority sets forth the CPE requirement in hours and this rule currently sets the requirement in hours. Would it be helpful to your regulated public to keep the requirement in hours or is there a reason you are proposing to convert the requirement to minutes?

To be clear, the proposed amendment decreases the standard requirement from 40 hours to 33.33 hours, correct?

In (e), line 31, what are "regulatory or behavioral" professional ethics? Does your regulated public understand the meaning of these terms?

In (g), page 2 line 1, do you mean "may not" or "shall not?"

In (j), line 9, do you mean "may" or "shall?"

At line 13, do you mean "may" or "shall?"

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

Ashley Snyder
Commission Counsel
Date submitted to agency: November 26, 2019

21 NCAC 08G .0401 is amended as published in 34:03 NCR 158-159 as follows:

21 NCAC 08G .0401 CPE REQUIREMENTS FOR CPAS

(a) In order for a CPA to receive ~~CPE credit for a course~~; credit for CPE activities:

- (1) the CPA shall attend or complete the ~~course~~ activity and receive a certificate of completion as set forth ~~in Rule .0403(c)(13) of this Section~~; in the Standards for CPE Program Sponsors in the NASBA/AICPA Statement on Standards for Continuing Professional Education (CPE) Programs, including subsequent amendments and editions, are hereby incorporated by reference. Copies of the Standards for CPE Program Sponsors can be found at no cost on the NASBA website at www.nasbaregistry.org/the-standards;
- (2) the ~~course~~ activity shall meet the requirements set out in ~~Rule .0404(a) and (c)~~ Rule .0404 of this Section; and
- (3) the ~~course~~ activity shall increase the professional competency of the CPA.

(b) ~~A course~~ An activity that increases the professional competency of a CPA shall be ~~a course~~ an activity in an area ~~of accounting of the profession~~ in which the CPA practices or is planning to ~~practice in the future~~, practice, or in the area of professional ~~ethics, or an area of the profession~~; ethics.

(c) Because of differences in the education and experience of CPAs, ~~a course~~ an activity may contribute to the professional competence of one CPA but not another. Each CPA shall therefore exercise judgment in selecting ~~courses~~ activities for which CPE credit is claimed and choose only those that contribute to that CPA's professional competence.

(d) Active CPAs shall complete ~~40 CPE hours~~, 2,000 CPE minutes computed in accordance with Rule .0409 of this Section by December 31 of each year, except as follows:

- (1) CPAs having certificate applications approved by the Board in ~~April-June~~ April to June shall complete ~~30 CPE hours~~ 1,500 CPE minutes during the same calendar year;
- (2) CPAs having certificate applications approved by the Board in ~~July-September~~ July to September shall complete ~~20 CPE hours~~ 1,000 CPE minutes during the same calendar year; or
- (3) CPAs having certificate applications approved by the Board in ~~October-December~~ October to December shall complete ~~40 CPE hours~~ 500 CPE minutes during the same calendar ~~year~~; year; and

Any CPE minutes completed during the calendar year in which the certificate application is approved may be used for that year's requirement even if the minutes were completed before the certificate was granted.

(e) ~~There shall be no CPE requirements for inactive CPAs. A CPA shall complete a minimum of 50 CPE minutes annually in activities on regulatory or behavioral professional ethics and conduct. Ethics CPE shall be offered by a CPE sponsor registered with NASBA pursuant to .0403(c) of this Section.~~

(f) ~~There shall be no CPE requirements for inactive CPAs.~~

(g) ~~Any CPE hours completed during the calendar year in which the certificate is approved may be used for that year's requirement even if the hours were completed before the certificate was granted. When a CPA has completed more than the required number of hours minutes of CPE in any one calendar year, the extra hours, not in excess of 20 hours, up to 1,000 minutes shall be carried forward and treated as hours minutes earned in the following year. Ethics~~

1 CPE ~~hours~~ minutes may not be included in any carry forward ~~hours- minutes~~ to meet the requirement of Paragraph (e)
2 of this Rule. A CPA shall not claim CPE credit for ~~courses~~ activities taken in any year prior to the year of certification.
3 ~~(g)~~ (h) Any CPE ~~hours~~ minutes used to satisfy the requirements for change of status as set forth in 21 NCAC 08J
4 .0105, for reissuance as set forth in ~~21 NCAC 08J .0106~~ 21 NCAC .08J .0106, or for application for a new certificate
5 as set forth in Rule 08I .0104 of this Chapter may be used to satisfy the annual CPE requirement set forth in Paragraph
6 (d) of this Rule.
7 ~~(h)~~ (i) It shall be the CPA's responsibility to maintain records substantiating the CPE credits claimed for the current
8 year and for each of the four calendar years prior to the current year.
9 ~~(i)~~ (j) A non-resident licensee may satisfy the annual CPE requirements ~~including this Rule~~ in the jurisdiction ~~in~~
10 ~~which he or she~~ where the CPA is licensed and currently works or resides. If there is no annual CPE requirement in
11 the jurisdiction ~~in which he or she~~ where the CPA is licensed and currently works or resides, ~~he or she~~ the CPA shall
12 comply with Paragraph (d) of this Rule. A non-resident licensee whose office is in North Carolina shall comply with
13 Paragraph (e) of this Rule. All other non-resident licensees may satisfy Paragraph (e) of this Rule by completing the
14 ethics requirements in the jurisdiction in which the non-resident licensee is licensed as a CPA and works or resides.
15 If there is no ethics CPE requirement in the jurisdiction where the non-resident licensee is licensed and currently works
16 or resides, the non-resident licensee shall comply with Paragraph (e) of this Rule.

17
18 *History Note: Authority G.S. 93-12(3); 93-12(8b);*

19 *Eff. May 1, 1981;*

20 *Amended Eff. January 1, 2014; January 1, 2007; January 1, 2004; August 1, 1995; April 1, 1994;*

21 *May 1, 1989; September 1, 1988;*

22 *Readopted Eff. February 1, 2016.*

23 *Amended Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Certified Public Accountant Examiners

RULE CITATION: 21 NCAC 08G .0403

DEADLINE FOR RECEIPT: December 12, 2019

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (d), if a CPE sponsor does not comply with this Rule, is the sponsor automatically disqualified or is failure to comply only grounds for disqualification?

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

Ashley Snyder
Commission Counsel
Date submitted to agency: November 26, 2019

21 NCAC 08G .0403 is amended as published in 34:03 NCR 159-160 as follows:

21 NCAC 08G .0403 QUALIFICATION OF CPE SPONSORS

(a) The Board shall not register ~~either CPE activities nor sponsors or providers of CPE courses or CPE courses.~~
activities.

(b) CPE providers not in good standing on the NASBA National Registry of CPE Sponsors shall comply with the Standards for CPE Program Sponsors in the NASBA/AICPA Statement on Standards for Continuing Professional Education (CPE) Programs found on the NASBA website at www.nasbaregistry.org.

~~(b) (c) Sponsors of continuing education programs activities that are listed in good standing on the NASBA National Registry of CPE Sponsors shall be considered by the Board as compliant with the CPE requirements of Paragraph (e) of this Rule.~~ Standards for CPE Program Sponsors in the NASBA/AICPA Statement on Standards for Continuing Profession Education (CPE) Programs found on the NASBA website at www.nasbaregistry.org.

~~(c) CPE providers not in good standing on the NASBA National Registry of CPE Sponsors shall meet the following requirements:~~

(1) ~~have an individual who did not prepare the course review each course to be sure it meets the standards for CPE;~~

(2) ~~state the following in every brochure or other publication or announcement concerning a course:~~

(A) ~~the general content of the course and the specific knowledge or skill taught in the course;~~

(B) ~~any prerequisites for the course and any advance preparation required for the course and if none, that shall be stated;~~

(C) ~~the level of the course, such as basic, intermediate, or advanced;~~

(D) ~~the teaching methods to be used in the course;~~

(E) ~~the amount of sponsor recommended CPE credit a CPA who takes the course may claim;~~
~~and~~

(F) ~~the date the course is offered, if the course is offered only on a certain date, and, if applicable, the location;~~

(3) ~~ensure that the instructors or presenters of the course are qualified to teach the subject matter of the course and to apply the instructional techniques used in the course;~~

(4) ~~evaluate the performance of an instructor or presenter of a course to determine whether the instructor or presenter is suited to serve as an instructor or presenter in the future as follows:~~

(A) ~~before the course's conclusion, provide for the attendees an opportunity to evaluate the quality of the course by questionnaires, oral feedback, or other means, in order to determine whether the course's objectives have been met, its prerequisites were necessary, the facilities used were satisfactory, and the course content was appropriate for the level of the course; and~~

(B) ~~systematically review the evaluation process to ensure its effectiveness;~~

- ~~(5) encourage participation in a course only by those who have the education and experience for the level of the course;~~
- ~~(6) distribute course materials to participants;~~
- ~~(7) use physical facilities for conducting the course that are consistent with the instructional techniques used;~~
- ~~(8) assign the number of CPE credits each participant may be eligible to receive by either:
 - ~~(A) monitoring attendance at a group course; or~~
 - ~~(B) testing in order to determine if the participant has learned the material presented;~~~~
- ~~(9) inform instructors and presenters of the results of the evaluation of their performances;~~
- ~~(10) retain for five years from the date of the course presentation or completion:
 - ~~(A) a record of participants completing course credit requirements;~~
 - ~~(B) an outline of the course;~~
 - ~~(C) the date and location of presentation;~~
 - ~~(D) the participant evaluations or summaries of evaluations;~~
 - ~~(E) the documentation of the instructor's qualifications; and~~
 - ~~(F) the number of contact hours recommended for each participant;~~~~
- ~~(11) have a visible, continuous, and identifiable contact person who is charged with the administration of the sponsor's CPE programs that has the responsibility and shall be accountable for assuring and demonstrating compliance with this Rule by the sponsor or by any other organization working with the sponsor for the development, distribution, or presentation of CPE courses;~~
- ~~(12) develop and promulgate policies and procedures for the management of grievances including tuition and fee refunds; and~~
- ~~(13) provide persons completing course requirements with written proof of completion indicating the participant's name, the name of the course, the date the course was held or completed, the sponsor's name and address, and the number of CPE hours calculated and recommended in accordance with Rule .0409 of this Section.~~

(d) Failure of a National Registry of CPE Sponsor to comply with ~~the terms of~~ this Rule shall be grounds for the Board to disqualify the sponsor as a CPE sponsor with this Board and to notify NASBA and the public of this action.

History Note: Authority G.S. 93-12(3); 93-12(8b);

Eff. May 1, 1981;

Amended Eff. January 1, 2014; January 1, 2007; January 1, 2004; March 1, 1990; May 1, 1989;

August 1, 1988; February 1, 1983;

Readopted Eff. February 1, 2016.

Amended Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Certified Public Accountant Examiners

RULE CITATION: 21 NCAC 08G .0404

DEADLINE FOR RECEIPT: December 12, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (b)(1), please capitalize "State" if you are only referring to North Carolina. If you are referring to any state, please leave as written.

In (b)(2), what are "technical sessions?" Does your regulated public know?

In (b)(4) and (b)(5), who determines if an activity is "designed and intended" for a continuing professional education activity? Is it the CPA, the provider, or the Board? If the Board makes this determination, what factors are considered?

Is (c) necessary? Consider the following requirements set forth elsewhere in your rules: .0401(b) – increase professional competency; .0404(a) – fields of study; and .0409(d) – CPE instruction.

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

Ashley Snyder
Commission Counsel
Date submitted to agency: November 26, 2019

21 NCAC 08G .0404 is amended as published in 34:03 NCR 160-161 as follows:

21 NCAC 08G .0404 REQUIREMENTS FOR CPE CREDIT

(a) A CPA shall not be granted CPE credit for ~~a course~~ an activity unless the ~~course~~ activity is in one of the fields of study listed in the NASBA Fields of Study, including subsequent amendments and editions, which are hereby incorporated by reference. Copies of the NASBA Fields of Study can be found at no cost on the NASBA website at www.nasbaregistry.org/the-standards.

- (1) ~~is in one of the seven fields of study recognized by the Board and set forth in Paragraph (b) of this Rule;~~
- (2) ~~is developed by an individual who has education and work experience in the subject matter of the course; and~~
- (3) ~~uses instructional techniques and materials that are current and accurate as set forth by Rule .0403 of this Section.~~

(b) The seven fields of study recognized by the Board are:

- (1) Accounting and Auditing
 - (A) Accountancy
 - (B) Accounting—Governmental
 - (C) Auditing
 - (D) Auditing—Governmental
- (2) Consulting Services
 - (A) Administrative Practice
 - (B) Social Environment of Business
- (3) Ethics
 - (A) Behavioral Ethics
 - (B) Regulatory Ethics
- (4) Management
 - (A) Business Law
 - (B) Business Management and Organization
 - (C) Finance
 - (D) Management Advisory Services
 - (E) Marketing
- (5) Personal Development
 - (A) Communications
 - (B) Personal Development
 - (C) Personnel/HR
- (6) Special Knowledge and Applications
 - (A) Computer Science

- (B) Economics
- (C) Mathematics
- (D) Production
- (E) Specialized Knowledge and Applications
- (F) Statistics
- (7) Tax

(e) (b) The following ~~may~~ shall qualify as acceptable types of ~~continuing education programs~~, CPE activities, provided the ~~programs activities~~ comply with the requirements set forth in ~~Paragraph (a) of this Rule~~; Paragraphs (b) or (c) of .0403 of this Section:

- (1) professional development ~~programs activities~~ of national and state accounting organizations;
- (2) technical sessions at meetings of national and state accounting organizations and their chapters;
- (3) courses taken at regionally accredited colleges and universities;
- (4) educational ~~programs activities~~ that are designed and intended for continuing professional education activity conducted within a business, accounting firm, or an association of accounting firms; or
- (5) correspondence ~~courses activities~~ that are designed and intended for continuing professional ~~education activity~~; education.

(d) (c) CPE credit ~~may~~ shall be granted for ~~teaching a CPE course~~ instructing or authoring a ~~publication~~ CPE activity as long as ~~the preparation to teach or write increased~~ the CPA's professional competency was increased and was in one of the ~~seven~~ fields of study recognized by the ~~Board and Board~~, as set forth in Paragraph (b) (a) of this Rule.

(e) (d) CPE credit shall not be granted for a self-study ~~course activity~~ if the material that the CPA must study to take the examination is not designed for CPE purposes. This includes periodicals, guides, magazines, subscription services, books, reference ~~manuals~~ manuals, and supplements that contain an examination to test the comprehension of the material read.

(f) (e) A CPA may claim credit for ~~a course~~ an activity offered by a ~~non-registered sponsor~~ provided that provider if the ~~course activity~~ meets the requirements of this Rule and Rules .0403(e), and ~~.0409~~ Rule .0409 of this Section. The CPA shall maintain documentation proving ~~that the course activity~~ met these standards.

History Note: Authority G.S. 93-12(8b);

Eff. May 1, 1981;

Amended Eff. January 1, 2007; January 1, 2004; August 1, 1998; February 1, 1996; March 1, 1990;

May 1, 1989; August 1, 1988; February 1, 1983;

Readopted Eff. February 1, 2016.

Amended Eff. January 1, 2020.

21 NCAC 08G .0405 is repealed as published in 34:03 NCR 161 as follows:

21 NCAC 08G .0405 ADMINISTRATION OF REQUIREMENT

History Note: Authority G.S. 93-12(8b);

Eff. May 1, 1981;

Amended Eff. October 1, 1984; January 1, 1982;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014.

Repealed Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Certified Public Accountant Examiners

RULE CITATION: 21 NCAC 08G .0406

DEADLINE FOR RECEIPT: December 12, 2019

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

At line 5, you use the term "may." Under what circumstances does the Board decide to audit information submitted by licensees? Is it random or is it based on a set of factors?

At line 7, do you mean "may" or "shall?" If you mean "may," under what circumstances does the Board decide to issue a warning letter vs. deny the renewal?

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

Ashley Snyder
Commission Counsel
Date submitted to agency: November 26, 2019

21 NCAC 08G .0406 is amended as published in 34:03 NCR 161 as follows:

21 NCAC 08G .0406 COMPLIANCE WITH CPE REQUIREMENTS

(a) All active CPAs shall file ~~with the Board a completed a reporting of CPE reporting form minutes~~ by the July 1 renewal date of each year. The Board may audit information submitted by licensees who apply for a renewal license.

(b) If a CPA fails to complete the CPE requirements prior to the end of the previous calendar year but the CPA has completed them by June 30, the Board may:

(1) issue a letter of warning for the first such failure within a ~~five-calendar~~ five-calendar year period;
and

(2) deny the renewal of the CPA's certificate for a period of not less than 30 days and until the CPA meets the reinstatement requirements set forth in 21 NCAC 08J .0106 for the second such failure within a ~~five-calendar~~ five-calendar year period.

History Note: Authority G.S. 93-12(8b); 93-12(9)(e);

Eff. May 1, 1981;

Amended Eff. January 1, 2007; January 1, 2004; April 1, 1994; March 1, 1990; May 1, 1989;

October 1, 1988;

Readopted Eff. February 1, 2016.

Amended Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Certified Public Accountant Examiners

RULE CITATION: 21 NCAC 08G .0409

DEADLINE FOR RECEIPT: December 12, 2019

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (g), lines 8-9, what are "contact minutes?"

In (h), line 12, what is "guided practice?" Does your regulated public know?

Why is "Nano Learning" listed as both a "Nano Learning Activity" in (g) and a "Blended Learning Activity" in (h)?

At line 13, what do you mean by "primary" and who makes this determination?

At line 14, please remove the parentheses and incorporate the parenthetical explanation into the text of the rule.

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

Ashley Snyder
Commission Counsel
Date submitted to agency: November 26, 2019

21 NCAC 08G .0409 is amended as published in 34:03 NCR 161-162 as follows:

21 NCAC 08G .0409 COMPUTATION OF CPE CREDITS

(a) ~~Group Courses: Non-College. Activity.~~ CPE credit for a group ~~course activity~~ activity that is not part of a college curriculum shall be given based on contact ~~hours.~~ minutes. ~~A contact hour shall be 50 minutes of instruction and one-half contact hour shall be equal to 25 minutes of instruction. For example, a group course lasting 100 minutes shall be two contact hours equaling two CPE credits. A group course lasting 75 minutes shall be one and one-half contact hours equaling one and one-half CPE credits. A group course lasting 25 minutes shall be one-half contact hour and equal to one-half CPE credit. When individual segments of a group course are less than 50 minutes, the sum of the individual segments shall be added to determine the number of contact hours. For example, five 30-minute presentations shall be 150 minutes, which shall be three contact hours and three CPE credits. No credit shall be allowed for a segment unless the participant completes the entire segment. Internet-based programs shall employ a monitoring mechanism to verify that participants are participating during the duration of the course. No credit shall be allowed for a group course having fewer than 25 minutes of course instruction.~~

(b) ~~Completing a College Course.~~ CPE credit for completing a college course in the college curriculum shall be granted based on converting the number of credit hours the college gives the CPA for completing the ~~course.~~ course into minutes. One semester hour of college credit shall be ~~15~~ 750 CPE ~~credits;~~ minutes. ~~one-quarter hour of college credit shall be 10 CPE credits; and one continuing education unit shall be 10 CPE credits.~~ No CPE credit shall be given to a CPA who audits a college course. No more than 50 percent of the CPE credits required for a year shall be credits for completing a college course.

(c) ~~Self Study.~~ Study Activity. CPE credit for a self-study ~~course activity~~ activity shall be given based on the ~~average~~ number of ~~contact hours needed to complete the course.~~ minutes needed to complete the activity as determined by the sponsor. ~~The average completion time shall be allowed for CPE credit. A sponsor shall determine on the basis of pre-tests or NASBA word count formula the average number of contact hours of course material it takes to complete a course. A contact hour shall be 50 minutes and one-half contact hour shall be 25 minutes of course material. No self-study course may contain less than 25 minutes of course material.~~

(d) ~~Instructing Preparing or Presenting a CPE Course.~~ Activity. CPE credit for ~~teaching preparing or presenting a CPE course activity~~ for CPAs shall be given based on the number of ~~contact hours~~ minutes spent in preparing ~~and or~~ presenting the ~~course.~~ activity. Preparing includes activities such as authoring or conducting a technical review. No more than 50 percent of the CPE credits required for a year shall be credits for preparing for ~~and or~~ presenting CPE ~~courses.~~ activities. CPE credit for preparing or presenting ~~a course an activity~~ shall be allowed only once a year for a ~~course an activity prepared or~~ presented more than once in the same year by the same CPA.

(e) ~~Authoring a Publication.~~ CPE credit for published articles and books shall be given based on the number of ~~contact hours~~ minutes the CPA spent writing the article or book. No more than 25 percent of a CPA's required CPE credits for a year shall be credits for published articles or books. An article written for a CPA's client or business newsletter shall not receive CPE credit.

(f) Instructing a ~~Graduate Level~~ College Course. CPE credit for instructing a ~~graduate level~~ college course above the level of accounting principles shall be given based on the number of credit hours the college gives a student for completing the course, using the calculation set forth in Paragraph (b) of this Rule. ~~Credit shall not be given for instructing a course in which there is credit given towards an undergraduate degree.~~ No more than 50 percent of the CPE credits required for a year shall be credits for instructing a college course.

(g) Nano Learning Activity. CPE credit for Nano Learning, a tutorial activity without interaction with a real-time instructor that is designed to permit a participant to learn a given subject through electronic media including technology applications/processes, computer-based or web-based technology, shall be based on the number of contact minutes. Nano Learning is not a group program. This CPE activity shall be offered by a CPE sponsor registered with NASBA pursuant to Rule .0403(c) of this Section.

(h) Blended Learning Activity. A Blended Learning program offers participants learning in multiple formats or delivery methods. Activities can include lectures, discussion, guided practice, games, case studies, and simulation. The varied delivery methods include Group Live, Group Internet Based, Self Study, or Nano Learning. The primary component of the program may be concurrent (a group program) or nonconcurrent, allowing the participant to control a portion of the time and place of the learning. CPE credit for Blended Learning shall be based on the number of contact minutes incorporated in all the learning formats in the Blended Learning activity. This CPE activity shall be offered by a CPE sponsor registered with NASBA pursuant to Rule .0403(c) of this Section.

~~(g)~~ (i) No more than 50 percent of the CPE credits required for a year shall be credits claimed under ~~Paragraph (d)~~ and ~~(f)~~ Paragraphs (b), (d), and (f) of this Rule.

History Note: Authority G.S. 93-12(8b);

Eff. May 1, 1989;

Amended Eff. July 1, 2015; January 1, 2014; February 1, 2012; January 1, 2007; January 1, 2004;

February 1, 1996; April 1, 1994; March 1, 1990;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014.

Amended Eff. January 1, 2020.

21 NCAC 08G .0410 is repealed as published in 34:03 NCR 162 as follows:

21 NCAC 08G .0410 PROFESSIONAL ETHICS AND CONDUCT CPE

History Note: Authority G.S. 93-12(3); 93-12(8b); 93-12(9);

Eff. January 1, 2005;

Amended Eff. January 1, 2014; February 1, 2012; January 1, 2007; January 1, 2006;

Readopted Eff. February 1, 2016;

Repealed Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Chiropractic Examiners

RULE CITATION: 21 NCAC 10 .0103

DEADLINE FOR RECEIPT: Friday, December 13, 2019

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

There is no need to incorporate statutes by reference in accordance with 150B-21.6; therefore, (a) and (b) are unnecessary.

In (c), what is the "time, date, and place" that the election will take place? I note that 90-140 requires that you all "establish procedures for the nomination and election of chiropractic members. These procedures shall be adopted under Article 2A of Chapter 150B." So, it appears to me that the actual "time, date, and place" would fall under a definition of a Rule and would need to be included here.

In (c), since 90-140 requires "at least three names" for each vacancy, is it necessary to say that here online 14?

In (c)(1), what is meant by "the election shall be conducted by the Board"? How will the voting be done? I note that 90-140 requires that "every chiropractor with a current North Carolina license residing in this State shall be eligible to vote in such elections." I read (c)(1) to limit this to the Board. Do you mean that the Board will hold the election, but the voting will be done by your regulated public? If so, please make this more clear.

In (c)(1) add "or herself" after "himself"

How do (c)(1) and (2) go with (c)? Please either make these their own Paragraphs or otherwise provide some introductory language in (c).

In (d), what is meant by "when determined by a majority vote of the Board? When will these be held? How often? If these fall under

Amber May
Commission Counsel
Date submitted to agency: December 3, 2019

“nomination and election” under 90-140, these need to be adopted as rule in accordance with 150B and I think that additional information is necessary for purposes of clarity. Alternatively, if these do not fall under “nomination and election” under 90-140, this appears to be internal management and as such (d) may not be necessary in Rule at all.

In (d), change “will be held” to “shall hold” on line 22

150B-14 has been repealed. Please remove it from your History Note.

Add 90-142 to your History Note.

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

Amber May
Commission Counsel
Date submitted to agency: December 3, 2019

21 NCAC 10 .0103 is amended with changes as published in 34:06 NCR 494-502 as follows:

21 NCAC 10 .0103 STRUCTURE OF BOARD

(a) Creation and Membership of Board of Examiners. The creation and membership of the Board of Chiropractic Examiners are governed by G.S. 90-139, which statute is herewith incorporated by reference including subsequent amendments. A copy of the statute may be obtained ~~from the Board at no charge.~~ on the Board's website at <https://ncchiroboard.com>.

(b) Selection of Chiropractic Members of Board of Examiners. The selection of chiropractic members of the Board of Examiners is governed by G.S. 90-140, which statute is herewith incorporated by reference including subsequent amendments. A copy of the statute may be obtained ~~from the Board at no charge.~~ on the Board's website at <https://ncchiroboard.com>.

(c) Election of Candidates for Appointment to the Board. ~~Annually,~~ As necessary to meet the requirements of G.S. 90-140, the Board shall select a time, date and place for the election of chiropractic candidates for appointment to the Board. At least three candidates shall be elected for each vacancy. The candidate receiving the most votes in each election shall be given a special recommendation.

(1) The election shall be conducted by the Board of Chiropractic Examiners. Any member of the Board who is nominated to succeed himself shall be disqualified from conducting the vote in which he ~~or~~ she is a nominee.

(2) Nomination shall be made from the floor and shall require two seconds. Any prospective nominee may withdraw his ~~or her~~ name from consideration by an oral statement to that effect.

(d) Officers of the Board. ~~Annually, and as soon as practicable after appointments have been made, the members of the Board shall~~ When determined by a majority vote of the Board, officer elections will be held to elect a president, a vice-president, a secretary, and a treasurer. treasurer or any officer position that comes open due to termination of an appointment or resignation.

History Note: Authority G.S. 90-139; 90-140; 150B-14;

Eff. February 1, 1976;

Readopted Eff. January 27, 1978;

Amended Eff. January 1, 1983; May 8, 1979;

Legislative Objection Lodged Eff. January 31, 1983;

Curative Amended Eff. February 18, 1983;

Amended Eff. June 1, 1994; December 1, 1988;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019- 2019;

Amended Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Chiropractic Examiners

RULE CITATION: 21 NCAC 10 .0204

DEADLINE FOR RECEIPT: Friday, December 13, 2019

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (b), change "It shall be the responsibility of the licensee to inform the Board of any change in his or her contact information" to ~~"It shall be the responsibility of the~~ The licensee ~~to~~ shall inform the Board of any change in his or her contact information"

In (b), add "at" before your email address

In (b), add a comma after "regular mail."

Do you have an address rule setting forth your address for regular mail and your fax number? If not, please provide it here.

Add 90-142 to your History Note.

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

Amber May
Commission Counsel
Date submitted to agency: December 3, 2019

21 NCAC 10 .0204 is amended as published in 34:06 NCR 494-502 as follows:

21 NCAC 10 .0204 LICENSURE

(a) Initial Licensure. The initial license awarded to an applicant who passed the examination shall be mailed to the address appearing on the application form.

(b) Change of ~~Address.~~ Contact Information. It shall be the responsibility of the licensee to inform the Board of any change in his or her ~~mailing address.~~ contact information. Updated ~~address~~ contact information shall be forwarded to the ~~secretary in writing~~ Board office email ncboce@ncchiroboard.com, by regular mail or fax within 30 days after any such change.

~~(c) Email and Facsimile. A licensee who maintains an office email address or office facsimile machine shall inform the Board of his or her current email address or facsimile machine telephone number. This contact information shall not be made available to the public and shall be used only for expediting the dissemination of official messages the Board deems high priority or urgent.~~

History Note: Authority G.S. 90-145; 90-148;

Eff. February 1, 1976;

Readopted Eff. January 27, 1978;

Amended Eff. January 1, 1983;

Legislative Objection Lodged Eff. January 31, 1983;

Curative Amended Eff. February 28, 1983;

Amended Eff. July 1, 2014; December 1, 1988;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019-2019;

Amended Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Chiropractic Examiners

RULE CITATION: 21 NCAC 10 .0206

DEADLINE FOR RECEIPT: Friday, December 13, 2019

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Is a "radiologic technologist" the same as a "diagnostic imaging technician" as used in 90-143.2? Assuming it is, please use terminology that is consistent with the statute.

In (b), what is meant by the new language on lines 19-20? What is the actual requirement? What are the practical requirements? Are these already set forth in Rule? If not, please provide them in Rule. If so, please cross-reference the Rule, as opposed to the website.

In (f), delete or define "easily"

In (h), what is meant by "shall comply with Paragraph (e) of this Rule? Is the intent here that a person whose seeking reinstatement just has to pay the fee? Paragraph (e) has a lot of information in it and I'm not sure that you are referencing all of it.

Add 90-142 to your History Note.

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

Amber May
Commission Counsel
Date submitted to agency: December 3, 2019

21 NCAC 10 .0206 is amended as published in 34:06 NCR 494-502 as follows:

21 NCAC 10 .0206 CERTIFICATION OF RADIOLOGIC TECHNOLOGISTS

(a) Application Procedure. After successful completion of the Certification of Clinical Assistants described in 12 NCAC 10 .0213 and completing the education program described in Paragraph (b) of this Rule, a person desiring certification as a radiologic technologist shall pass a competency examination administered by or under the authority of the Board. The applicant shall complete an application form available on the Board's ~~website,~~ ~~www.ncchiroboard.com,~~ website at <https://ncchiroboard.com/x-ray-technician/>, and confirm and submit that the applicant is at least 18 years of age, a high school graduate or the equivalent, and possessed of good moral character. A photocopy of the applicant's birth certificate, driver's license, or government-issued identification card shall constitute prima facie evidence of the applicant's age. A photocopy of the applicant's high school diploma, transcript, or general equivalency diploma (G.E.D.) shall constitute prima facie evidence of the applicant's graduation from high school. An affidavit attesting to good moral character and signed by a chiropractic physician or other responsible party who knows the applicant and is not related to the applicant shall constitute prima facie evidence of the applicant's good moral character.

(b) Approved Education Programs. In order to be approved by the Board, a radiological technologist education program shall be at least 50 hours in length, of which at least six hours shall be in-person didactic training with an instructor or instructors who, based on education and experience, are competent to teach the portion of the curriculum they have been ~~assigned.~~ assigned, and completion of the practical requirement as outlined on the Board's website at <https://ncchiroboard.com/x-ray-technician/>. The education program shall provide sufficient instruction in the five subjects set forth in G.S. 90-143.2 to enable its graduates to satisfy all applicable standards of care governing the production of X-rays. To obtain approval of an education program, the program sponsor shall submit to the Board, at least 60 days prior to the proposed starting date, all instructional materials to be used in the program, including a syllabus of the didactic training and a curriculum vitae for each instructor.

(c) A.C.R.R.T. Exemption. Any person registered as "active" with the American Chiropractic Registry of Radiologic Technologists shall be deemed to have satisfied the educational requirements of Paragraph (b) of this Rule.

(d) Competency Examination. The competency examination shall be administered in person at least three times per year. The Board shall publish on its website, ~~www.ncchiroboard.com,~~ <https://ncchiroboard.com/master-exam-calendar/>, the date, time, and location of the examination at least 90 days in advance. The Board may authorize additional testing sessions based on the number of applications received. The minimum passing score is 70 percent.

(e) Certificate Expiration and Renewal. A certificate of competency issued pursuant to G.S. 90-143.2 shall expire at the end of the calendar year in which it was issued but may be renewed upon a showing that the certificate holder completed six hours of Board-approved continuing education in radiologic technology during the year. A radiologic technologist whose initial certificate expires less than 12 months after issuance shall not be required to obtain continuing education until the second calendar year of certification but shall be required to pay the renewal fee at the end of the initial year of certification. A radiologic technologist seeking to renew a certificate of competency shall submit evidence that the applicant has completed six hours of Board-approved continuing education. A certificate of

attendance or completion issued by the course sponsor and filed with the Board shall constitute prima facie evidence that the applicant has completed the number of hours recited in the certificate. The applicant shall pay a renewal fee in the amount of twenty-five dollars (\$25.00). The renewal fee shall not be paid in cash and may be paid by credit card through the Board's website, ~~www.ncchiroboard.com~~, <https://ncchiroboard.com>, or by a check made payable to the North Carolina Board of Chiropractic Examiners.

(f) Displaying Certificate. The holder of a certificate issued pursuant to this Rule shall display the certificate in the x-ray room of the chiropractic clinic in which the holder is employed in a location where the certificate may be easily viewed by patients.

(g) Compliance. Other than licensed doctors of chiropractic, only those persons maintaining current certifications of competency in conformity with this Rule may produce x-rays or other diagnostic images in chiropractic offices. A chiropractor who permits the production of x-rays or other diagnostic images by a non-certified employee or an employee whose certification has expired shall be deemed in violation of G.S. 90-154.3.

(h) Lapsed Certificates. If a certificate of competency has lapsed due to non-renewal and the lapse does not exceed 60 days, the certificate holder may obtain reinstatement by demonstrating completion of six hours of Board-approved continuing education and paying the renewal fee set forth in Paragraph (e) of this Rule. If the lapse is greater than 60 days, no make-up continuing education shall be required but the certificate holder shall re-take and pass the competency examination described in Paragraph (d) of this Rule. ~~and pay the initial certification fee set forth in Paragraph (a) of this Rule.~~ Regardless of the length of lapse, any person seeking reinstatement of a lapsed certificate shall comply with Paragraph (e) of this Rule.

History Note: Authority G.S. 90-143.2; 90-154.3;

Eff. February 1, 1993;

Temporary Amendment Eff. January 1, 2003;

Temporary Amendment Expired October 31, 2003;

Amended Eff. April 1, 2018; July 1, 2010; January 1, 2004;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019; 2019;

Amended Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Chiropractic Examiners

RULE CITATION: 21 NCAC 10 .0207

DEADLINE FOR RECEIPT: Friday, December 13, 2019

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), delete "in advance." I think you've got this covered by line 9.

In (a), what are the substantive requirements of the form? Are they set forth elsewhere in rule or statute?

In (c)(4), how is an instructor to "satisfy the Board that he or she is competent..." How will this be determined by the Board? What factors will be used?

In (d), what is meant by "A proposed seminar having been approved by the Board, its sponsor and co-sponsors shall:"? Here, do you mean something like "Sponsors and co-sponsors of any approved continuing education seminar shall:"? If so, say that. Also, is it still proposed if it's been approved?

In (d)(3), delete or define "timely"

In (d)(4)(A), what is meant by "a method approved by the Board"? What are the required methods? If it varies, how will this determination be made as to whether they will approve a particular method? What factors will be used?

In (d)(4)(B), what is meant by "provide for the safety and comfort of the attendees"? What is the actual requirement here?

In (d)(1)(D), delete "actually"

In (e), delete or define “willfully or negligently” on line 6, “materially” on line 7, and “accurately” on line 8.

In (e), delete “in its discretion” on line 9 since you’ve already said “may.” Please also provide what factors will be used in making the determination as to whether the Board will refuse to approve future seminar applications.

In (f), do you mean something like “All doctor of chiropractic courses that have been approved by... shall be deemed to have complied with this Rule”? If so, say that. I note that this language more closely tracks what you have elsewhere in your Rules.

Add 90-142 to your History Note.

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

Amber May
Commission Counsel
Date submitted to agency: December 3, 2019

21 NCAC 10 .0207 is amended with changes as published in 34:06 NCR 494-502 as follows:

21 NCAC 10 .0207 CONTINUING EDUCATION SEMINARS

(a) Approval of Seminars. Only continuing education seminars approved in advance by the Board shall count towards satisfying the requirements for license renewal. The sponsor and co-sponsors of any proposed seminar shall be responsible for submitting ~~to the Board~~ all the information outlined on the Board deems necessary Board's Course Application to enable the Board to evaluate the seminar in accordance with this Rule. The Board's Course Application can be found on, and must be submitted via, the Board's website at <https://ncchiroboard.com>. An application for approval shall be in writing and The Board's Course Application shall be submitted at least 30 days prior to the date of the proposed seminar. Incomplete applications will not be processed.

(b) Duration of Approval. A seminar approval issued by the Board shall expire ~~one year after the date of issuance, at the end of the calendar year for which approved.~~ If the sponsor or co-sponsors of an approved seminar wish to repeat the seminar on a date beyond the approval period, a new application shall be submitted to the Board.

(c) Criteria for Approval. The Board's criteria for approving continuing education seminars is as follows:

- (1) No practice-building or motivational seminars shall be approved;
- (2) No seminar shall be approved that requires attendees, in order to be able to utilize the information presented at the seminar, to purchase equipment or clinical supplies available only through the seminar's instructors, sponsors or co-sponsors;
- (3) Each seminar subject shall fall within the extent and limitation of chiropractic licensure in this State; and
- (4) Each instructor shall submit a curriculum vitae and satisfy the Board that he or she is competent to teach the subject or subjects he or she is scheduled to teach.

(d) Duties of Seminar Sponsor. A proposed seminar having been approved by the Board, its sponsor and co-sponsors shall:

- (1) Disclose on all brochures and advertising materials the name and address of each sponsor and co-sponsor and whether each sponsor and co-sponsor is a for-profit or not-for-profit entity;
- (2) Be liable for all expenses incurred in holding the seminar;
- (3) Give timely notice to the Board of any material changes in the seminar, including date, location, subject matter or instructors; and
- (4) Provide an agent at the seminar site who shall:
 - (A) Monitor and report the attendance of each person attending the seminar, using a method approved by the Board;
 - (B) Provide for the safety and comfort of attendees;
 - (C) Supervise the agenda and ~~disallow~~ prohibit the presentation of any subject matter not approved by the Board; and

(D) Complete and submit to the Board a post-seminar review summarizing any problems experienced and any variance between the application for approval and the seminar as actually presented.

(e) Sanction for Non-Compliance. By applying for seminar approval, each sponsor and co-sponsor agrees to admit to the seminar at no charge a representative of the Board for the purpose of observing compliance with this Rule. If the Board determines that a sponsor or co-sponsor has willfully or negligently falsified the application for approval, or has failed to keep attendance accurately, or has allowed the seminar as actually presented to vary materially from the agenda as set forth in the application, or has willfully failed to adhere to any other provision of this Rule, the Board, in its discretion, may refuse to approve future seminar applications from the offending sponsor or co-sponsor or from any principal who is a partner or shareholder in the offending sponsor or co-sponsor.

(f) PACE Approved State. The Board accepts all doctor of chiropractic courses that have been approved by the Providers of Approved Continuing Education (PACE) program administered by the Federation of Chiropractic Licensing Boards (FCLB).

History Note: Authority G.S. 90-142; 90-155;

Eff. January 1, 2004;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019-2019;

Amended Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Chiropractic Examiners

RULE CITATION: 21 NCAC 10 .0213

DEADLINE FOR RECEIPT: Friday, December 13, 2019

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), delete "Different certification requirements shall apply to each category." This appears to be addressed specifically in (b). Also, change the period to a colon at the end of "follows"

In (b), are the "general certification requirements" "the requirements set forth in this Paragraph"?

In (b)(2), delete "administered by or under the authority of the Board"

In (h), delete or define "easily"

Add 90-142 to your History Note.

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

21 NCAC 10 .0213 is amended as published in 34:06 NCR 494-502 as follows:

21 NCAC 10 .0213 CERTIFICATION OF CLINICAL ASSISTANTS

(a) Classification of Applicants. Applicants for clinical assistant competency certification shall be classified as follows. Different certification requirements shall apply to each category.

(1) Reciprocity applicants. A "reciprocity applicant" means an applicant who is currently certified or registered as a clinical assistant in another state whose requirements for certification or registration are substantially similar to or more stringent than the requirements for certification in North Carolina.

(2) New applicants. A "new applicant" means any applicant who is not a reciprocity applicant.

(b) Requirements for Certification. Every applicant, regardless of classification, shall complete an application form available on the Board's website (~~www.ncchiroboard.com~~) at <https://ncchiroboard.com> and requiring the applicant to confirm and submit documentary evidence satisfactory to the Board that the applicant is at least 18 years of age, a high school graduate or the equivalent, and possessed of good moral character. A photocopy of the applicant's birth certificate, driver's license, or government-issued identification card shall constitute prima facie evidence of the applicant's age. A photocopy of the applicant's high school diploma, transcript, or general equivalency diploma (G.E.D.) shall constitute prima facie evidence of the applicant's graduation from high school. An affidavit attesting to good moral character and signed by a chiropractic physician or other responsible party who knows the applicant and is not related to the applicant shall constitute prima facie evidence of the applicant's good moral character. Every applicant, regardless of classification, shall pay to the Board an initial certification fee in the amount of twenty dollars (\$20.00). The initial certification fee shall not be paid in cash and may be paid by credit card through the Board's website, ~~www.ncchiroboard.com~~, website at <https://ncchiroboard.com> or by a check made payable to the North Carolina Board of Chiropractic Examiners. In addition to the general certification requirements, an applicant shall satisfy the requirements for the appropriate category of certification, as follows:

(1) Reciprocity Applicants. A reciprocity applicant shall submit a copy of the applicant's current certification or registration as a clinical assistant in a state with which North Carolina reciprocates and shall also submit written confirmation from the state's certifying authority or registrar that the applicant is in good standing in that state.

(2) New Applicants. A new applicant shall submit evidence that the applicant has completed an approved clinical assistant education program as described in Paragraph (c) of this Rule. A certificate of completion filed with the Board by the program sponsor shall constitute prima facie evidence that the applicant has obtained the required education. A new applicant shall also take and pass the standard proficiency examination administered by or under the authority of the Board, as described in Paragraph (d) of this Rule.

(c) Education Programs. In order to be approved by the Board, a clinical assistant education program for new applicants shall be at least 24 hours in length, of which at least six hours shall be in-person didactic training with an instructor or instructors who, based on education and experience, are competent to teach the portion of the curriculum

they have been assigned. Credit for online coursework shall not exceed 18 hours, and all online coursework shall precede didactic training. The education program shall provide sufficient instruction in the five subjects set forth in G.S. 90-143.4(c) to enable its graduates to satisfy all applicable standards of care. To obtain approval of an education program, the program sponsor shall submit to the Board, at least 60 days prior to the proposed starting date, all instructional materials to be used in the program, including a syllabus of the didactic training, and a curriculum vitae for each instructor.

(d) Examinations. The proficiency examination for new applicants shall assess both academic knowledge and practical skills acquired through education programs and shall be administered in person at least four times per year on dates and at locations to be announced by the Board at least 90 days in advance and published on the Board's ~~website, www.ncchiroboard.com~~, website at <https://ncchiroboard.com>. In its discretion, the Board may authorize additional testing sessions based on the number of applications received. The minimum passing score on the examination is 75 percent.

(e) Certificate Expiration and Renewal. Unless renewed, a certificate of competency shall expire on June 30th of the third year following the year in which it was issued. A certificate holder seeking to renew shall submit evidence that the applicant has completed six hours of Board-approved continuing education. A certificate of attendance or completion issued by the course sponsor and filed with the Board shall constitute prima facie evidence that the applicant has completed the number of hours recited in the certificate. The applicant shall pay to the Board a renewal fee in the amount of twenty-five dollars (\$25.00). The renewal fee shall not be paid in cash and may be paid by credit card through the Board's ~~website, www.ncchiroboard.com~~, website at <https://ncchiroboard.com> or by a check made payable to the North Carolina Board of Chiropractic Examiners.

(f) Lapsed Certificates. If a certificate of competency has lapsed due to non-renewal and the lapse does not exceed 60 days, the certificate holder may obtain reinstatement by making up the accrued deficiency in continuing education. If the lapse is greater than 60 days, no make-up continuing education shall be required, but the certificate holder shall re-take and pass the proficiency examination for new applicants. Regardless of the length of lapse, a certificate holder seeking reinstatement shall pay the renewal fee set forth in Paragraph (e) of this Rule.

(g) Exemptions. Graduates of accredited chiropractic colleges and students enrolled in accredited chiropractic colleges who are serving college-sponsored preceptorships in North Carolina are deemed by the Board to have satisfied all requirements imposed by this Rule and shall be deemed competent to perform the duties of a clinical assistant. Any person who qualifies for exemption and who works as a clinical assistant in this state for more than 180 days shall submit the application form described in Paragraph (b) of this Rule and note the claim of exempt status. Exempt persons shall not be required to pay a certification fee.

(h) Displaying Certificate. The holder of a certificate issued pursuant to this Rule shall display the certificate in the chiropractic clinic in which the holder is employed in a location where the certificate may be easily viewed by patients.

History Note: Authority G.S. 90-142; 90-143.4;

Eff. July 1, 2014;

Amended Eff. April 1, 2018;

1 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27,*
2 *2019-2019;*
3 *Amended Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Chiropractic Examiners

RULE CITATION: 21 NCAC 10 .0215

DEADLINE FOR RECEIPT: Friday, December 13, 2019

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), what are the "petition forms"? Is there more than just the petition for predetermination as referenced in (b)?

In (a), delete "and instructions" since this Rule should provide the necessary instructions to request a predetermination.

In (b)(1), delete "full" in "full name"

In (b)(5), delete "complete" and "accurate"

On lines 35 and 36, change "will" to "shall"

Add 90-142 to your History Note.

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

21 NCAC 10 .0215 is adopted as published in 34:06 NCR 494-502 as follows:

21 NCAC 10 .0215 PETITION FOR PREDETERMINATION

(a) General. Pursuant to G.S. 93B-8.1(b6), any person with a criminal history may petition the Board at any time for a predetermination of whether the individual's criminal history will likely disqualify the individual from obtaining a license, in accordance with this Rule. Petition forms and instructions may be found on the Board's website at <https://ncchiroboard.com>.

(b) Petition Procedure. To petition the Board under this Rule, a person must submit to the Board's office a petition for predetermination that contains all of the following information:

- (1) The person's full name;
- (2) The last four digits of the person's social security number;
- (3) The person's current residential address;
- (4) The person's current mailing address;
- (5) A complete and accurate nationwide criminal history record report from the criminal records reporting service currently under contract with the Board;
- (6) For each crime identified in the criminal history record report, the following information:
 - (i) Whether the crime was a felony or misdemeanor;
 - (ii) The date that the crime occurred;
 - (iii) The date the person was convicted of, or plead guilty or nolo contendere to, the crime;
 - (iv) The age of the person at the time of the crime;
 - (v) The circumstances surrounding the commission of the crime;
 - (vi) The sentence imposed for the crime;
 - (vii) The period of time during which the person was incarcerated for the crime;
 - (viii) The period of time during which the person was on probation or parole for the crime;
 - (ix) Any documentation related to the person's rehabilitation or employment since the date of the crime;
 - (x) Whether the person has undergone any rehabilitative drug or alcohol treatment since the date of the crime;
 - (xi) Whether a Certificate of Relief has been granted regarding the crime, pursuant to G.S. 15A 173.2; and
 - (xii) Any affidavits or other written documents, including character references, for the person.
- (7) An affirmation under oath that the person has read the Instructions for Submitting a Petition for Predetermination and the statutes and rules governing the practice of chiropractic and that the information contained in the petition is true and accurate.

Incomplete petitions will not be considered by the Board. If incomplete petitions received by the Board are not made complete within 30 days of receipt, the incomplete petitions will be returned to the person from whom the request was made.

1 (c) Petition Fee. A non-refundable petition fee of forty-five dollars (\$45.00) shall accompany each petition. This fee
2 may be paid by credit card through the Board's website at <https://ncchiroboard.com> or by check made payable to the
3 North Carolina Board of Chiropractic Examiners. Cash shall not be accepted.

4 (d) Delegation of Authority for Predetermination. The Board delegates authority for rendering predeterminations
5 under this Rule to the Chiropractic Review Committee.

6
7 *History Note: Authority G.S. 90-143.3; 90-154; 93B-8.1;*

8 *Adopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Chiropractic Examiners

RULE CITATION: 21 NCAC 10 .0302

DEADLINE FOR RECEIPT: Friday, December 13, 2019

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

What is the intent of (a)? I have no idea. What is the actual requirement of your people?

Given 90-154.2(4), is (b) necessary? It appears to be covered by statute. I note that the statute is more clear than Paragraph (b).

In (c), please consider revising "The Board of Examiners deems the following to be false or misleading advertising in violation of 90-154(b)(1)" to something like The following shall constitute false or misleading advertising in violation of 90-154(b)(1):"

Change "which" to "that" in (c)(1) in "which purports" and in (c)(2) in "which promotes" and "which the Board" (although see my note below on the latter.) Also, in (c)(4) in "which implies"

In (c)(2), what is meant by "treatment, therapy, or service which the Board... has found to be unacceptable or outside the scope of practice"? I see that 90-154.3 requires that you all adopt rules that establish and define standards of acceptable care. Assuming these rules exist, could you cross-reference those? Maybe 90-143(a) too? I think that "found to be" is ambiguous as written

In (c)(2), add a comma after "therapy"

Please revise (c)(3) for purposes of clarity.

Add 90-142 to your History Note.

Amber May
Commission Counsel
Date submitted to agency: December 3, 2019

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

Amber May
Commission Counsel
Date submitted to agency: December 3, 2019

21 NCAC 10 .0302 is amended with changes as published in 34:06 NCR 494-502 as follows:

21 NCAC 10 .0302 ADVERTISING AND PUBLICITY

(a) General. Doctors of Chiropractic shall exercise restraint in matters of advertising and publicity so as to maintain the dignity of chiropractic as a recognized profession.

(b) Identification. The terms by which a licentiate may identify himself professionally are listed in G.S. 90-154.2(4). Terms which do not indicate that the licentiate is a chiropractor, such as "drugless physician" or "naturopath", shall not be used. Methods of professional identification may include:

(1) Signs. Signs may be placed on exterior doors, windows or walls of the licentiate's office or at entrances to the building in which his office is located.

(2) Stationery. A licentiate may identify himself on his stationery and mailing literature using the terms permitted by this Rule.

(c) Prohibited Advertising. The Board of Examiners deems the following to be false or misleading advertising in violation of G.S. 90-154(b)(1):

(1) Advertising which purports to guarantee a beneficial result from chiropractic treatment.

(2) Advertising which promotes a treatment, therapy or service which the Board of Examiners has found to be unacceptable ~~care~~. care or outside the scope of practice.

(3) Advertising in which the licentiate is identified as a specialist, unless the licentiate has complied with the requirements of 21 NCAC 10 .0304 and any reference to the specialty is immediately preceded by the term "chiropractic." Illustrations: "pediatrics" standing alone is deemed false or misleading; "chiropractic pediatrics" conforms to this Rule. "Neurologist" standing alone is deemed false or misleading; "chiropractic neurologist" conforms to this Rule.

(4) Advertising which implies the licensee holds an additional license(s) in North Carolina not so held, including but not limited to a medical physician, physical therapist, massage therapist, or acupuncturist.

History Note: Authority G.S. 90-142; 90-154;

Eff. February 1, 1976;

Readopted Eff. January 27, 1978;

Amended Eff. January 1, 1983; May 8, 1979;

Legislative Objection Lodged Eff. January 31, 1983;

Curative Amended Eff. February 28, 1983;

Curative Amended Eff. March 2, 1983;

Amended Eff. November 1, 2007; December 1, 1988;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019; 2019;

Amended Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Chiropractic Examiners

RULE CITATION: 21 NCAC 10 .0401

DEADLINE FOR RECEIPT: Friday, December 13, 2019

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), 150B-16 was repealed. The correct citation is 150B-20. Please note that 150B-20 was recently updated. Please update any references within the Rule and also your History Note. That said, given 150B-20, (a) appears to be unnecessary.

In (b), delete "There are no minimum mandatory contents of a petition, but the Board considers the following information to be pertinent:" 150B-20(a) sets forth the mandatory requirements of the petition. As such, this Rule and statute conflict. Specifically, a person shall submit the proposed text of the Rule and a statement of the effect of the Rule if they are requesting you all to create or amend a rule.

To the extent that you want to request folks send additional information over what is required by 150B-20 (which I think would be (b)(2), (4), (5) and (6), you can make this a separate Paragraph and say "A petitioner may submit the following additional information."

Since 150B-20(b) and (c) controls the time requirements for both review of a petition for rulemaking and also responding to the petitioner, (c) appears to be unnecessary. To the extent that you all deem this Paragraph to be necessary, please consider simply providing a cross-reference to 150B-20..

Please let me know if you want an example of a petition for rulemaking rule that has recently been approved by RRC.

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

Amber May
Commission Counsel
Date submitted to agency: December 3, 2019

21 NCAC 10 .0401 is amended as published in 34:06 NCR 494-502 as follows:

SECTION .0400 - RULE-MAKING PROCEDURES

21 NCAC 10 .0401 PETITIONS FOR ADOPTION OF RULES

(a) General. The procedure for petitioning the Board of Examiners to adopt, amend or appeal a rule is governed by G.S. 150B-16.

(b) Submission. Rule-making petitions shall be sent to the ~~secretary~~ president of the Board. No special form is required, but the petitioner shall state his name and address. There are no minimum mandatory contents of a petition, but the Board considers the following information to be pertinent:

- (1) a draft of the proposed rule;
- (2) the reason for its proposal;
- (3) the effect of the proposed rule on existing rules or decisions;
- (4) data supporting the proposed rule;
- (5) practices likely to be affected by the proposed rule;
- (6) persons likely to be affected by the proposed rule.

(c) Disposition. The ~~secretary~~ president shall review the petition and develop a recommendation as to whether the petitioner's proposed rule should be rejected or implemented. The ~~secretary~~ president shall present the petition and his recommendation to the Board at its next regular meeting following receipt of the petition, and the Board shall render its decision to either deny the petition or initiate rule-making. The Board shall notify the petitioner of its decision in writing within the 120-day period set by G.S. 150B-16.

History Note: Authority G.S. 90-142; 150B-16;

Eff. February 1, 1976;

Readopted Eff. January 27, 1978;

Amended Eff. December 1, 1988;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019; 2019;

Amended Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Chiropractic Examiners

RULE CITATION: 21 NCAC 10 .0403

DEADLINE FOR RECEIPT: Friday, December 13, 2019

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Please note that 150B-12 was repealed in 1991. Update your History Note to your general rulemaking authority.

Given 150B, everything except for (c)(1) appears to be unnecessary. Is the overall intent to provide time limitations for presentations? If so, delete the remainder of the Rule and make clear that this Rule is addressing "oral presentations at the public hearing conducted in accordance with 150B-21.1(a3)(4) and 150B-21.2(e)."

In (c)(1), what factors will the presiding officer use in making a determination as to whether he or she will allow additional time?

What is meant by (c)(2)? How is the presiding officer to "acknowledge" written presentations? (c)(2) appears to be unnecessary as you are required to accept written comments during the rulemaking process pursuant to 150B-21.1(a3)(3) and 150B-21.2(f).

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

Amber May
Commission Counsel
Date submitted to agency: December 3, 2019

21 NCAC 10 .0403 is amended as published in 34:06 NCR 494-502 as follows:

21 NCAC 10 .0403 PROCEDURE FOR ADOPTION OF RULES

(a) General. The procedure for the adoption, amendment or repeal of a rule is governed by G.S. 150B-12.

(b) Notice of Rule-Making. In addition to the mandatory publication of notice in the North Carolina Register, the Board, in its discretion, may also publish notice through its newsletter to licentiates on the Board's website at <https://ncchiroboard.com>, or by separate mailing. Any person who wishes to receive individual notice shall file a written request with the ~~secretary and shall be responsible for the cost of mailing said notice.~~ Board office.

(c) Public Hearing. Any public rule-making hearing required by G.S. 150B-12 shall be conducted by the President of the Board or by any person he or she may delegate. The presiding officer shall have complete control of the hearing and shall conduct the hearing ~~so as~~ to provide a reasonable opportunity for any interested person to present views, data and comments.

(1) Oral presentations shall not exceed 15 minutes unless the presiding officer, in his or her discretion, prescribes a greater time limit.

(2) Written presentations shall be acknowledged by the presiding officer and shall be given the same consideration as oral presentations.

*History Note: Authority G.S. 150B-12;
 Eff. February 1, 1976;
 Readopted Eff. January 27, 1978;
 Amended Eff. December 1, 1988;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27,
 ~~2019.~~ 2019;
 Amended Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Chiropractic Examiners

RULE CITATION: 21 NCAC 10 .0406

DEADLINE FOR RECEIPT: Friday, December 13, 2019

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), 150B-17 was recodified as 150B-4. So, please change the cross-reference. Please also update this in your History Note.

Also, by (a), do you mean something like "The Board shall respond to requests for declaratory rulings in accordance with 150B-4?" When possible, please write in active voice.

In (b)(3), delete "concise" in "concise statement"

Add "and" at the end of (b)(3).

In (c), delete "ordinarily"

In (c)(1), delete "substantially"

In (c)(2) delete "specifically"

Add an "and" or "or" at the end of (c)(2).

Please let me know if you want an example of a declaratory rulings Rule that has been recently approved by RRC.

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

Amber May
Commission Counsel
Date submitted to agency: December 3, 2019

21 NCAC 10 .0406 is amended as published in 34:06 NCR 494-502 as follows:

21 NCAC 10 .0406 DECLARATORY RULINGS

(a) General. The issuance of declaratory rulings by the Board of Examiners is governed by G.S. 150B-17.

(b) Request for Declaratory Ruling: Contents. A request for a declaratory ruling shall be in writing and addressed to the ~~secretary~~, president. The request shall contain the following information:

- (1) The name and address of the person making the request;
- (2) The statute or rule to which the request relates;
- (3) A concise statement of the manner in which the person has been aggrieved by the statute or rule;
- (4) A statement as to whether a hearing is desired, and if desired, the reason therefor.

(c) Refusal to Issue Ruling. The Board shall ordinarily refuse to issue a declaratory ruling under the following circumstances:

- (1) When the Board has already made a controlling decision on substantially similar facts in a contested case;
- (2) When the facts underlying the request for a ruling were specifically considered at the time of the adoption of the rule in question;
- (3) When the subject matter of the request is involved in pending litigation in North Carolina.

History Note: Authority G.S. 150B-17;
Eff. February 1, 1976;
Readopted Eff. January 27, 1978;
Amended Eff. January 1, 1983;
Legislative Objection Lodged Eff. January 31, 1983;
Curative Amended Eff. February 28, 1983;
Amended Eff. December 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27,
~~2019~~ 2019;
Amended Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Chiropractic Examiners

RULE CITATION: 21 NCAC 10 .0501

DEADLINE FOR RECEIPT: Friday, December 13, 2019

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Is the Board's website and address set forth elsewhere in Rule? If so, I think this is fine here. If not, please provide the information.

In (a), rather than "Directions on filing a complaint and the complaint form can be found..." provide the directions and the substantive requirements of the form in the Rule. For example, I assume you mean something like "Anyone wishing to file a complaint shall file a form with the Board office. The complaint shall include the following information:

- (1) Whatever it is;*
- (2) That you're; and*
- (3) Requiring*

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

21 NCAC 10 .0501 is amended as published in 34:06 NCR 494-502 as follows:

SECTION .0500 - INVESTIGATION OF COMPLAINTS

21 NCAC 10 .0501 FILING COMPLAINTS

~~(a) General.~~ Any person who has reason to believe that a Doctor of Chiropractic has violated the laws governing chiropractic may file a complaint with the ~~Board of Examiners.~~ Board. Directions on filing a complaint and the complaint form can be found on the Board's website at <https://ncchiroboard.com/complaint-filing-process>. Complaints ~~should~~ shall be filed directly with the ~~secretary of the Board of Examiners.~~ office.

~~(b) Form of Complaint.~~ Complaints may be formal or informal, but must be in writing:

(1) ~~Informal Complaints.~~ Any written communication, construed most favorably to the complainant, which appears to allege a violation of the laws governing chiropractic shall be considered an informal complaint.

(2) ~~Formal Complaint.~~ A formal complaint shall be executed in writing under oath upon a form provided by the secretary. It shall specify the statute or rule allegedly violated and shall contain a short statement of the acts or omissions constituting the alleged violation including the dates of said acts or omissions.

~~(c) Secretary's Response to Complaints.~~ The secretary shall review any complaint to determine whether a major or minor violation has been alleged. If the secretary determines that the alleged violation is minor, he shall attempt to resolve the complaint by informal communication with the complainant and the chiropractor complained of. If the secretary determines that the alleged violation is major, he shall assist the complainant in filing a formal complaint.

History Note: Authority G.S. 90-142; 90-154;

Eff. February 1, 1976;

Readopted Eff. January 27, 1978;

Amended Eff. December 1, 1988; January 1, 1983; December 20, 1979;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019; 2019;

Amended Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Chiropractic Examiners

RULE CITATION: 21 NCAC 10 .0503

DEADLINE FOR RECEIPT: Friday, December 13, 2019

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Delete the "or" at the end of (b)(2)(A).

In (d), what is meant by "informal"? Do you need this? Please consider deleting this language.

In (e), by "may", do you mean "shall" on line 24?

Also, in (e)(1), by "may", do you mean "shall"? If you don't find probable cause, are there ever any circumstances that you wouldn't dismiss the charge?

In (e)(2), change "will" to "shall" in "will be considered" on line 28.

In (e)(2), change "at the discretion of the Board" to "in accordance with 150B-40."

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

Amber May
Commission Counsel
Date submitted to agency: December 3, 2019

21 NCAC 10 .0503 is amended as published in 34:06 NCR 494-502 as follows:

21 NCAC 10 .0503 DETERMINATION OF PROBABLE CAUSE

(a) General. ~~Formal complaints~~ Complaints deemed likely to have occurred, based on the findings of the Investigative Report, shall be ~~investigated by~~ referred to the Chiropractic Review Committee. The committee shall hold a hearing to determine whether there is probable cause to believe a violation of the laws governing Chiropractic has occurred.

(b) Composition of Chiropractic Review Committee. The committee shall be composed of:

(1) the secretary of the Board of Examiners. If the secretary is unable to attend a ~~particular~~ specific probable cause hearing, he or she may designate another physician member of the Board to serve and assume his or her duties at said hearing;

~~(2) the attorney for the Board of Examiners; and~~

~~(3)~~ (2) an alternate Board member. "Alternate Board member" means:

(A) a former Board member selected by the secretary; or

~~(B)~~ a current Board member selected by the secretary; or

~~(B)(C)~~ a licensee selected by the secretary from among those who, at any election held pursuant to Rule .0103(c) of this Chapter, have been elected nominees for Board membership but not appointed to the Board.

(c) Notice of hearing. The secretary shall provide notice of the probable cause hearing in accordance with G.S. 150B-38(b).

(d) Conduct of Probable Cause Hearing. The probable cause hearing shall be informal, and the ~~secretary~~ secretary, or designee per (b)(1) above, shall preside. The Chiropractic Review Committee may consider evidence at the probable cause hearing that would not be admissible if offered at the hearing in a contested case.

(e) Action by the Chiropractic Review Committee. After examining the evidence presented at the probable cause hearing, the Chiropractic Review Committee may dispose of each charge in ~~the formal~~ a complaint as follows:

(1) If no probable cause exists to believe that a violation of G.S. 90-154 has occurred, the charge may be dismissed;

~~(2)~~ If probable cause exists to believe that a violation of G.S. 90-154 has occurred, and if the Committee and licensee at issue fail to resolve the matter through settlement, the case will be considered a "contested case" and set for hearing before either the Board, or an Administrative Law Judge at the NC Office of Administrative Hearings, at the discretion of the Board.

~~(2) If the respondent admits the charge, he may be directed to cease and desist from commission of those acts which violate the provisions of G.S. 90-154; or~~

~~(3) If a charge is denied and probable cause is found, or if a charge, while admitted, is of such gravity as to make the imposition of punitive sanctions appropriate, the complaint shall be presented to the Board of Examiners for its decision on the merits.~~

History Note: Authority G.S. 90-141; 90-143; 90-154;

1 *Eff. December 1, 1988;*
2 *Amended Eff. October 1, 2016;*
3 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27,*
4 *~~2019- 2019;~~*
5 *Amended Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Chiropractic Examiners

RULE CITATION: 21 NCAC 10 .0706

DEADLINE FOR RECEIPT: Friday, December 13, 2019

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), delete "instead" on line 6 and end the sentence after "... Administrative Hearings."

In (b), line 9, change "will" to "shall"

In (b)(2), change "which" to "that" in "which give I

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

Amber May
Commission Counsel
Date submitted to agency: December 3, 2019

21 NCAC 10 .0706 is readopted as published in 34:06 NCR 494-502 as follows:

21 NCAC 10 .0706 CONDUCT OF BOARD HEARING

(a) General. Hearings in contested cases shall be conducted by a majority of the Board, unless a majority of the Board votes to designate an administrative law judge to preside at the hearing in the Office of Administrative Hearings instead. The president shall serve as presiding officer at Board Hearings unless he or she is absent or disqualified, in which case the vice-president shall preside. Board Hearings shall be conducted as prescribed by G.S. 150B-40.

(b) Disqualification. An affidavit seeking disqualification of any Board member, if filed in good faith and in a timely manner, will be ruled on by the remaining members of the Board. An affidavit is considered timely if it is filed:

(1) Prior to the hearing; or

(2) As soon after the commencement of the hearing as the affiant becomes aware of facts which give rise to his belief that a Board member should be disqualified.

(c) Evidence. The admission of evidence in a Board Hearing on a contested case shall be as prescribed in G.S. 150B-41.

History Note: Authority G.S. 150B-40; 150B-41;

Eff. February 1, 1976;

Readopted Eff. January 27, 1978;

Amended Eff. January 1, 1989;

Expired Eff. May 1, 2019 pursuant to G.S. ~~150B-21.3A~~. 150B-21.3A;

Readopted Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Chiropractic Examiners

RULE CITATION: 21 NCAC 10 .0708

DEADLINE FOR RECEIPT: Friday, December 13, 2019

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), you've said "secretary or the designated presiding officer" and then elsewhere through this Rule you've only said "designated presiding officer." Perhaps this is correct because the presiding officer will be the one making the call as to whether the request is to be granted, but I want to be sure. If so, no change is necessary.

For purposes of clarity, please consider combining (a) and (c) or at least consider switching (c) and (b). If you combined (a) and (c), it would look something like: "Consistent with G.S. 150B-40(b), all motions for continuance shall be addressed to the secretary or designated presiding officer of the contested case hearing. All motions for continuance shall in in writing and received in the office of the Board no less than seven calendar days before the hearing date."

In (b), what is considered to be a "compelling cause"? Please either provide some examples or say how this will be determined. Is this the same "good cause" in Paragraph (d)? If so, please use consistent terminology and consider combining these Paragraphs. A suggestion would be "(b) Motions for continuance shall be granted upon a showing of good cause. In determining whether good cause exists, the presiding officer shall consider the ability of the party requesting a continuance to proceed without a continuance." Please note that this combined (b) and (d) and incorporated several of my notes below.

In (b) and (d), line 10, by "may", do you mean "shall"?

In (d), delete "effectively"

Amber May
Commission Counsel
Date submitted to agency: December 3, 2019

In (e), delete “usually.” You don’t need it since you’ve included “unless...”

In (f), what are “compelling circumstances”? Is this the same as “compelling cause” or “good cause”? What factors will be used in making this determination? I note that “especially if a continuance has been previously requested” looks like a factor. If so, it would look something like:

Motions for continuance filed on the date of the hearing shall be granted to a party only under compelling circumstances upon consideration of the following:

- 1) The circumstances that necessitate the continuance;*
- 2) Whether the circumstances could have been ascertained prior to the*
- 3) Whether the party has previously requested a continuance;*
- 4) Whatever else y’all will consider.*

Just so I understand, why is it necessary to separate out continuances made on the day of the hearing versus those made less than 7 days prior to the hearing? Based upon the Rule, it looks like the determination will be the same. If so, In (f), rather than “motions for continuance filed on the date of the hearing” could be “... filed less than seven days prior to the hearing...” Of this is correct, I think you could combine (e) and (f).

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

21 NCAC 10 .0708 is adopted as published in 34:06 NCR 494-502 as follows:

21 NCAC 10 .0708 CONTINUANCES FOR BOARD HEARINGS

(a) Consistent with G.S. 150B-40(b), all motions for continuance shall be addressed to the secretary, or the designated presiding officer of the contested case hearing.

(b) Motions for a continuance of a hearing may be granted upon a showing of compelling cause. Under no circumstances is the Board required to grant continuances.

(c) Motions for a continuance shall be in writing and shall be received in the office of the Board no less than seven calendar days before the hearing date.

(d) In determining whether good cause exists, the presiding officer may consider the ability of the party requesting a continuance to proceed effectively without a continuance.

(e) Usually, a motion for a continuance filed less than seven calendar days from the date of the hearing shall be denied unless the reason for the motion could not have been ascertained earlier.

(f) Motions for continuance filed on the date of the hearing shall be granted to a party only under compelling circumstances, especially if a continuance has been previously requested.

History Note: Authority G.S. 90-156; 150B-38(h);

Adopted Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Chiropractic Examiners

RULE CITATION: 21 NCAC 10 .0709

DEADLINE FOR RECEIPT: Friday, December 13, 2019

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (g), delete or define "promptly."

In (g), who are the "members with voting authority"? 150B-40 just requires a "majority of the agency" and I don't see any limiting language regarding voting in your

In (g), change "will" to "shall" on lines 1 and 2.

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

21 NCAC 10 .0709 is adopted with changes as published in 34:06 NCR 494-502 as follows:

21 NCAC 10 .0709 SUBPOENAS

(a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a Board Hearing or for the purposes of discovery, shall:

- (1) be made in writing to the Board;
- (2) identify any document sought;
- (3) include the full name and home or business address of all persons to be subpoenaed; and
- (4) if known, the date, time, and place for responding to the subpoena.

The Board shall issue the requested subpoenas within three days of receipt of the request.

(b) Subpoenas shall contain the following:

- (1) the caption of the case;
- (2) the name and address of the person subpoenaed;
- (3) the date, hour, and location of the hearing in which the witness is commanded to appear;
- (4) a particularized description of the books, papers, records, or objects the witness is directed to bring with him to the hearing, if any;
- (5) the identity of the party on whose application the subpoena was issued;
- (6) the date of issue;
- (7) the signature of the presiding officer or his designee; and
- (8) a "return of service." The "return of service" form as filled out, shall show:
 - (A) the name and capacity of the person serving the subpoena;
 - (B) the date on which the subpoena was delivered to the person directed to make service;
 - (C) the date on which service was made;
 - (D) the person on whom service was made;
 - (E) the manner in which service was made; and
 - (F) the signature of the person making service.

(c) Subpoenas shall be served in a manner set forth in Rule 45 of the N.C. Rules of Civil Procedure.

(d) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office. Written objections shall comply with Rule 45 of the N.C. Rules of Civil Procedure.

(e) The party who requested the subpoena may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness with the filing of the response with the Board.

(f) After receipt of the objection and response thereto, if any, the Board shall issue a notice of a Hearing on the motion to the party who requested the subpoena and the party challenging the subpoena to be scheduled as soon as practicable, at which time evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

1 (g) Promptly after the close of such Board Hearing, a majority of the Board members with voting authority will rule
2 on the challenge and issue a written decision. A copy of the decision will be issued to all parties and made a part of
3 the record.

4 *History Note: Authority G.S. 150B-38; 150B-39; 150B-40;*
5 *Adopted Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Occupational Therapy

RULE CITATION: 21 NCAC 38 .0801

DEADLINE FOR RECEIPT: Friday, December 13, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In Item (1), change “refers” to “means” to be consistent with the rest of this Rule.

In Item (2), please review the definition of “contact hour” in light of .0805. It appears based upon .0805, that contact hour may be different depending on what kind of activity is being used for CE.

In Item (4), what is meant by “entry-level”, “advanced”, and “enhanced”? Here, do you mean something like “Continuing Education” means educational experiences beyond those required by G.S. 90-270.70(a)”?

In Item (8), consider changing “as defined in” to “as set forth in.” I don’t read .0805 to provide a definition for this.

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

Amber May
Commission Counsel
Date submitted to agency: December 2, 2019

21 NCAC 38.0801 is amended as published in 34:04 NCR 305 as follows:

21 NCAC 38 .0801 CONTINUING COMPETENCE DEFINITIONS

As used in this Section:

- (1) "AOTA Approved Provider Program" refers to a voluntary process of review and approval of continuing education (CE) providers by the American Occupational Therapy Association (AOTA) based on criteria and guidelines that assess a provider's ability to develop and implement CE activities that are relevant to the practice of occupational therapy.
- (2) "Contact Hour" means a unit of measure for a continuing education activity. One contact hour equals 60 minutes in a learning activity, excluding meals and breaks. One contact hour equals one point.
- (3) "Continuing Competence" means a process in which an occupational therapist or an occupational therapy assistant develops and maintains the knowledge, performance skills, interpersonal abilities, critical reasoning skills, and ethical practice reasoning skills necessary to perform his or her occupational therapy professional responsibilities.
- (4) "Continuing Education" means structured educational experiences beyond entry-level academic degree work that are intended to provide advanced or enhanced knowledge in a particular area.
- (5) "Continuing Education Credit" means credit given for a formalized activity in the form of contact hours or continuing education units.
- (6) "Continuing Education Unit (CEU)" means a unit of measure for continuing education. One CEU is defined as 10 contact hours of participation in a learning activity excluding meals and breaks.
- (7) "Peer Reviewed" means any written work that is blind reviewed by more than one person.
- (8) "Points" means an assigned unit of measure for each continuing competence activity as defined in Rule .0805 of this Section.

*History Note: Authority G.S. 90-270.69; 90-270.75(a);
Eff. July 1, 2007;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. January 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Occupational Therapy

RULE CITATION: 21 NCAC 38 .0804

DEADLINE FOR RECEIPT: Friday, December 13, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Overall, how does this Rule go with .0805? I think that .0805 give the kinds of activities that may be approved if they apply to one of the subject matters in (b), are related to responsibilities, and serve to protect the public, but I think that this could be much more clear (if that's correct.)

In (a), to be approved for what? Activities for what? Continuing education? Please make it clear within the body of the text of the Rule as to what this is applying.

In (a), how will the Board make the decision as to whether activities "serve to protect the public by enhancing the licensee's continuing competence"?

Would it help to somehow combine (a) and (b) for purposes of clarity? It's a bit unclear to me as to whether the activities have to apply to one of these subject matters.

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

Amber May
Commission Counsel
Date submitted to agency: December 2, 2019

21 NCAC 38 .0804 is amended as published in 34:04 NCR 305-306 as follows:

**21 NCAC 38 .0804 SCOPE OF QUALIFIED ACTIVITIES FOR MAINTAINING CONTINUING
COMPETENCE**

(a) To be approved by the Board, activities must be related to the licensee's current or anticipated roles and responsibilities in occupational therapy and must serve to protect the public by enhancing the licensee's continuing competence.

(b) Subject matter for approved activities include research; theoretical or practical content related to the practice of occupational therapy; or the development, administration, supervision, and teaching of clinical practice or service delivery programs by occupational therapists or occupational therapy assistants.

History Note: Authority G.S. 90-270.69; 90-270.75(a);

Eff. July 1, 2007;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;

Amended Eff. January 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Occupational Therapy

RULE CITATION: 21 NCAC 38 .0805

DEADLINE FOR RECEIPT: Friday, December 13, 2019

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Overall, how does this Rule go with .0804? Do all of these activities have to be approved in accordance with .0804? Please review and clarify.

On line 4, by “are”, do you mean “may include the following” or “shall include the following”?

In each item, it looks like you are essentially defining what each type of activity is. Please consider making this more clear.

In (1)(a), please make the second sentence of this Subparagraph a complete sentence.

In (1)(a), what is a “formal assessment”? Please delete “formal” or provide some examples (but see my question below.)

In (1)(a), are these examples of continuing education or of the formal assessments? Please review and clarify. I think it's of continuing education.

In (1)(b), should “may earn” be “shall earn”? Are there any circumstances in which a person would not get a contact hour for this (assuming it's been approved in accordance with .0804)? Please note that this language is in every Item.

In (1)(b) what is “an equivalent unit”? Since a contact hours is defined as 60 minutes of a learning activity, how would they come up with an equivalent unit? Please note that this is a question for other Items in this Rule and came up in the contact hour definition in .0801.

Do you need all of (1)(b) since you've included “one contact hours equals one point” in .0801(2)?

Why would one need the documentation referenced in (1)(c), (2)(d), and otherwise throughout this Rule ? Is this for the therapist's records? Is this to make it clear

Amber May
Commission Counsel
Date submitted to agency: December 2, 2019

to the sponsor that they have to provide some documentation to the therapist? Is this the documentation necessary for approval in accordance with .0804? Please make this more clear.

In (1)(c), rather than “documentation shall include a certificate of completion or similar documentation including...” could you just say “documentation shall include...” My concern here is the “similar documentation.”

Can you combine (2)(b) and (c) and say “... maximum of six points, except that...”

In (2)(d), delete or define “successful” in “successful completion.”

Since you’ve said “one contact hour equals 60 minutes in a learning activity”, (3)(b) appears to conflict with that since you’ve said that three contact hours will only equal one point. Please review and revise.

In (3)(c), is this form something they have to submit in order to be approved? What is the purposes of the documentation?

Please provide some sort of introductory language to (4)(a) and (b).

Would it help to provide some reference to “an occupational therapy practitioner or post Level II fieldwork student” in (4)?

Change the semi-colon at the end of (4)(a) to a colon.

In (4)(a)(ii), just to be clear, a “Level II fieldwork student” is a licensee as referenced in (4)(b)(i)?

I note that in (4)(b)(i), you’ve said “level II fieldwork student” and in (5)(a), you’ve said “Level II OT or OTA fieldwork student.” Are these the same?

In (5)(b), did you intend to delete “points;” on line 65?

In (6)(a), add a comma after “article” and after “edited” in (6)(b).

Change the semi-colon at the end of (6)(b) to a colon.

Why have you referenced .0804 in (8) when you haven’t done it elsewhere? Is this Item the only one subject to approval in accordance with .0804?

Is the intent of (8)(a) to define what “professional meeting and activities” are? Please review and clarify.

The format of (8)(b) is different than the rest of the Items in this Rule. Is the intent here that a person can earn 1 point for each 5 hours of meetings, not to exceed 2 points?

In (8)(c), what is meant by “participation must be validated”?

Amber May
Commission Counsel
Date submitted to agency: December 2, 2019

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

Amber May
Commission Counsel
Date submitted to agency: December 2, 2019

21 NCAC 38 .0805 is amended as published in 34:04 NCR 306-308 as follows:

21 NCAC 38 .0805 QUALIFIED ACTIVITIES FOR MAINTAINING CONTINUING COMPETENCE

Activities that qualify for maintaining continuing competence are:

(1) Continuing Education:

- (a) Includes attendance and participation at a live presentation such as a workshop, seminar, conference, or in-service educational program. May also include participation in other continuing education activities that require a formal assessment of learning. Examples include electronic or Web-based courses, AOTA Self-Paced Clinical Courses or other formalized self-study courses, or AOTA Continuing Education Articles;
- (b) A licensee may earn one point for each contact hour or equivalent unit that is awarded by the provider. There are no maximum points in this category; and
- (c) Documentation shall include a certificate of completion or similar documentation including name of course, date, author/instructor, sponsoring organization, location, and number of hours attended.

(2) Academic Coursework:

- (a) Includes participation in on-site or distance learning academic courses from a university, college, or vocational technical adult education course related to the practice of occupational therapy;
- (b) A licensee may earn one point for each contact hour, up to a maximum of six points;
- (c) A licensee enrolled in a graduate or post-graduate OT curriculum has no maximum points in this category; and
- (d) Documentation shall include an original official transcript indicating successful completion of the course, date, and a description of the course from the school catalogue or course syllabus.

(3) Small Group Study:

- (a) Includes review and discussion of journal articles, clinical videotapes or audiotapes by at least two licensed practitioners;
- (b) A licensee may earn one point for ~~one hour~~ three contact hours spent in an independent study activity, up to a maximum of three points; and
- (c) Documentation shall include title, author, publisher, time spent, and date of completion. Licensee must complete the Small Group Study Form provided by the NCBOT and include a statement that describes how the activity relates to a licensee's current or anticipated roles and responsibilities.

(4) Mentorship Agreement:

- (a) Participation as a Mentee;

- (i) Participation in a formalized mentorship agreement with a mentor as defined by a signed contract between the mentor and mentee that outlines specific goals and objectives and designates the plan of activities that are to be met by the mentee. These activities must be related to the development of new occupational therapy skills outside current required job performance;
- (ii) A licensee may earn one point for each ~~four~~ 10 contact hours spent in activities directly related to achievement of goals and objectives up to a maximum of ~~five~~ two points; and
- (iii) Documentation shall include name of mentor and mentee, copy of signed contract, dates, hours spent and focus of mentorship activities, and outcomes of mentorship agreement.
- (b) Participation as Mentor:
- (i) Participation in a formalized mentorship agreement with ~~a~~ an occupational therapy practitioner or post Level II fieldwork student mentee as defined by a signed contract between the mentor and mentee that designates the responsibilities of the mentor and specific goals and objectives that are to be met by the mentee. These activities must be related to the development of ~~new~~ occupational therapy skills for the ~~mentee~~ mentee. The mentorship must not be part of the mentor's that are outside current required job performance; responsibilities;
- (ii) A licensee may earn one point for each four hours spent in mentorship activities as a mentor up to a maximum of five points; and
- (iii) Documentation shall include name of mentor and mentee, copy of signed contract, dates, hours spent and focus of mentorship activities, and outcomes of mentorship agreement.
- (5) Fieldwork Supervision:
- (a) Participation as the primary clinical fieldwork educator for Level I or Level II OT or OTA fieldwork students;
- (b) A licensee may earn one-half point for each ~~40~~ 20 hours of fieldwork, up to a maximum of ~~six~~ 12 points; points for Level I may not exceed six.
- (c) Documentation shall include verification provided by the school to the fieldwork educator with the name of student, school, and dates of fieldwork or the signature page of the completed student evaluation form. Evaluation scores and comments shall be deleted or blocked out; and
- (d) If fieldwork spans two licensure years, credit shall be given only for the year it is completed.
- (6) Professional Writing:
- (a) Publication of a peer-reviewed book, chapter, article or contracted review of occupational therapy resource material;

- (b) During the year written, edited or reviewed a licensee may earn;
- (i) 15 points as author of a book;
 - (ii) 10 points as author of a chapter;
 - (iii) Five points as author of a peer-reviewed article;
 - (iv) Five points as a contracted reviewer of a print or multimedia occupational therapy resource; or
 - (v) 10 points as listed editor of a book.
- (c) Documentation shall consist of full reference for publication including title, author, editor, and date of publication; or copy of acceptance letter, if not yet published; and
- (d) Credit for submitted items shall be given for one licensure period only.
- (7) Presentation and Instruction:
- (a) Presentation of an academic course or peer-reviewed or non peer-reviewed workshop, seminar, in-service, electronic or Web-based course for the first time or for which more than 50% of the material has been ~~revised~~; revised related to occupational therapy;
 - (b) A licensee may earn two points for ~~each one~~ contact hour ~~of credit~~ that is awarded for an activity, up to a maximum of six points; and
 - (c) Documentation shall include a copy of official program, schedule, or syllabus including presentation title, date, hours of presentation, and type of audience or verification of such, signed by the sponsor.
- (8) Professional Meetings and Activities:
- (a) Consistent with Rule .0804 of this Section, participation in board or committee work with agencies or organizations to promote and enhance the practice of occupational therapy;
 - (b) A licensee may earn one point for five hours or two points for 10 or more hours for participation on committees or boards; and
 - (c) Documentation must include name of committee or board, name of agency or organization, purpose of service, and description of licensee's role. Participation and hours must be validated by an officer or representative of the organization or committee.
- (9) Board Certification or Specialty Certification:
- (a) The Board shall recognize completion of activities that result in board certification or specialty certification by AOTA during the current licensure period;
 - (b) A licensee may earn 15 points for each board certification or specialty certification credential earned or re-certified during the current licensure period; and
 - (c) Documentation shall include certificate of completion or other documentation from the recognized certifying body that identifies satisfactory completion of requirements for obtaining board certification or specialty ~~certification~~. certification or recertification.
- (10) Research and Grants:

- (a) Development of or participation in a research project or grant ~~proposal~~; proposal relevant to occupational therapy;
- (b) A licensee may earn one point for each three hours spent working on a research project or grant proposal, up to a maximum of five points; and
- (c) Documentation includes verification from the primary investigator indicating the name of the research project, dates of participation, major hypotheses or objectives of the project, and licensee's role in the project or name of grant proposal, name of grant source, purpose and objectives of the project, and verification from the grant author regarding licensee's role in the development of the grant if not the author.

History Note: Authority G.S. 90-270.69; 90-270.75(a);

Eff. July 1, 2007;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;

Amended Eff. January 1, 2020.