

## Burgos, Alexander N

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**Subject:** FW: [External] RE: September 2022 RRC - 74C Rules

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**From:** Gray, Jeffrey <JGray@bdixon.com>

**Sent:** Tuesday, September 13, 2022 10:26 AM

**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Hatch, Andrew S <andrew.hatch@oah.nc.gov>

**Subject:** RE: [External] RE: September 2022 RRC - 74C Rules

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Brian:

Do you mean on the question of “adjudicate?” It would mean whenever there is a final determination in the case, which is how it is defined. And yes, that may be a long time, but what happens if we grant the renewal after some stage in the proceeding and the conviction is upheld? I do not think it is “unclear,” or any other standard that would allow for an objection by the Commission.

If you are inquiring about a cross-reference to the minimum score, that is not necessary. This minimum score has been the same since 1973. 49 years. This is “re-qualification,” which means anybody doing this has done it at least once in their life and knows what the minimum qualifying score is. This is not something the general public needs to know. Rule .0806 – according to the History Note – has been reviewed 13 times by RRC Staff Attorneys and no one has raised this issue. Similarly, Rule .0807 has been reviewed 15 times.

Jeff

## **Burgos, Alexander N**

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**Subject:** FW: [External] RE: September 2022 RRC - 74C Rules

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Sent:** Monday, September 12, 2022 4:06 PM

**To:** Gray, Jeffrey <jgray@bdixon.com>

**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Hatch, Andrew S <andrew.hatch@oah.nc.gov>

**Subject:** RE: [External] RE: September 2022 RRC - 74C Rules

Hi Jeff,

Just checking in on this. I'd appreciate a response either by tonight or tomorrow morning, so I can make a determination as to what my recommendation is going to be. Let me know what your timeframe is.

Thanks,

Brian

Brian Liebman

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984)236-1948

[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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## Burgos, Alexander N

---

**Subject:** FW: [External] RE: September 2022 RRC - 74C Rules

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Sent:** Thursday, September 8, 2022 5:32 PM

**To:** Gray, Jeffrey <jgray@bdixon.com>

**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Hatch, Andrew S <andrew.hatch@oah.nc.gov>

**Subject:** RE: [External] RE: September 2022 RRC - 74C Rules

Jeff,

Thank you for your response. My comments, as necessary, below in bold.

14B NCAC 16 .0806:

Paragraph (b) line24: I did not make the change, since the affidavit is already described in the sentence there is no need to describe it again; I mere added "the" in front of "affidavit."

**OK.**

Paragraph (d): There is a difference. Rail-mounted is an add-on to an integrated rail on the firearm or a rail that is added post-manufacture. A dedicated light system is integral and manufactured as part of the firearm. The request came from the industry so they certainly understand it.

**OK. Thank you for the explanation.**

Paragraph (d): Requalification is the process of firing the firearm on the range and being scored. It is separate from the renewal, but is required for renewal.

**OK, this is fine in light of R. 807, although I think a cross reference would help make this clearer.**

Paragraph (e): There is no "standard." It is common sense. If the Governor or the President says, "citizens can't travel," then that restricts or prohibits an armed guard from traveling to the classroom or the firing range. If the Governor or the President says, "citizens cannot assemble indoors," then that restricts or prohibits going to an indoor classroom. If the Governor or the President says, "citizens cannot assemble in groups greater that X number of people," then that restricts or prohibits going to a classroom or a range. The Declaration of the State of Emergency is the deciding factor, i.e. the standard.

**OK.**

Also, paragraph (e): I added "by the licensee."

**Thank you.**

Also, paragraph (e): "Conditionally" means it is temporary; the guard must qualify within 90 days of the lifting of the state of emergency or it is no longer valid. (This rule has been reviewed by staff three times in the last 30 or so months. Why are these being raised as questions now???)

**OK.**

14B NCAC 16 .0904:

Paragraph (d): See, above.

**OK.**

Paragraph (c): The minimum score is 80%. *See*, 14B NCAC 16 .0807(d).  
**Fine, but a cross reference would help make this clearer.**

Also, paragraph (e)" *See*, above.  
**OK.**

Also, paragraph (e) I added "by the licensee."  
**OK.**

Also, paragraph (e) *See*, above.  
**OK.**

14B NCAC 16 .0911:

Paragraph (b): What does "adjudicate" mean? Seriously??? Well, according to Black's Law Dictionary, 5<sup>th</sup> ed., it means "to settle in the exercise of judicial authority; to determine finally."  
**Thank you. Where I was going with this was whether the deferral ends at the time the plea is entered or the verdict is handed down, or whether it continues until an appeal is exhausted or the time for appeal expires. As you're no doubt aware, a criminal appeal can take an awfully long time to exhaust, which would have an impact on your rule.**

Paragraph (d): *See*, above.  
**OK.**

Also, paragraph (d): I added "by the licensee."  
**OK**

Also, paragraph (d): *See*, above.  
**OK.**

Thanks,  
Brian

Brian Liebman  
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## Burgos, Alexander N

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**Subject:** FW: [External] RE: September 2022 RRC - 74C Rules  
**Attachments:** 14B NCAC 16 .0806 is amended as published.08.11.22.docx; 14B NCAC 16 .0904 (As published in...).docx; 14B NCAC 16 .0911 (As published in...).docx

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**From:** Gray, Jeffrey <JGray@bdixon.com>  
**Sent:** Wednesday, September 7, 2022 4:33 PM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Hatch, Andrew S <andrew.hatch@oah.nc.gov>  
**Subject:** RE: [External] RE: September 2022 RRC - 74C Rules

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Brian:

Attached are the revised rules reflecting the suggested changes/additions. Please note, the base rule for each of these is not the rule as noticed. These same three rules were in the process of being amended when the current version was noticed (i.e. 4/1/22.) Those amendments were effective July 1, 2022. Therefore, I have integrated the most recent proposed amendments into the July 1, 2022 version of each rule. I have noted this in the precatory sentence at the top of each rule.

Below are the answers to your questions. **To avoid confusion, however, I am using the paragraph & line references from your Request for Change to answer your questions.**

14B NCAC 16 .0806:

Paragraph (b) line24: I did not make the change, since the affidavit is already described in the sentence there is no need to describe it again; I mere added "the" in front of "affidavit."

Paragraph (d): There is a difference. Rail-mounted is an add-on to an integrated rail on the firearm or a rail that is added post-manufacture. A dedicated light system is integral and manufactured as part of the firearm. The request came from the industry so they certainly understand it.

Paragraph (d): Requalification is the process of firing the firearm on the range and being scored. It is separate from the renewal, but is required for renewal.

Paragraph (e): There is no "standard." It is common sense. If the Governor or the President says, "citizens can't travel," then that restricts or prohibits an armed guard from traveling to the classroom or the firing range. If the Governor or the President says, "citizens cannot assemble indoors," then that restricts or prohibits going to an indoor classroom. If the Governor or the President says, "citizens cannot assemble in groups greater that X number of people," then that restricts or prohibits going to a classroom or a range. The Declaration of the State of Emergency is the deciding factor, i.e. the standard.

Also, paragraph (e): I added "by the licensee."

Also, paragraph (e): “Conditionally” means it is temporary; the guard must qualify within 90 days of the lifting of the state of emergency or it is no longer valid. (This rule has been reviewed by staff three times in the last 30 or so months. Why are these being raised as questions now???)

14B NCAC 16 .0904:

Paragraph (d): *See, above.*

Paragraph (c): The minimum score is 80%. *See, 14B NCAC 16 .0807(d).*

Also, paragraph (e)” *See, above.*

Also, paragraph (e) I added “by the licensee.”

Also, paragraph (e) *See, above.*

14B NCAC 16 .0911:

Paragraph (b): What does “adjudicate” mean? Seriously??? Well, according to Black’s Law Dictionary, 5<sup>th</sup> ed., it means “to settle in the exercise of judicial authority; to determine finally.”

Paragraph (d): *See, above.*

Also, paragraph (d): I added “by the licensee.”

Also, paragraph (d): *See, above.*

Jeff

1 **14B NCAC 16 .0806 is amended as published in 36:19 NCR 1554, and amended effective July 1, 2022, as follows:**

2  
3 **14B NCAC 16 .0806 RENEWAL OF ARMED SECURITY GUARD FIREARM REGISTRATION**  
4 **PERMIT**

5 (a) Each applicant for renewal of an armed security guard firearm registration permit identification card or his or her  
6 employer shall complete an online form on the website provided by the Board. This online form shall be submitted  
7 not more than 90 days prior to expiration of the applicant's current armed registration and shall be accompanied by:

- 8 (1) one head and shoulders color digital photograph of the applicant in JPG, JPEG, or PNG format of  
9 sufficient quality for identification, taken within six months prior to online application and  
10 submitted by uploading the photograph online with the application submission;
- 11 (2) upload online a statement of the results of a statewide criminal history search obtained by the  
12 reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the  
13 applicant has resided within the preceding 12 months;
- 14 (3) the applicant's renewal fee, along with the four dollar (\$4.00) convenience fee and credit card  
15 transaction fee;
- 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) a statement signed by a certified trainer that the applicant has successfully completed the training  
20 requirements of Rule .0807 of this Section; and
- 21 (6) a completed affidavit form and public notice statement form.

22 (b) If there is a criminal charge pending against the applicant for renewal that constitutes a deniable offense under  
23 G.S. 74C-8(d)(2), consideration of the application shall be deferred until the criminal charge is adjudicated.

24 (c) The employer of each applicant for a registration renewal shall give the applicant a copy of the online application  
25 and a copy of the completed affidavit form to serve as a record of application for renewal and shall retain a copy of  
26 the application, including **the** affidavit in the guard's personnel file in the employer's office.

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

32 (e) A registered armed security guard may utilize a dedicated light system or gun-mounted light for requalification.

33 (f) During a national or State declared state of emergency that restricts or prohibits a registered armed security guard  
34 from requalifying, the Board shall, upon written request to the Director **by the licensee**, extend the deadline for  
35 requalification up to ~~60~~ 90 days beyond the effective period of the state of emergency. Any registration renewed  
36 pursuant to this Paragraph shall be issued conditionally and shall automatically expire on the ~~60<sup>th</sup>~~ 90<sup>th</sup> day if  
37 requalification requirements have not been met.

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*History Note: Authority G.S. 74C-5; G.S. 74C-8.1; G.S. 74C-9; 74C-13;  
Eff. June 1, 1984;  
Amended Eff. May 1, 2012; October 1, 2010; December 1, 1995; February 1, 1990; December 1,  
1985;  
Transferred and Recodified from 12 NCAC 07D .0806 Eff. July 1, 2015;  
Amended Eff. January 1, 2018; November 1, 2017;  
Readopted Eff. November 1, 2019;  
Amended Eff. March 1, 2020;  
Emergency Amendment Eff. May 6, 2020;  
Temporary Amendment Eff. July 24, 2020;  
Temporary Amendment Expired Eff. May 14, 2021;  
Amended Eff. July 1, 2022; January 1, 2022;  
Amended Eff. October 1, 2022.*

1 **14B NCAC 16 .0904 is amended as published in 36:19 NCR 1554, and amended effective July 1, 2022, as follows:**

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

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

- 7 (1) uploaded online a certificate of successful completion of a firearms trainer refresher course approved  
8 by the Board and the Secretary of Public Safety consisting of a minimum of eight hours of classroom  
9 and practical range training in safety and maintenance of the applicable firearm (i.e. handgun,  
10 shotgun, or rifle), range operations, control and safety procedures, and methods of firing. This  
11 training shall be completed within 180 days of the submission of the renewal application;
- 12 (2) uploaded online a statement of the results of a criminal history records search by the reporting  
13 service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has  
14 resided within the preceding 48 months; and
- 15 (3) the applicant's renewal fee, along with the four dollar (\$4.00) convenience fee and credit card  
16 transaction fee.

17 (b) If there is a criminal charge pending against the applicant for renewal that constitutes a deniable offense under  
18 G.S. 74C-8(d)(2), consideration of the application shall be deferred until the criminal charge is adjudicated.

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

24 (d) Any firearms trainer who fails to qualify with the minimum score during the refresher course shall not continue  
25 to instruct during the period between the failure to qualify and the expiration of his or her permit.

26 (e) The holder of a firearms trainer certificate may utilize a dedicated light system or gun mounted light for personal  
27 requalification.

28 (f) During a national or State declared state of emergency that restricts or prohibits a certified firearms trainer from  
29 requalifying, the Board shall, upon written request to the Director **by the licensee**, extend the deadline for  
30 requalification up to ~~60~~ 60 days beyond the effective period of the state of emergency. Any certificate renewed  
31 pursuant to this Paragraph shall be issued conditionally and shall automatically expire on the ~~60<sup>th</sup>~~ 90<sup>th</sup> day if  
32 requalification requirements have not been met.

33  
34 *History Note: Authority G.S. 74C-5; 74C-8.1(a); 74C-9; 74C-13;*  
35 *Eff. June 1, 1984;*  
36 *Amended Eff. January 1, 2013; October 1, 2010; June 1, 2009; December 1, 1995; December 1,*  
37 *1985;*

1                    *Transferred and Recodified from 12 NCAC 07D .0904 Eff. July 1, 2015;*  
2                    *Amended Eff. November 1, 2017; February 1, 2016; October 1, 2015;*  
3                    *Readopted Eff. November 1, 2019;*  
4                    *Amended Eff. March 1, 2020;*  
5                    *Emergency Amendment Eff. May 6, 2020;*  
6                    *Temporary Amendment Eff. July 24, 2020;*  
7                    *Temporary Amendment Expired Eff. May 14, 2021;*  
8                    *Amended Eff. July 1, 2022; January 1, 2022;*  
9                    *Amended Eff. October 1, 2022.*

1 **14B NCAC 16 .0911 is amended as published in 36:19 NCR 1554, and amended effective July 1, 2022, as follows:**

2  
3 **14B NCAC 16 .0911 RENEWAL OF AN UNARMED TRAINER CERTIFICATE**

4 (a) Each applicant for renewal of an unarmed trainer certificate shall complete an online renewal form on the website  
5 provided by the Board. This form shall be submitted online not less than 30 days prior to the expiration of the  
6 applicant's current certificate. In addition, the applicant shall include the following:

- 7 (1) the renewal fee set forth in Rule .0903(a)(3) of this Section and collected online as part of the  
8 application process;
- 9 (2) a certificate of completion of a minimum of 16 hours of Board developed armed or unarmed  
10 instruction performed during the current unarmed trainer certification period;
- 11 (3) a statement verifying the classes taught during the current unarmed trainer certification period on a  
12 form provided by the Board as part of the online application process; and
- 13 (4) uploaded online a statement of the results of a criminal history records search by the reporting  
14 service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has  
15 resided within the preceding 24 months.

16 (b) If there is a criminal charge pending against the applicant for renewal that constitutes a deniable offense under  
17 G.S. 74C-8(d)(2), consideration of the application shall be deferred until the criminal charge is adjudicated.

18 (c) If there is a criminal charge pending against the applicant for renewal that constitutes a deniable offense under  
19 G.S. 74C-8(d)(2), consideration of the application shall be deferred until the criminal charge is adjudicated.

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

25 (e) During a national or State declared state of emergency that restricts or prohibits an unarmed trainer from  
26 performing the instruction required by Subparagraph (a)(2) of this Rule, the Board shall, upon written request to the  
27 Director by the licensee, extend the deadline for renewal up to 90 days beyond the effective period of the state of  
28 emergency. Any certificate renewed pursuant to this Paragraph shall be issued conditionally and shall automatically  
29 expire on the 90th day if instruction requirements have not been met.

30  
31 *History Note: Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13;*  
32 *Eff. August 1, 2004;*  
33 *Amended Eff. January 1, 2013; October 1, 2010; January 1, 2008;*  
34 *Transferred and Recodified from 12 NCAC 07D .0911 Eff. July 1, 2015;*  
35 *Readopted Eff. March 1, 2020;*  
36 *Amended Eff. July 1, 2022;*  
37 *Amended Eff. October 1, 2022.*

## Burgos, Alexander N

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**From:** Liebman, Brian R  
**Sent:** Tuesday, August 23, 2022 4:59 PM  
**To:** Gray, Jeffrey  
**Cc:** Burgos, Alexander N; Hatch, Andrew S  
**Subject:** RE: [External] RE: September 2022 RRC - 74C Rules

Thank you!

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
brian.liebman@oah.nc.gov

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**From:** Gray, Jeffrey <JGray@bdixon.com>  
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**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Hatch, Andrew S <andrew.hatch@oah.nc.gov>  
**Subject:** [External] RE: September 2022 RRC - 74C Rules

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Brian:

RECEIVED. I will have these back to you before the deadline.

Jeff

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**From:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Sent:** Tuesday, August 23, 2022 1:22 PM  
**To:** Gray, Jeffrey <[JGray@bdixon.com](mailto:JGray@bdixon.com)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>; Hatch, Andrew S <[andrew.hatch@oah.nc.gov](mailto:andrew.hatch@oah.nc.gov)>  
**Subject:** September 2022 RRC - 74C Rules

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Board for the September 2022 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, September 15, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on Wednesday, September 7, 2022.

In the meantime, please do not hesitate to reach out via email with any questions or concerns.

Thanks,

Brian

Brian Liebman  
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