

## Burgos, Alexander N

---

**Subject:** FW: [External] RE: RFC for PPSB August RRC meeting

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**From:** Ascher, Seth M <seth.ascher@oah.nc.gov>  
**Sent:** Thursday, August 22, 2024 2:43 PM  
**To:** Gray, Jeffrey <jgray@bdixon.com>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** Re: [External] RE: RFC for PPSB August RRC meeting

No problem Jeff. With this revision, I anticipate recommending approval of these rules at August's meeting. I will let you know if anything changes between now and then.

### Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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## Burgos, Alexander N

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**Subject:** FW: [External] RE: RFC for PPSB August RRC meeting  
**Attachments:** 14B NCAC 16 .0203.amended.07.01.24.docx

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**From:** Gray, Jeffrey <JGray@bdixon.com>  
**Sent:** Thursday, August 22, 2024 1:30 PM  
**To:** Ascher, Seth M <seth.ascher@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: RFC for PPSB August RRC meeting

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Seth:

It was checked off my "to do" list but I sure can't find where I sent it.

Here it is!

Thanks for the reminder.

Jeff

*Jeffrey P. Gray*

Of Counsel  
Bailey & Dixon, LLP  
434 Fayetteville Street, Suite 2500  
P.O. Box 1351  
Raleigh, NC 27601 (27602)  
Telephone: 919-828-0731  
Facsimile: 919-828-6592  
E-mail: [jgray@bdixon.com](mailto:jgray@bdixon.com)

1 14B NCAC 16 .0203 is amended as published in 38:19 NCR 1229-1243 as follows:

2  
3 **14B NCAC 16 .0203 RENEWAL OR RE-ISSUE OF LICENSES AND TRAINEE PERMITS**

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

- 7 (1) one head and shoulders digital color photograph of the applicant in JPG, JPEG, or PNG format of  
8 sufficient quality for identification, taken within six months prior to online application and  
9 submitted by uploading the photograph online with the application submission;
- 10 (2) upload online a statement of the result of a statewide criminal history records search by the reporting  
11 service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has  
12 resided within the preceding 24 months;
- 13 (3) the applicant's renewal fee, along with a ~~four dollar (\$4.00)~~ the convenience fee charged by the  
14 Board's on-line application vendor and credit card transaction fee; ~~and~~
- 15 (4) for license applicants, proof of liability insurance as set out in G.S. 74C-10(e); ~~and~~
- 16 (5) proof of having completed continuing education as require by Rule .1202 of this Chapter.

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) 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~~ two years of the expiration date and the following documentation is  
21 submitted 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 that shall be mailed separately to  
24 the Board's office;
- 25 (3) one head and shoulders digital color photograph of the applicant in JPG, JPEG, or PNG format of  
26 sufficient quality for identification, taken within six months prior to online application and  
27 submitted by uploading the photograph online with the application submission;
- 28 (4) upload online a statement of the result of a statewide criminal history records search by the reporting  
29 service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has  
30 resided within the preceding 60 months;
- 31 (5) the applicant's non-refundable application fee, along with a ~~four dollar (\$4.00)~~ the convenience fee  
32 charged by the Board's on-line application vendor and credit card transaction fee;
- 33 (6) proof of liability insurance as set out in G.S. 74C-10(e); ~~and~~
- 34 (7) payment to the State Bureau of Investigations to cover the cost of criminal record checks performed  
35 by the State Bureau of Investigations, with payment to be paid online through the Board's online  
36 application process; ~~and~~
- 37 (8) proof of having completed continuing education as required by Rule .1202 of this Chapter.

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

5  
6 *History Note: Authority G.S. 74C-5; 74C-8; 74C-8.1; 74C-9;*  
7 *Eff. June 1, 1984;*  
8 *Amended Eff. October 1, 2013; May 1, 2012; October 1, 2010; November 1, 2007; January 4, 1994;*  
9 *July 1, 1987; December 1, 1985;*  
10 *Transferred and Recodified from 12 NCAC 07D .0203 Eff. July 1, 2015;*  
11 *Amended Eff. November 1, 2017;*  
12 *Readopted Eff. March 1, 2020;*  
13 *Amended Eff. September 1, 2024; July 1, 2022; July 1, 2021.*

## Burgos, Alexander N

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**To:** Gray, Jeffrey; Snyder, Ashley B; Ascher, Seth M  
**Subject:** RE: [External] RE: RFC for PPSB August RRC meeting

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**From:** Gray, Jeffrey <JGray@bdixon.com>  
**Sent:** Monday, August 12, 2024 4:19 PM  
**To:** Snyder, Ashley B <ashley.snyder@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: RFC for PPSB August RRC meeting

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Ashley:

Will do. 14B NCAC 16 .0501 will appear as if already approved by the Commission since Seth had no requests or objections regarding it.

Thanks.

Jeff

*Jeffrey P. Gray*

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Bailey & Dixon, LLP  
434 Fayetteville Street, Suite 2500  
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Raleigh, NC 27601 (27602)  
Telephone: 919-828-0731  
Facsimile: 919-828-6592  
E-mail: [jgray@bdixon.com](mailto:jgray@bdixon.com)

---

**From:** Snyder, Ashley B <[ashley.snyder@oah.nc.gov](mailto:ashley.snyder@oah.nc.gov)>  
**Sent:** Monday, August 12, 2024 4:16 PM  
**To:** Gray, Jeffrey <[JGray@bdixon.com](mailto:JGray@bdixon.com)>; Ascher, Seth M <[seth.ascher@oah.nc.gov](mailto:seth.ascher@oah.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: RFC for PPSB August RRC meeting

Hi Jeff,

Please file to [oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov) Thanks.

**Ashley Snyder**  
Codifier of Rules  
Office of Administrative Hearings  
(984) 236-1941

## Burgos, Alexander N

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**Subject:** FW: [External] RE: RFC for PPSB August RRC meeting

---

**From:** Gray, Jeffrey <JGray@bdixon.com>  
**Sent:** Monday, August 12, 2024 3:28 PM  
**To:** Ascher, Seth M <seth.ascher@oah.nc.gov>; Snyder, Ashley B <ashley.snyder@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: RFC for PPSB August RRC meeting

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Opps. There were no changes requested for .1501 so I won't be sending you anything. Just Ashley.

Ashley, do I file a 150B-21.(5)(a) request at [oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov) or just e-mail it to you directly?

J.

*Jeffrey P. Gray*

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E-mail: [jgray@bdixon.com](mailto:jgray@bdixon.com)

## **Burgos, Alexander N**

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**Subject:** FW: [External] RE: RFC for PPSB August RRC meeting

---

**From:** Ascher, Seth M <seth.ascher@oah.nc.gov>

**Sent:** Monday, August 12, 2024 12:31 PM

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

**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Snyder, Ashley B <ashley.snyder@oah.nc.gov>

**Subject:** Re: [External] RE: RFC for PPSB August RRC meeting

Jeff,

I recommend you make both changes via 150B-21.5 via Ashley. This will simplify things and make sure that the updates go through at the same time. You can accomplish this by emailing her directly after the commission meeting with the updates to both rules.

Note that you could probably make the update to the rule pending before the Commission as part of the Commission process, but as you are aware you couldn't update the rule not before the Commission via the Commission (that is, you would have to use 150B-21.5(e)). But having the changes go through two different processes creates a potential for confusion if their effective dates end up being different.

**Seth Ascher**

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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## Burgos, Alexander N

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**Subject:** FW: [External] RE: RFC for PPSB August RRC meeting  
**Attachments:** 20240808170404356.pdf; 20240809150412524.pdf

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**From:** Gray, Jeffrey <JGray@bdixon.com>  
**Sent:** Friday, August 9, 2024 3:15 PM  
**To:** Ascher, Seth M <seth.ascher@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Snyder, Ashley B <ashley.snyder@oah.nc.gov>  
**Subject:** RE: [External] RE: RFC for PPSB August RRC meeting

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Seth:

I've talked myself out of my original conclusion and actually do have a question...

One of the rules in this set, .1501, as well as one that was not a part of this set of amendments (.1502), has a change allowed by 150B-21.5(a)(2). In (b) of each rule the American Safety and Health Institute is now called the "Health and Safety Institute." See, attached letter.

As per 150B-21.5(e) I am to notify Ashley Snyder of such an exempt change, but is this something I can accomplish by doing it as part of this review process? If so, can I do the changes in both rules, i.e. .1501 which is part of this set and the identical change to .1502, at the same time or must I submit those two rules (one of which is redundant) separately?

Note that I have cc.'d Ashley on this, as well, and included .1501 for her convenience.

As you will note, the writer of the attached letter from the HIS wants other changes but since the Board could not change .1502 through the Public Comment to .1501 I am going to notice both rules for his remaining requested changes once the currently pending rules are approved. The above request is just a stopgap for the organization's name.

Jeff

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Telephone: 919-828-0731  
Facsimile: 919-828-6592  
E-mail: [jgray@bdixon.com](mailto:jgray@bdixon.com)

---

**From:** Gray, Jeffrey  
**Sent:** Friday, August 9, 2024 1:43 PM



**To:** Ascher, Seth M <[seth.ascher@oah.nc.gov](mailto:seth.ascher@oah.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: RFC for PPSB August RRC meeting

Seth:

Thanks so much. I will have a corrected .0203 to you by Monday afternoon.

Jeff

*Jeffrey P. Gray*

Of Counsel  
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## **Burgos, Alexander N**

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**From:** Ascher, Seth M  
**Sent:** Monday, August 5, 2024 3:17 PM  
**To:** Gray, Jeffrey  
**Cc:** Burgos, Alexander N  
**Subject:** RFC for PPSB August RRC meeting  
**Attachments:** RFC PPSB.docx

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Private Protective Services Board for the August 2024 RRC meeting. The RRC will formally review these Rules at its meeting on Wednesday, August 28, 2024, at 10:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Attached is the Request for Changes Pursuant to G.S. 150B-21.10. Note that I had two general questions applicable to multiple rules, but otherwise did not have requests for most of the rules. Please submit the revised Rules and forms to me via email, no later than 5 p.m. on August 19, 2024.

Please let me know if you have any questions or concerns.

### **Seth Ascher**

Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984) 236-1934

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**VIA EMAIL - DELIVERY & READ RECEIPT REQUESTED**

April 2, 2024

Paul Sherwin, MBA  
Director  
NCDPS Private Protective Services  
3101 Industrial Dr., Suite 104,  
Raleigh, North Carolina 27609

**RE: Proposed Rulemaking Comment, 14B NCAC 16 .1501**

Dear Mr. Sherwin,

The purpose of this letter is to request amendment of language in the proposed rules of Department of Public Safety, Private Protective Services Board ("Board").

**I. Proposed Rule Language**

- a. (5) possess a basic first aid certificate from the American Red Cross and a valid CPR and AED certification from the American Red Cross, American Heart Association, American Safety and Health Institute, or National Safety Council.

**II. Requested Amendment**

- a. (5) possess a valid basic first aid ~~certificate and CPR and AED certification from the American Red Cross and a valid CPR and AED certification~~ from the American Red Cross, American Heart Association, Health and Safety Institute ~~American Safety and Health Institute~~, or National Safety Council.

**III. Reasons for Requesting Amendment**

- a. The American Heart Association®, Inc. ("AHA"), the American National Red Cross ("ARC") and the



Health and Safety Institute ("HSI") are the largest providers of first aid and CPR training in the United States (**EXHIBIT A**).

- b. HSI is the successor organization to the American Safety and Health Institute ("ASHI").
- c. The AHA, ARC, HSI, and the National Safety Council ("NSC") each develop and administer basic first aid training and certification programs that help participants recognize and care for an injury or illness until professional help arrives.<sup>1,2,3,4</sup>
- d. HSI first aid and CPR AED training programs are equivalent to those offered by the AHA, the ARC, and the NSC.
- e. Like the AHA and ARC (but unlike the NSC), HSI is nationally accredited by the Commission on Accreditation of Pre-Hospital Continuing Education ("CAPCE"). CAPCE is the national accrediting body for emergency medical service continuing education courses and course providers.
- f. HSI's first aid and CPR AED training programs are currently in use by, and accepted, approved, or recognized as meeting the requirements of thousands of employers, state regulatory agencies, occupational licensing boards, professional associations, commissions, and councils in hundreds of occupations and professions nationwide.
- g. The training business units of the HSI, AHA, ARC, and NSC are similar.
  - i. Each corporation develops and markets commercially available, proprietary training programs, products, and services to their approved Training Centers, either directly or via distributors.
  - ii. The business structures of the approved Training Centers include sole proprietorships, partnerships, corporations, LLCs, non-profits, as well as both large and small government agencies.
  - iii. Instructors are authorized to certify course participants. Certification requires instructor evaluation of hands-on skills to verify skill competency.
- h. As proposed, the rule language:

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<sup>1</sup>Heartsaver® First Aid Training. Available: <https://cpr.heart.org/en/cpr-courses-and-kits/heartsaver/heartsaver-first-aid-training> [Retrieved 4/2/24]

<sup>2</sup>NSC First Aid Training. Available: <https://www.nsc.org/safety-training/first-aid/courses/first-aid> [Retrieved 4/2/24]

<sup>3</sup>Adult First Aid | CPR AED. Available: <https://hsi.com/solutions/cpr-aed-first-aid-training/programs/adult-first-aid-cpr-aed> [Retrieved 4/2/24]

<sup>4</sup> First Aid Training. Available: <https://www.redcross.org/take-a-class/first-aid/first-aid-training> [Retrieved 4/2/24]



- i. Grants an unjust monopoly for the first aid training programs, products and services of the ARC and its Licensed Training Providers ("LTPs")<sup>5</sup> all of whom have a vested economic interest in first aid training, particularly where it is required for occupational licensing; and
- ii. Has an inequitable cost impact on registered employees and licensed companies by denying them the use of a substantially equivalent means of compliance and potentially lower cost first aid training alternative; and
- iii. Stifles competition, prohibits substitutes, and prevents choice in first aid training vendor selection, quality, and service; and
- iv. Imposes the inconvenience and additional costs associated with superfluous ARC first aid training and certification for those with current first aid training and certification earned from the HSI, AHA, and NSC; and
- v. Has an adverse business impact on the 342 HSI approved Training Centers in North Carolina, many of which are small or micro businesses employing or contracting with 1,080 HSI Authorized Instructors, by preventing competition on equal and fair terms; and
- vi. Harms HSI's reputation as an equivalent, bona fide, nationally approved and accredited training organization.

#### **IV. Additional Facts**

- a. HSI publishes and administers a set of [quality assurance standards](#) designed to monitor and improve the performance of HSI, its approved Training Centers and Authorized Instructors so that the products and services provided meet or exceed the requirements of regulatory authorities and other approvers.
- b. HSI is a member of the Council on Licensure, Enforcement and Regulation ([CLEAR](#)), the international resource for professional regulation stakeholders. HSI Quality Assurance representatives are [Nationally Certified Regulatory Investigators](#).
- c. HSI is a member of the American National Standards Institute ([ANSI](#)) and ASTM International ([ASTM](#)) – both globally recognized leaders in the development and delivery of international voluntary consensus standards.

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<sup>5</sup> Available: <https://www.redcross.org/take-a-class/licensed-training-authorized-providers> [Retrieved 4/2/24]



## Conclusion

The AHA, ARC and HSI are the largest providers of first aid and CPR training in the United States. The exclusionary language of the proposed (and current) rule fails to treat similarly situated first aid training programs in the same fashion, harms competition by eliminating rivals without a plausible justification, and restrains competition without a countervailing rationale sufficient to justify its harmful effects. The requested amendment will encourage full and free competition while achieving the goal of maintaining the quality measures necessary to protect public health and safety. We support regulations that do not harm employment, competition, or innovation. We value, believe in, and promote successful completion of a valid first aid and CPR AED program as an important component in protecting public safety, health, and welfare. We look forward to helping the Board protect the health and safety of the citizens of North Carolina.

Respectfully,

A handwritten signature in blue ink, appearing to read "Ralph Shenefelt", with a long horizontal flourish extending to the right.

Ralph Shenefelt

Senior Vice President

Regulatory & Quality Assurance



## Burgos, Alexander N

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**Subject:** FW: [External] RE: RFC for PPSB August RRC meeting

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**Sent:** Friday, August 9, 2024 1:43 PM  
**To:** Ascher, Seth M <seth.ascher@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: RFC for PPSB August RRC meeting

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Seth:

Thanks so much. I will have a corrected .0203 to you by Monday afternoon.

Jeff

*Jeffrey P. Gray*

Of Counsel  
Bailey & Dixon, LLP  
434 Fayetteville Street, Suite 2500  
P.O. Box 1351  
Raleigh, NC 27601 (27602)  
Telephone: 919-828-0731  
Facsimile: 919-828-6592  
E-mail: [jgray@bdixon.com](mailto:jgray@bdixon.com)

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**From:** Ascher, Seth M <[seth.ascher@oah.nc.gov](mailto:seth.ascher@oah.nc.gov)>  
**Sent:** Friday, August 9, 2024 1:30 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)>  
**Subject:** Re: [External] RE: RFC for PPSB August RRC meeting

Jeff,

Thanks for your prompt responses.

As to the first two questions, I don't think any further action is necessary. I would note that under different circumstances, we might ask you to update the forms. However, here I think the work (for both of us) outweighs the potential benefit, and as you note the public had the correct information in the register.

On correcting 14B NCAC 16 .0203, line 13:, I don't see a problem with you treating this as a typographical error and correcting the rule to match the similar rules before the Commission. The "differs substantially" test under 150B-21.2(g) applies to post-publication changes and I think changing this rule to be consistent with the others would be

permissible. If you want to do that, go ahead and send me an updated rule with the post-publication change made according to the appropriate formatting.

Let me know if you have further questions,

**Seth Ascher**

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

---

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---

**From:** Gray, Jeffrey <[JGray@bdixon.com](mailto:JGray@bdixon.com)>  
**Sent:** Friday, August 9, 2024 11:21 AM  
**To:** Ascher, Seth M <[seth.ascher@oah.nc.gov](mailto:seth.ascher@oah.nc.gov)>  
**Subject:** [External] RE: RFC for PPSB August RRC meeting

You don't often get email from [jgray@bdixon.com](mailto:jgray@bdixon.com). [Learn why this is important](#)

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Seth:

Here are my responses to your questions.

**All Submission cover sheets:**



I am totally befuddled as to how the same explanation is shown for each of these rules on the Submission for Permanent Rule form. However, I do know **why**. I used the last form I submitted (an amendment to a single rule, .0707) as a template for these submissions. This was the explanation for that solitary rule amendment. I did a cut and paste of the relevant sentence from the Notice of Text for each Submission form. (It took over an hour.) My Timesheets indicate I proofed them. All I can figure is something happened and the change for each wasn't saved and when I printed them they all reverted to the .0707 language. I didn't notice it when I signed it. (My computer skills are pretty rudimentary... obviously.)

But, as you note, the bottom line is that they were noticed correctly in the Register and on the Board's website. Thanks.

**14B NCAC 16 .0201, et al.:**

The fee is not a "data processing fee," it is a service fee pursuant to G.S. 150B-19(5)a. The company, called Permitium, created the Board's application platform at no charge upfront. They are an approved contractor through State IT. Permitium charges this fee – which they call a "convenience fee" like banks do for credit cards -- for licensees to use the system. Essentially Permitium bills the licensee directly. The Board's portion of the overall fee (and the fingerprint card fee that goes to the SBI, if applicable) goes into an electronic deposit account. This is a closed system for licensees or potential licensees only and you must have an access code and use Permitium's dashboard.

**14B NCAC 16 .0203, line 13:**

This was a definite oversight. It should have been changed to read like all the others. Can that be done through this review process as a "typographical error" (G.S. 150B-21.5(a)(5)), or will I need to re-notice it, etc.?

As to my question I mention below, I now think it best to leave the rule I was looking at alone.

Jeff

*Jeffrey P. Gray*

Of Counsel

Bailey & Dixon, LLP

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Telephone: 919-828-0731

Facsimile: 919-828-6592

E-mail: [jgray@bdixon.com](mailto:jgray@bdixon.com)

---

**From:** Gray, Jeffrey

**Sent:** Wednesday, August 7, 2024 12:02 PM

**To:** Ascher, Seth M <[seth.ascher@oah.nc.gov](mailto:seth.ascher@oah.nc.gov)>

**Subject:** RE: RFC for PPSB August RRC meeting

RECEIVED. And thank you.

I have a question for you, which I will include in my early response. (Hopefully by tomorrow.)

*Jeffrey P. Gray*

Of Counsel

Bailey & Dixon, LLP

434 Fayetteville Street, Suite 2500

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