

REQUEST FOR TECHNICAL CHANGE

AGENCY: Sheriff's Education and Training Standards Commission

RULE CITATION: 12 NCAC 10B .0305

DEADLINE FOR RECEIPT: Tuesday, May 11, 2021

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

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call 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 6, you noticed the hearing to occur on February 18. Assuming the hearing was held on that date, please update this.

In the Rule:

Please insert page numbers (see Rule 26 NCAC 02C .0108(1)(f))

In (a), line 7, what are "essential job functions"? Who determines this – the employing agency?

On line 7, how is this form obtained? What are the contents? Pursuant to G.S. 150B-2(8a), the contents of forms must be in a rule or law. Is there another rule you can cross-reference here?

So that I'm clear – in (a), line 9, you state that the form may not be completed more than 120 days prior to appointment. But then in (b), you address fixing forms that are completed out of compliance with Paragraph (a), which seems contradictory. Is this to address issues the agency had seen with timing of filling out the form?

In (c), line 13, what does "proper" mean here?

On line 14, end the sentence after "(F-3). Then state "It shall also ...". Then on line 15, change the comma after "(F-3)" to a semicolon and state "... (F-3); if not, the employing agency shall provide the applicant..."

In (d), lines 17-18, what is "relevant to performance" here? Who determines it?

On line 18, replace "his/her" with "his or her"

And so that I'm clear – this review by the employing agency is then reviewed by the Commission?

On lines 19-20, what are the contents of the form (F-8)? Are they what is set forth in Paragraph (e)? Where can one obtain a copy of the form?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 27, 2021

And on lines 19-20, why do you say this is “Commission-mandated”? You do not say this for F-3. Is that not Commission mandated?

In (e)(1), line 22, replace “state-wide” with “Statewide”

In (e)(2) and elsewhere the term is used, please confirm the name of the organization is still the “Division of Criminal Information” If it has been updated to another name (such as “Criminal Justice Information Services”), please update the name throughout the Rule.

In (e)(4), line 29, as well as (f)(3), Page 2, lines 1 and 2, please make “state” lowercase, as it appears you are referring to any state other than NC.

In (f), line 30, why is “background investigation” capitalized? The term is not capitalized in (a), line 6.

Also on line 30, replace “in which” with “where”

In (f)(1), line 32, consider replacing “are” before “acceptable” with “shall be” Please note the same recommendation for (f)(2) and “is” before “acceptable” on lines 34 and 36, as well as (f)(3), Page 2, lines 2 and 6.

In (f)(2), line 36, what do you mean by “documented”?

So that I’m clear – in (f)(2), the submission of the criminal record check from other countries will depend upon the employing agency being able to locate them?

In (f)(3) Page 2, line 2, what is an “IQ inquiry”?

On line 3, end this sentence after “inquiry.” Then state, “If not, then...”

On line 4, please insert a comma after “city”

On line 5, please replace the semicolon after “correspondence” with a comma.

In (g), line 8, replace “which” with “that” in both places.

On line 10, I suggest you replace “is also” with “shall also be”

In (h), line 12, replace “which” with “that”

On line 13, what do you mean by “then documentation of that name change is required”? Do you mean “then the name change shall be documented”? If so, I suggest you state that.

In (i), line 16, what is “to the satisfaction of the Division staff”? I suggest you delete this phrase or provide guidance within the Rule language of how to meet this.

On line 16, replace “which” with “that”

In (j), lines 19 and 20, replace “which” with “that”

In (k), how does one obtain this form?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 27, 2021

On line 24, please make “OR” entirely lowercase “or”

In the History Note, please simply insert a semicolon after “2018” on line 31 – do not show it as a change, simply do it.

On line 32, please spell out the date as “June 1, 2021.”

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

1 **12 NCAC 10B .0305 IS AMENDED AS PUBLISHED IN VOLUME 35, ISSUE 15, PAGES 1644 – 1645 OF**
2 **THE NORTH CAROLINA PUBLIC REGISTER AS FOLLOWS:**

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5 **12 NCAC 10B .0305 BACKGROUND INVESTIGATION**

6 (a) Prior to the background investigation conducted by the employing agency to determine the applicant's suitability
7 to perform essential job functions, the applicant shall complete the Commission's Personal History Statement (F-3)
8 to provide a basis for the investigation. The Personal History Statement (F-3) submitted to the Division shall be
9 completed no more than 120 days prior to the applicant's date of appointment.

10 (b) If the Personal History Statement (F-3) was completed more than 120 days prior to the applicant's date of
11 appointment, the Personal History Statement (F-3) shall be updated by the applicant who shall initial and date all
12 changes or a new Personal History Statement (F-3) must be completed.

13 (c) The employing agency shall ensure the proper dates, signatures, and notarizations are affixed to the Personal
14 History Statement (F-3); and shall also certify that the results of the background investigation are consistent with the
15 information provided by the applicant on the Personal History Statement (F-3), and if not, provide the applicant the
16 opportunity to update the F-3 prior to submission to the Division.

17 (d) The employing agency, prior to employment, shall examine the applicant's character traits and habits relevant to
18 his/her performance as a justice officer and shall determine whether the applicant is of good moral character as
19 defined in Rule .0301(a)(8). The investigator shall summarize the results of the investigation on the Commission-
20 mandated Background Investigation Form (F-8) which shall be signed and dated by the investigator.

21 (e) The Background Investigation Form (F-8) shall include records checks from:

- 22 (1) a state-wide search of the Administrative Office of the Courts (AOC) computerized system;
- 23 (2) the national criminal record database accessible through the Division of Criminal Information
24 (DCI) network;
- 25 (3) the North Carolina Division of Motor Vehicles, if the applicant has ever possessed a driver's
26 license issued in North Carolina; and
- 27 (4) out-of-state motor vehicles check obtained through the Division of Criminal Information or
28 obtained through the any other state's Division of Motor Vehicles if the applicant held a license in
29 that State(s) within the 10 year period prior to the date of appointment.

30 (f) The Background Investigation must also include records checks from jurisdictions in which the applicant resided
31 within the 10 year period prior to the date of appointment and where the applicant attended high school, as follows:

- 32 (1) Where the applicant resided in jurisdictions in North Carolina, Clerk of Court records checks are
33 acceptable;
- 34 (2) Where the applicant resided in another country, an Interpol records check is acceptable provided
35 the country is a member of Interpol; or if the applicant was in the United States military, a military
36 records check is acceptable; or if neither, efforts shall be made and documented to attempt to
37 obtain a records check from the country and submitted if available; and

1 (3) Where the applicant resided in a State other than North Carolina, a records check through the
2 Division of Criminal Information using the IQ inquiry is acceptable provided the State will
3 respond to that type of inquiry; or if not, then either a records check response from both the
4 municipality, city or town where the applicant resided and the county-wide Sheriff's Office or
5 Police Department obtained through traditional correspondence; or a records check from the
6 appropriate county-wide or state-wide record holding agency is acceptable.

7 (g) If the applicant had prior military service, the Background Investigation must also include a copy of the
8 applicant's DD214 which shows the characterization of discharge for each discharge which occurred and military
9 discipline received, if any. If the DD214 indicates a discharge characterization of any type other than Honorable,
10 then a military records check is also required.

11 (h) All records checks shall be performed on each name by which the applicant for certification has ever been
12 known since the age of 12. If the applicant has had an official name change which occurred after the applicant had
13 reached the age of 12 years of age, then documentation of that name change is required.

14 (i) The employing agency shall forward to the Division certified copies of any criminal charge(s) and disposition(s)
15 known to the agency or listed on the applicant's Personal History Statement (F-3). The employing agency shall
16 explain to the satisfaction of Division staff that charges or other violations which may result from the records checks
17 required in Paragraph (e) of this Section do not pertain to the applicant for certification. This documentation shall be
18 included with all other documentation required in 12 NCAC 10B .0408.

19 (j) The employing agency shall include a signed and notarized Release Authorization Form which authorizes the
20 Division staff to obtain documents and records pertaining to the applicant for certification which may be required in
21 order to determine whether certification may be granted.

22 (k) The employing agency shall provide the results of a completed and processed form AOC-CR-280, Law
23 Enforcement Application for Verification of Expunction under G.S. 15A-145.4, 15A-145.5, 15A-145.6, 15A-
24 145.8A OR 15A-146, for each applicant presented for certification.

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26 *History Note: Authority G.S. 17E-7;*
27 *Eff. January 1, 1989;*
28 *Amended Eff. January 1, 2010; January 1, 2009; January 1, 2007; August 1, 2002; January 1,*
29 *1994; January 1, 1993; January 1, 1992; January 1, 1990;*
30 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*
31 *2018.*
32 *Amended Eff. 6/1/2021*
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