

**Note from the Codifier:** The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days.  
For questions, you may contact the Office of Administrative Hearings at 919.431.3000 or email oah.postmaster@oah.nc.gov.

## TITLE 19A – DEPARTMENT OF TRANSPORTATION

**Rulemaking Agency:** Department of Transportation/Division of Motor Vehicles

**Codifier of Rules received for publication the following notice and proposed temporary rule(s) on:** September 1, 2017

**Rule Citations:** 19A NCAC 03K .0101, .0102

**Public Hearing:**

**Date:** September 25, 2017

**Time:** 6:00 p.m.

**Location:** John Chavis Media Center, 505 Martin Luther King Jr. Blvd, Raleigh, NC

**Reason:** The North Carolina Department of Transportation Division of Motor Vehicles has determined that temporary rulemaking to adopt 19A NCAC 03K .0101 and .0102 is necessary due to a change in the applicable state statutes.

On June 28, 2017, the North Carolina General Assembly approved Session Law 2017-57 "Appropriations Act of 2017" for the 2016/2017 fiscal year. In Section 34.32.(b) the agency is directed to begin collecting fees for administrative hearings beginning January 1, 2018. In Section 34.32.(c), the Division of Motor Vehicles is authorized to adopt temporary rules to implement the provisions.

In order to be able to establish the fees rates, set up the system for collecting the fees per the established rates, and notify individuals requesting administrative hearings after January 1, 2018 that there will be a fee for scheduling the hearing, the agency needs to utilize the option for adopting temporary rules.

**Comment Procedures:** Comments from the public shall be directed to: Helen Landi, 1501 Mail Service Center, Raleigh, NC 27699-1501, email hlandi@ncdot.gov. The comment period begins September 11, 2017 and ends October 3, 2017.

### SUBCHAPTER 03K – DIVISION HEARING FEES

#### 19A NCAC 03K .0101 ASSESSMENT OF ADMINISTRATIVE HEARING FEES

(a) The Division shall provide notice to the applicant of a right to an administrative hearing, the procedure for requesting a hearing, the applicable fee for a hearing, and statutory deadline, if any, to timely request a hearing.

(b) The fee for each type of hearing provided by the Division shall be set forth in 19A NCAC 03K .0102.

(c) A hearing request shall be submitted in writing and shall include the applicable fee listed in the Division's notice to the applicant as listed in Paragraph (a) of this Rule. A request for hearing will neither be accepted by the Division nor be considered received within any required deadline noticed to the applicant under Paragraph (a) of this Rule if the hearing request does not include the applicable hearing fee, except as provided under Paragraph (j) of this Rule.

(d) The Division shall take no action on the request or hearing until the required fee is paid in full, except for the following hearings that are scheduled by the Division due to the nature of the alleged offense, charge, or violation:

- (1) A hearing conducted to review an applicant's compliance with the requirements and obligations of the Ignition Interlock Program when the applicant is licensed pursuant to a conditional restoration agreement with the Division.
- (2) A hearing conducted to determine the applicant's compliance with the requirements and obligations of the applicant's probation or conditional restoration agreement with the Division.
- (3) Hearings related to violations of an alcohol concentration restriction conducted if the alleged violation was received on a report from an ignition interlock service provider.
- (4) Motor vehicle dealer license or sales representative license hearings conducted pursuant to G.S. 20-296 in which the hearing relates to a previously-issued license.

If the Division takes no adverse action at a hearing listed in this Paragraph, the Division shall not charge a hearing fee to the applicant. If adverse action is taken by the Division following the hearing, the applicant shall pay the required hearing fee set forth in 19A NCAC 03K .0102. This hearing fee shall be paid no later than 30 calendar days after the date the hearing is held or the decision is issued by the Division, whichever is later. An applicant who fails to pay the hearing fee within the required 30 day period shall be considered past due and subject to the provisions of Article 6B of Chapter 147.

(e) Upon receipt of a written hearing request and the full payment for the required hearing fee, within any deadline, if any, noticed under Paragraph (a) of this Rule, the Division shall send the applicant written notice of the scheduled hearing, including the time, date, and location of the hearing and notice of the time period for an applicant to cancel a hearing request in order to receive a partial refund under Paragraph (g) of this Rule.

(f) The Division shall cancel any hearing upon notification that a hearing fee payment has been returned to the Division due to insufficient funds from the applicant's financial institution. A notice of the hearing cancellation shall be sent to the applicant. Upon cancellation, any pending adverse action against the applicant previously stayed as part of the hearing process shall be placed into effect by the Division five days after date of notice is mailed per G.S. 20-48.

(g) A hearing fee shall be non-refundable unless the Division receives a written notice from the applicant seeking to cancel the hearing postmarked at least 10 business days prior to the scheduled hearing date, except as listed in Paragraph (h) of this Rule. The hearing fee,

less a processing fee listed in Paragraph (m) of this Rule, will be refunded. An applicant's notice to cancel a hearing shall be mailed to: Division of Motor Vehicles, Attn: Administrative Support Unit, 3118 Mail Service Center, Raleigh, NC 27699-3118. Any notice to cancel a hearing postmarked less than 10 business days prior the hearing shall cancel the previously scheduled hearing and the applicant shall not be eligible for a refund of the hearing fee.

(h) A hearing fee paid pursuant to 19A NCAC 03K .0102 (a)(17) shall be non-refundable.

(i) The Division may waive the administrative a hearing fee when an applicant is indigent. An applicant seeking relief as indigent from an administrative hearing shall submit a completed and notarized Affidavit of Indigence as prescribed by the Division. The applicant may obtain a copy of the Affidavit of Indigence from the Division's website (www.ncdot.gov/dmv/). A written hearing request that includes a completed and affirmed Affidavit of Indigence that is received by the Division within the deadline noticed under Paragraph (a) of this Rule is considered a timely request for hearing. An applicant may face criminal and/or civil penalties for submitting a false affidavit.

(j) Upon receipt of the Affidavit of Indigence, the Division shall determine whether the applicant is eligible for a waiver of the hearing fee required under Paragraph (c) of this Rule.

(k) Criteria the Affidavit of Indigence, the Division shall utilize the current Federal Poverty Level Guidelines, to qualify an applicant's eligibility for waiver of the hearing fee. The applicant with income below 150 percent of the Federal Poverty Level shall receive a waiver of the hearing fee under Paragraph (c) of this Rule. The terms "household size," and "household income," are defined with reference by the Federal Income Tax Code (U.S. Code Title 26) and U.S. Treasury Regulations. The waiver criteria are:

(1) household size; and

(2) household income.

The Division may request documentation from the applicant if such is necessary for the Division to qualify the applicant's eligibility for a waiver of the hearing fee. The applicant has five calendar days to comply with the request for additional documentation. Failure to comply with the request for additional documentation will result in a denial for the applicant's request for a waiver on the hearing fees.

(l) After the Division's review of an applicant's Affidavit of Indigence, the Division shall proceed as follows:

(1) If the Division finds the applicant is qualified for a waiver of the hearing fee pursuant to the Affidavit of Indigence, the Division shall proceed with the hearing as if the required hearing fee had been paid. The Division shall send the notice listed in Paragraph (e) of this Rule.

(2) If the Division finds that the applicant is not qualified for a waiver of the hearing fee, the Division shall notify the applicant of this determination. This notification shall also include:

(A) Notice of the amount of the hearing fee owed by the applicant to proceed with the requested hearing;

(B) A date upon which the applicant shall submit the required hearing fee to the Division, and such date shall not be less than 10 calendar days from the date of the notification;

(C) Notice that if such hearing fee is not received by the Division by the noticed date, the written request for hearing pursuant to Paragraph (c) of this Rule will be considered withdrawn; and

(D) Notice that any pending action by the Division upon which the applicant requested a hearing shall be placed into effect if such hearing fee is not paid by the noticed date.

An applicant's failure to pay the hearing fee by the date contained in the notification letter will be considered a withdrawal of the request for a hearing.

(m) The Division shall retain a sum of fifty dollars (\$50.00) to process all hearing requests set forth in 19A NCAC 03K .0102, except for hearings listed under 19A NCAC 03K .0102(a)(2) and (a)(16), for which the Division shall retain twenty dollars (\$20.00).

*Authority G.S. 20-16; 20-17; 20-31; S.L. 2014-100, s. 34.9; S.L. 2015-241 s. 29.30A; S.L. 2017-57, s 34.32(a),(b),(c),(d).*

## **19A NCAC 03K .0102 ADMINISTRATIVE HEARING FEE SCHEDULE**

(a) The Division shall assess the following administrative hearing fees, pursuant to Rule .0101 of this Subchapter:

(1) sixty dollars (\$60.00) for a hearing related to a lapse in financial responsibility conducted pursuant G.S. 20-316;

(2) forty dollars (\$40.00) for a conference to determine the applicant's eligibility to attend drive improvement clinic as provided by G.S. 20-16;

(3) seventy-five dollars (\$75.00) for an ignition interlock mouth contaminant review to determine compliance with the requirements of the Ignition Interlock Program and of a conditional restoration agreement with the Division;

(4) seventy dollars (\$70.00) for ignition interlock medical accommodation reviews;

(5) one hundred dollars (\$100.00) for all other license suspension or revocation hearings not listed in Subparagraphs (6) through (12) of this Paragraph to include hearings held pursuant to G.S. 20-13 and G.S. 20-16;

(6) four hundred fifty dollars (\$450.00) for hearings conducted for violations of an alcohol concentration restriction (ACR), violation of an ignition interlock device restriction, or refusal to submit to a chemical analysis;

(7) two hundred dollars (\$200.00) for a financial responsibility hearing conducted pursuant to the provisions of the Motor Vehicle Safety-Responsibility Act of 1953;

(8) two hundred dollars (\$200.00) for a hearing related to a commercial driver license (CDL) disqualification;

(9) two hundred dollars (\$200.00) for a restoration hearing related to a license suspension due to driving while license revoked or moving violation;

(10) two hundred twenty five dollars (\$225.00) for an interview held prior to a license restoration hearing in situations involving alcohol-related convictions, suspensions, or revocations;

(11) four hundred twenty-five dollars (\$425.00) for a license restoration hearing related to driving while impaired (DWI) conducted pursuant to G.S. 20-19;

(12) two hundred twenty dollars (\$220.00) for hearings conducted to determine compliance with the requirements of probation or restoration agreement with the Division;

- (13) two hundred dollars (\$200.00) for a motor vehicle dealer license or salesman license hearing conducted pursuant to G.S. 20-295 and G.S. 20-296;
- (14) two hundred dollars (\$200.00) for a mechanic license or inspection station license hearing conducted pursuant to G.S. 20-183.8G;
- (15) two hundred dollars (\$200.00) for a commercial driver training school hearing;
- (16) fifty dollars (\$50.00) for a hearing related to the denial of a service offered by the Division; and
- (17) a filing fee in the amount of one thousand two hundred dollars (\$1,200) shall be due from the party initiating an action which must be filed with the Commissioner of Motor Vehicles pursuant to G.S. 20-308.1. In addition to the filing fee, each party that files a motion in the case shall be assessed a fee of six hundred dollars (\$600.00) per motion that shall be payable at the time the motion is filed.

(b) No fees shall be charged for medical evaluation hearings or competency hearings conducted pursuant to G.S. 20-9(g)(4) or G.S. 20-17.1.

*Authority S.L. 2014-100, s. 34.9; S.L. 2015-241 s. 29.30A; S.L. 2017-57, s 34.32(a),(b),(c),(d).*