

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, notice on how to proceed as an indigent, and the 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 provided in Paragraph (a) of this Rule. A request for hearing shall 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 is not completed or the hearing request does not include the applicable hearing fee, except as provided under Paragraph (j) of this Rule. A written hearing request sent via U.S. Mail shall be deemed timely only if this request is postmarked prior to the statutory deadline, if any as provided in Paragraph (a) of this Rule.

(d) The Division shall take no action on a request or hearing until the required fee is paid in full, except for the following hearings 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 if 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; or
- (3) a hearing related to motor vehicle dealer license or sales representative license conducted pursuant to G.S. 20-296 for hearings related 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 calendar day period shall be considered past due and subject to the provisions G.S. 147, Article 6B.

(e) Upon receipt of a written hearing request and the full payment for the required hearing fee, within any deadline, if applicable, 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) Upon notification that a hearing fee payment has been returned to the Division due to insufficient funds from the applicant's financial institution, the Division shall notify the applicant of the insufficient funds and that failure to pay the hearing fee constitutes a waiver of the hearing. This notification shall include:

- (1) the amount of the hearing fee owed by the applicant to proceed with the requested hearing;
- (2) a date upon which the applicant shall submit the required hearing fee to the Division (noticed date), which shall not be less than 10 calendar days from the date of the notification;
- (3) the type of money payment accepted by the Division, including certified check, money order, or other secured methods of payment accepted by the Division;
- (4) notice that if the 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
- (5) 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 shall be considered a withdrawal of the request for a hearing. A hearing fee paid via U.S. Mail shall be deemed timely only if the payment is postmarked prior to the noticed date.

(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 and as described in this Paragraph. If on the date the written hearing request is postmarked or received by the Division, whichever occurs first, the applicant is not eligible pursuant to G.S. 20 for the hearing requested, the applicant shall be entitled to a refund of the hearing only if a written request to cancel the hearing is postmarked at least three calendar days prior to the scheduled hearing date. If the applicant is eligible for a hearing when the hearing request is post-marked or received by the Division, whichever occurs first, and the applicant later becomes ineligible for the requested hearing prior to the actual hearing, the applicant shall be entitled

to a refund only if 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. The processing fee listed in Paragraph (m) of this Rule shall be deducted by the Division from any refunded hearing fee. 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.

(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 fee 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/). The Affidavit of Indigence shall be posted by the Division in English and Spanish. 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 shall be considered a timely request for hearing. An applicant may face criminal and 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) In evaluating the Affidavit of Indigence, the Division shall apply the current Federal Poverty Level Guidelines to qualify an applicant's eligibility for waiver of the hearing fee. The Federal Poverty Guidelines issued by the U.S. Department of Health and Human Services and published in the Federal Register are incorporated by reference including subsequent amendments and editions. A copy may be obtained at no cost at <https://www.federalregister.gov/>. 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 Federal Tax Code and U.S. Treasury Regulations published by the U.S. Internal Revenue Service are incorporated by reference including subsequent amendments and editions. A copy may be obtained at no cost at: <https://www.irs.gov/>. The waiver criteria are:

- (1) household size; and
- (2) household income.

The Division may request documentation from the applicant if necessary for the Division to qualify the applicant's eligibility for a waiver of the hearing fee. The applicant shall comply with a request for additional documentation within 10 calendar days. Failure to comply with a request for additional documentation shall result in a denial of the applicant's request for a waiver of 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 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 noticed date, which shall not be less than 10 calendar days from the date of the notification;
 - (C) notice that if the 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 shall be considered a withdrawal of the request for a hearing. A hearing fee paid via U.S. Mail shall be deemed timely only if such payment is postmarked prior to the noticed date.

(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).

History Note: 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);
Temporary Adoption Eff. January 1, 2018. (Codifier's Note: This Rule shall remain in effect until the permanent rule that replaces the temporary rule becomes effective. See S.L. 2017-57, s. 34.32(c)).