

Impact Analysis

Agency	North Carolina Commissioner of Banks
Rule Title	Various (see proposed rule text in Appendix)
Citation	04 NCAC 03F .0201, .0203, .0301, .402, .0504, .0506, .0507
Proposed Action	Amendment, Repeal, and Adoption of Rules for Subchapter 03F
Agency Contact	Lonnie Christopher, Rules Coordinator lchristopher@nccob.gov (919) 715-7438 Or Katherine M.R. Bosken, Depository Division kbosken@nccob.gov (919) 715-0082
Authority	N.C.G.S. §§ 53-208.2; 53-208.3; 53-208.6; 53-208.8; 53-208.12; 53-208.15; 53-208.27
Impact Summary	State Government: No. Local Government: No. Federal Government: No. Substantial Impact: No.
Necessity	The Office of the Commissioner of Banks (the “OCOB”) is responsible for drafting regulations related to the operation of virtual currency providers in North Carolina. The North Carolina Money Transmitters Act, N.C. Gen. Stat. § 53-208.1, <i>et seq.</i> (the “MTA”) is broadly written to encompass entities engaged in the business of transferring virtual currencies in and out of real currency, as well as entities engaged in the business of processing payments between virtual currency wallets. The rules in Subchapter F – Licensees Under the MTA need to be amended in order to clarify requirements for entities involved in virtual currency under the Act.

As part of the rule making process, the OCOB is proposing to repeal one rule that is no longer necessary. In the rule amendments the OCOB seeks to clarify the language of the rules to conform to Chapter 53, modernize language currently used in the industry, and make stylistic changes for readability purposes. The OCOB is proposing to adopt one rule in order to clarify permissible investments in virtual currency under the MTA.

The OCOB has drafted the rules in conjunction with stakeholders in a clear and unambiguous manner and feel that they are reasonably necessary to implement and interpret State law. These rules are designed to achieve the regulatory objective in a cost-effective and timely manner.

None of the rule amendments or the adoption of the one rule have a substantial economic impact on federal, state, or county government, nor will they have a substantial economic impact on those who we regulate.

I. REPEAL:

04 NCAC 03F .0507 CEASING OPERATIONS

This rule is being repealed because the language contained in the rule has been combined in rule 04 NCAC 03F .0402 Surrender of License and is no longer necessary.

II. AMENDMENTS:

04 NCAC 03F .0201 DEFINITIONS

Rule is amended to improve readability, modernize the rule with language currently used in the industry.

04 NCAC 03F .0301 APPLICATOIN FOR A LICENSE

Rule is amended to improve readability and make stylistic changes. Also needed to correct citation in (a) from .0201(b) to .0201(c).

04 NCAC 03F .0402 SURRENDER OF LICENSE

Rule is being amended to incorporate language from rule 04 NCAC 03F .0507 and allows us to repeal .0507.

04 NCAC 03F .0504 AGENT REPORT

Rule is amended to improve readability, modernize the rule with language currently used in the industry, and make stylistic changes.

04 NCAC 03F .0506 REVOCATION OR CANCELLATION OF SURETY BOND

Rule is being amended to clarify the amount of time a regulated entity has to notify the OCOB with regard to a revocation or cancellation of a surety bond.

III. RULE ADOPTION:

04 NCAC 03F .0203 PERMISSIBLE INVESTMENTS

This rule is recommended for adoption in order to clarify the limits of permissible investments by licensees.

APPENDIX: Proposed Rule Text

REPEAL:

04 NCAC 03F .0507 CEASING OPERATIONS

A licensee shall immediately notify the Commissioner in writing of its decision to cease operations in this State under the Money Transmitters Act.

History Note: ~~Authority G.S. 53-208.27;~~

~~Eff. February 1, 1993.~~

~~Repealed Eff. October 1, 2015.~~

AMENDMENTS:

04 NCAC 03F .0201 DEFINITIONS

In addition to the terms defined in G.S. 53-208.2, the following terms used in this Subchapter shall be defined as follows:

~~(a) As used in this Subchapter, unless the context clearly requires otherwise:~~

~~(1) "Agent" shall mean a person, partnership, corporation, or other entity authorized by a licensee to sell or issue checks of the licensee in this State as a service or for a fee or other consideration on the behalf of the licensee;~~

(1) "Agent of Payee" shall mean a person appointed by a payee to collect and process payments as the legal agent of the payee, where:

(A) there exists a written agreement between the payee and agent directing the agent to collect and process payments on the payee's behalf;

(B) the payee, in writing, directs buyers of its goods or services to tender payment to the agent; and

(C) payment is treated as received by the payee on receipt by the agent.

~~(2) "Applicant" shall mean a person who applies for a license under the Money Transmitters Act;~~

(2) "Engage in the business of money transmission," shall mean for compensation or gain, or in expectation of compensation or gain, either directly or indirectly, to make available monetary transmission services to North Carolina consumers for personal, family, or household purposes;

- (3) ~~"Controlling person" shall mean any person as defined in G.S. 53-208.2(16) who owns or holds with the power to vote 10% or more of the equity securities of the applicant or licensee, or who has the power to direct the management and policy of the applicant or licensee; has the power, directly or indirectly, to direct the management or policy of a licensee or person subject to the Money Transmitter Act. This includes any person that is a director, general partner, executive officer, or managing member that shall be in control of a licensee or person subject to the Money Transmitters Act;~~
- (4) ~~"Executive officer" shall have the same meaning as set forth in Regulation "O," promulgated by the Board of Governors of the Federal Reserve System and codified in the Code of Federal Regulations at Title 12, Chapter II, Subchapter A, Part 215.2; mean in addition to those identified in GS 53-208.2(7), the chief executive officer, chief operating officer, chief compliance officer, chief technology officer, or any other individual who exercises significant influence over, or participates in, major policy making decisions of the applicant or licensee without regard to title, salary, or compensation;~~
- (5) ~~"Location" shall mean any place of business within this State operated by the licensee or the licensee's agent authorized delegate at which checks of the licensee are issued or sold; which the licensee or authorized delegate engage in the business of monetary transmission;~~
- (6) ~~"Money Transmitters Act" shall mean the Money Transmitters Act codified at Chapter 53, Article 16A of the North Carolina General Statutes (G.S. 53-208.1, et seq.);~~
- (7) ~~"State" shall mean the State of North Carolina;~~
- (8) ~~Terms defined in G.S. 53-208.2 shall have the same meaning in this Subchapter.~~
- (8) "Virtual currency" shall mean a digital representation of value that can be digitally traded and functions as a medium of exchange, a unit of account, or a store of value, but does not have legal tender status as recognized by the United States Government;
- (9) "Virtual currency transmitter" shall mean any person in the business of:
- (A) receiving virtual currency for transmission to a third party; or
- (B) maintaining control of virtual currency on behalf of others.

~~(b) An application for a license, amendment to the application, annual statement, notice, or any other document which is required by law or rule to be filed with the Commissioner shall be addressed as follows:~~

~~Mailing Address:~~

~~Office of the Commissioner of Banks~~

~~4309 Mail Service Center
Raleigh, North Carolina 27699-4309.~~

~~Street Address:
Office of the Commissioner of Banks
316 West Edenton Street
Raleigh, North Carolina 27603~~

History Note: Authority G.S. 53-208.27;

Eff. February 1, 1993;

Amended Eff. October 1, 2016; November 1, 2013; September 1, 2006; June 1, 1995.

04 NCAC 03F .0301 APPLICATION FOR A LICENSE

- (a) Any person who wishes to ~~sell or issue checks~~ engage in the business of monetary transmission in this State pursuant to the Money Transmitters Act ~~must~~ shall first obtain a license issued by the Commissioner. An application for a license ~~can~~ may be obtained ~~from and shall be filed pursuant to Rule .0201(b) of this Subchapter.~~ at the address set forth in Rule .0301(e) or on the NCCOB website at <https://www.nccob.org/Public/docs/Financial%20Institutions/Money%20Transmitters/mtapp.pdf>.
- (b) An application for a Money Transmitters' license shall include the information required by G.S. 53-208.5 through G.S. ~~53-208.10~~ 53-208.09 of Chapter 53, Article 16A. The application ~~must~~ shall be submitted on a form provided by the Commissioner.
- (c) In addition to the documents and information listed in Paragraph (b) of this Rule, the Commissioner may require additional information necessary to complete an investigation pursuant to G.S. 53-208.10.
- (d) Incomplete application files shall be ~~closed and deemed~~ denied without prejudice when the applicant has not submitted information requested by the Commissioner within 30 days of such request.
- (e) An application for a license, amendment to the application, annual statement, notice, or any other document that is required by law or rule to be filed with the Commissioner shall be addressed as follows:

Mailing Address:
Office of the Commissioner of Banks
4309 Mail Service Center
Raleigh, North Carolina 27699-4309

Street Address:
Office of the Commissioner of Banks
316 West Edenton Street
Raleigh, North Carolina 27603

History Note: Authority G.S. 53-208.3; 53-208.27;
Eff. February 1, 1993;
Amended Eff. October 1, 2016; November 1, 2013.

04 NCAC 03F .0402 SURRENDER OF LICENSE

A licensee shall notify the Commissioner in writing within 15 calendar days of its decision to cease operations in this State under the Money Transmitters Act, and shall surrender its license to the Commissioner no later than 30 days after it has ceased operations in this State.

History Note: Authority G.S. 53-208.13; 53-208.27;
Eff. February 1, ~~1993.~~ 1993;
Amended Eff. October 1, 2016.

04 NCAC 03F .0504 AGENT ACTIVITY REPORTS

The reports required by GS 53-208.12 shall include: ~~A licensee shall file each quarter of the calendar year, a quarterly report of agent activity no later than 60 days after the quarter has ended. The quarterly report shall contain the following information:~~

- (1) The licensee's total number of ~~agents or subagents~~ authorized delegates in this ~~State;~~ State; and
- (2) The total number and dollar amount of ~~the checks sold or issued by~~ monetary transmission activity, designated by activity type, licensee, and by each agent or subagent of the licensee's authorized delegates in this State.

History Note: Authority G.S. 53-208.12; 53-208.19; 53-208.27;
Eff. February 1, 1993;
Amended Eff. October 1, 2016; June 1, 1995.

04 NCAC 03F .0506 REVOCATION OR CANCELLATION OF SURETY BOND

(a) No later than 30 days after the renewal of its surety bond, a licensee shall file pursuant to Rule .0201(b) of this Subchapter:

- (1) a certificate of continuation of the surety bond required by ~~G.S. 53-208.8~~; G.S. 53-208.8(a); or
- (2) evidence of continued compliance with G.S. 53-208.8(b) ~~which that~~ shall consist of a safekeeping receipt received ~~directly~~ from the trustee of securities with a par value equal to the amount of the surety bond ~~is~~ required by G.S. 53-208.8.

(b) A licensee shall notify the Commissioner in writing of revocation or cancellation of its surety bond furnished pursuant to ~~G.S. 53-208.8~~. 53-208.8 no later than 15 calendar days after revocation or cancellation.

History Note: Authority 53-208.8; 53-208(13); 53-208.27;

Eff. February 1, 1993;

Amended Eff. October 1, 2016; November 1, 2013; June 1, 1995.

ADOPTION:

04 NCAC 03F .0203 PERMISSIBLE INVESTMENTS

Permissible investments shall include virtual currency owned by the licensee, but only to the extent of outstanding transmission obligations received by the licensee in identical denomination of virtual currency.

History Note: Authority G.S. 53-208.2; 53-208.6; 53-208.27;

Eff. October 1, 2016.