

# ***NORTH CAROLINA REGISTER***

**VOLUME 34 • ISSUE 05 • Pages 336 – 465**

**September 3, 2019**

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**PUBLISHED BY**

*The Office of Administrative Hearings  
Rules Division  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
Telephone (919) 431-3000  
Fax (919) 431-3104*

*Julian Mann III, Director  
Molly Masich, Codifier of Rules  
Dana McGhee, Publications Coordinator  
Lindsay Silvester, Editorial Assistant  
Cathy Matthews-Thayer, Editorial Assistant*

## **Contact List for Rulemaking Questions or Concerns**

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

### **Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.**

Office of Administrative Hearings

Rules Division

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules

[molly.masich@oah.nc.gov](mailto:molly.masich@oah.nc.gov)

(919) 431-3071

Dana McGhee, Publications Coordinator

[dana.mcgee@oah.nc.gov](mailto:dana.mcgee@oah.nc.gov)

(919) 431-3075

Lindsay Silvester, Editorial Assistant

[lindsay.silvester@oah.nc.gov](mailto:lindsay.silvester@oah.nc.gov)

(919) 431-3078

Cathy Matthews-Thayer, Editorial Assistant

[cathy.thayer@oah.nc.gov](mailto:cathy.thayer@oah.nc.gov)

(919) 431-3006

### **Rule Review and Legal Issues**

Rules Review Commission

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Amber Cronk May, Commission Counsel

[amber.may@oah.nc.gov](mailto:amber.may@oah.nc.gov)

(919) 431-3074

Amanda Reeder, Commission Counsel

[amanda.reeder@oah.nc.gov](mailto:amanda.reeder@oah.nc.gov)

(919) 431-3079

Ashley Snyder, Commission Counsel

[ashley.snyder@oah.nc.gov](mailto:ashley.snyder@oah.nc.gov)

(919) 431-3081

Alexander Burgos, Paralegal

[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)

(919) 431-3080

Julie Brincefield, Administrative Assistant

[julie.brincefield@oah.nc.gov](mailto:julie.brincefield@oah.nc.gov)

(919) 431-3073

### **Fiscal Notes & Economic Analysis**

Office of State Budget and Management

116 West Jones Street

(919) 807-4700

Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

Contact: Carrie Hollis, Economic Analyst

[osbmruleanalysis@osbm.nc.gov](mailto:osbmruleanalysis@osbm.nc.gov)

(919) 807-4757

NC Association of County Commissioners

215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Amy Bason

[amy.bason@ncacc.org](mailto:amy.bason@ncacc.org)

NC League of Municipalities

(919) 715-4000

150 Fayetteville Street, Suite 300

Raleigh, North Carolina 27601

contact: Sarah Collins

[scollins@nclm.org](mailto:scollins@nclm.org)

### **Legislative Process Concerning Rule-making**

545 Legislative Office Building

300 North Salisbury Street

(919) 733-2578

Raleigh, North Carolina 27611

(919) 715-5460 FAX

Jason Moran-Bates, Staff Attorney

Jeremy Ray, Staff Attorney

**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2019 – December 2019

| FILING DEADLINES      |            |                     | NOTICE OF TEXT                   |                                | PERMANENT RULE                                       |                  |                                      | TEMPORARY RULES  |
|-----------------------|------------|---------------------|----------------------------------|--------------------------------|--|------------------|--------------------------------------|--|
| Volume & issue number | Issue date | Last day for filing | Earliest date for public hearing | End of required comment Period | Deadline to submit to RRC for review at next meeting | RRC Meeting Date | Earliest Eff. Date of Permanent Rule | 270 <sup>th</sup> day from publication in the Register |
| 33:13                 | 01/02/19   | 12/06/18            | 01/17/19                         | 03/04/19                       | 03/20/19   | 04/18/19         | 05/01/19                             | 09/29/19   |
| 33:14                 | 01/15/19   | 12/19/18            | 01/30/19                         | 03/18/19                       | 03/20/19   | 04/18/19         | 05/01/19                             | 10/12/19   |
| 33:15                 | 02/01/19   | 01/10/19            | 02/16/19                         | 04/02/19                       | 04/22/19   | 05/16/19         | 06/01/19                             | 10/29/19   |
| 33:16                 | 02/15/19   | 01/25/19            | 03/02/19                         | 04/16/19                       | 04/22/19   | 05/16/19         | 06/01/19                             | 11/12/19   |
| 33:17                 | 03/01/19   | 02/08/19            | 03/16/19                         | 04/30/19                       | 05/20/19   | 06/20/19         | 07/01/19                             | 11/26/19   |
| 33:18                 | 03/15/19   | 02/22/19            | 03/30/19                         | 05/14/19                       | 05/20/19   | 06/20/19         | 07/01/19                             | 12/10/19   |
| 33:19                 | 04/01/19   | 03/11/19            | 04/16/19                         | 05/31/19                       | 06/20/19   | 07/18/19         | 08/01/19                             | 12/27/19   |
| 33:20                 | 04/15/19   | 03/25/19            | 04/30/19                         | 06/14/19                       | 06/20/19   | 07/18/19         | 08/01/19                             | 01/10/20   |
| 33:21                 | 05/01/19   | 04/09/19            | 05/16/19                         | 07/01/19                       | 07/22/19   | 08/15/19         | 09/01/19                             | 01/26/20   |
| 33:22                 | 05/15/19   | 04/24/19            | 05/30/19                         | 07/15/19                       | 07/22/19   | 08/15/19         | 09/01/19                             | 02/09/20   |
| 33:23                 | 06/03/19   | 05/10/19            | 06/18/19                         | 08/02/19                       | 08/20/19   | 09/19/19         | 10/01/19                             | 02/28/20   |
| 33:24                 | 06/17/19   | 05/24/19            | 07/02/19                         | 08/16/19                       | 08/20/19   | 09/19/19         | 10/01/19                             | 03/13/20   |
| 34:01                 | 07/01/19   | 06/10/19            | 07/16/19                         | 08/30/19                       | 09/20/19   | 10/17/19         | 11/01/19                             | 03/27/20   |
| 34:02                 | 07/15/19   | 06/21/19            | 07/30/19                         | 09/13/19                       | 09/20/19   | 10/17/19         | 11/01/19                             | 04/10/20   |
| 34:03                 | 08/01/19   | 07/11/19            | 08/16/19                         | 09/30/19                       | 10/21/19   | 11/21/19         | 12/01/19                             | 04/27/20   |
| 34:04                 | 08/15/19   | 07/25/19            | 08/30/19                         | 10/14/19                       | 10/21/19   | 11/21/19         | 12/01/19                             | 05/11/20   |
| 34:05                 | 09/03/19   | 08/12/19            | 09/18/19                         | 11/04/19                       | 11/20/19   | 12/19/19         | 01/01/20                             | 05/30/20   |
| 34:06                 | 09/16/19   | 08/23/19            | 10/01/19                         | 11/15/19                       | 11/20/19   | 12/19/19         | 01/01/20                             | 06/12/20   |
| 34:07                 | 10/01/19   | 09/10/19            | 10/16/19                         | 12/02/19                       | 12/20/19   | 01/16/20         | 02/01/20                             | 06/27/20   |
| 34:08                 | 10/15/19   | 09/24/19            | 10/30/19                         | 12/16/19                       | 12/20/19   | 01/16/20         | 02/01/20                             | 07/11/20   |
| 34:09                 | 11/01/19   | 10/11/19            | 11/16/19                         | 12/31/19                       | 01/21/20   | 02/20/20         | 03/01/20                             | 07/28/20   |
| 34:10                 | 11/15/19   | 10/24/19            | 11/30/19                         | 01/14/20                       | 01/21/20   | 02/20/20         | 03/01/20                             | 08/11/20   |
| 34:11                 | 12/02/19   | 11/06/19            | 12/17/19                         | 01/31/20                       | 02/20/20   | 03/19/20         | 04/01/20                             | 08/28/20   |
| 34:12                 | 12/16/19   | 11/21/19            | 12/31/19                         | 02/14/20                       | 02/20/20   | 03/19/20         | 04/01/20                             | 09/11/20   |

This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

## **EXPLANATION OF THE PUBLICATION SCHEDULE**

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

### **GENERAL**

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

### **FILING DEADLINES**

**ISSUE DATE:** The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

**LAST DAY FOR FILING:** The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

### **NOTICE OF TEXT**

**EARLIEST DATE FOR PUBLIC HEARING:** The hearing date shall be at least 15 days after the date a notice of the hearing is published.

**END OF REQUIRED COMMENT PERIOD**  
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

**DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:** The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.





# State of North Carolina

**ROY COOPER**  
GOVERNOR

August 2, 2019

**EXECUTIVE ORDER NO. 97**

**PROTECTING MINORS FROM CONVERSION THERAPY**

**WHEREAS**, North Carolina is home to approximately 320,000 adults who identify as lesbian, gay, bisexual, transgender, or queer ("LGBTQ"); and

**WHEREAS**, being LGBTQ is an innate quality and is not a disease, disorder, illness, deficiency or shortcoming; and

**WHEREAS**, conversion therapy, also known as "reparative therapy," "sexual orientation change efforts" ("SOCE") or "gender identity change efforts" ("GICE"), refers to any practice or treatment that seeks or purports to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions, or eliminate or reduce sexual or romantic attractions or feelings towards individuals of the same gender; and

**WHEREAS**, the American Psychological Association, the American Psychiatric Association, the American School Counselor Association, the American Academy of Pediatrics, the American Medical Association, the National Association of Social Workers, the American Counseling Association, the American Psychoanalytic Association, the American Academy of Child and Adolescent Psychiatry, and the Pan American Health Organization all oppose the practice of conversion therapy for minors; and

**WHEREAS**, the American Medical Association has concluded that "it is clinically and ethically inappropriate for health care providers to direct mental or behavioral health interventions, including SOCE and GICE, with a prescriptive goal aimed at achieving a fixed developmental outcome of a child's or adolescent's sexual orientation, gender identity or gender expression"; and

**WHEREAS**, the Substance Abuse and Mental Health Services Administration has expressed serious concerns with conversion therapy: "Interventions aimed at a fixed outcome, such as gender conformity or heterosexual orientation, including those aimed at changing gender identity, gender expression and sexual orientation are coercive, can be harmful and should not be part of behavioral health treatment"; and

**WHEREAS**, a 2019 study by the Williams Institute at the University of California at Los Angeles School of Law establishes that a total of 698,000 LGBTQ adults in the U.S. have received conversion therapy, with more than half of them receiving it as adolescents; and

**WHEREAS**, research by the Family Acceptance Project at San Francisco State University found that LGBTQ young adults whose parents attempted to change their sexual orientation or gender identity attempted suicide at double the rate of those who reported no such efforts, and suicide attempts nearly tripled for LGBTQ "young adults who reported both home-based efforts

to change their sexual orientation by parents *and* intervention efforts by therapists and religious leaders”; and

**WHEREAS**, a recent survey by The Trevor Project found that 42% of LGBTQ youth who have undergone conversion therapy attempted suicide, and 57% of transgender and non-binary youth who have undergone conversion therapy attempted suicide; and

**WHEREAS**, the American Psychological Association has concluded that conversion therapy can pose critical health risks to LGBTQ minors, including but not limited to an increased risk of depression, suicidality, substance use disorder and high-risk sexual behaviors; and

**WHEREAS**, eighteen (18) states, Puerto Rico, and the District of Columbia have already recognized the dangers of conversion therapy by passing laws which prohibit licensed mental health professionals from subjecting LGBTQ minors to conversion therapy; and

**WHEREAS**, the undersigned issued Exec. Order No. 24, 32 N.C. Reg. 958-62 (Nov. 15, 2017), which reaffirms the commitment to promoting diversity and inclusion; and

**WHEREAS**, additional action is necessary to promote the health, safety, and wellbeing of the state’s LGBTQ minors, who are uniquely vulnerable to conversion therapy; and

**WHEREAS**, state health care funds are spent to support evidence-based medical services, and medical experts have found conversion therapy to be ineffective, coercive and harmful to the health and well-being of minors.

**NOW, THEREFORE**, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

**Section 1. Purpose**

It is the policy of the Office of the Governor and the North Carolina Department of Health and Human Services (“DHHS”) to promote and implement actions that protect the wellbeing of all North Carolina residents regardless of their sexual orientation, gender identity, or gender expression. Additionally, it is the policy of the Office of the Governor and DHHS to ensure that state and federal funds that are allocated to DHHS and earmarked for medical and mental health care are not used to provide services that have been rejected as ineffective and unsafe by respected medical and mental health professional organizations. State and federal funds allocated to DHHS are used only for effective therapeutic services that are supported by credible evidence and medical experts.

**Section 2. Definitions**

- a. “State Agency”: Any North Carolina department, agency, board, commission or committee for which the undersigned has oversight responsibility.
- b. “Conversion Therapy”: The practice of attempting to change an individual’s sexual orientation or gender identity, including efforts to change behaviors or gender expressions, or eliminate or reduce sexual or romantic attractions or feelings towards individuals of the same sex.

Conversion therapy does not include the following: (i) any practice or treatment that provides acceptance, support, or understanding to an individual; (ii) any practice or treatment that facilitates an individual’s coping, social support, or identity exploration and development, including any practice or treatment that is neutral with regard to sexual orientation or gender identity and that seeks to prevent or address unlawful conduct or unsafe practices, and that does not seek to change sexual orientation or gender identity; or (iii) any practice or treatment that assists an individual seeking to undergo a gender transition or who is in the process of undergoing a gender transition.

**Section 3. DHHS Obligations**

DHHS is hereby directed to take appropriate steps to expressly disallow payment of DHHS allocated state and federal funds for conversion therapy for individual patients under eighteen (18) years of age. Such funds include but are not limited to those earmarked for medical and mental health care by North Carolina Medicaid or North Carolina Health Choice.

**Section 4. State Entities**

State entities not subject to the undersigned's oversight are encouraged but not required to adopt policies consistent with this Executive Order or help ensure that North Carolina is a good steward of taxpayer funds while protecting minors from the practice of conversion therapy.

**Section 5. Miscellaneous**

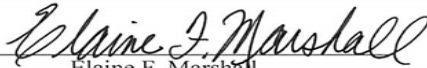
- a. This Executive Order is consistent with and does not otherwise abrogate federal or state law.
- b. Unless otherwise provided, this Executive Order supersedes and rescinds any previous Executive Order to the extent that they conflict.
- c. This Executive Order is effective immediately and shall remain in effect until amended or rescinded.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 2<sup>nd</sup> day of August in the year of our Lord two thousand and nineteen.



Roy Cooper  
Governor

ATTEST:



Elaine F. Marshall  
Secretary of State





# State of North Carolina

**ROY COOPER**  
GOVERNOR

August 9, 2019

EXECUTIVE ORDER NO. 98

## DECLARATION OF A STATE OF EMERGENCY

### BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

**WHEREAS**, several North Carolina Department of Transportation ("NCDOT") Divisions in multiple counties in North Carolina received up to four (4) inches of rain over the period of only a few hours between June 7, 2019 and June 9, 2019; and

**WHEREAS**, the impact from the rains caused significant damage to transportation infrastructure; and

**WHEREAS**, the rains, along with the ensuing damage(s) to Federal-Aid routes, including but not limited to flooding, rockslides, mudslides, washouts and pipe blowouts constitute a state of emergency as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19); and

**WHEREAS**, certain measures are necessary to ensure the protection and safety of North Carolina residents and to coordinate the emergency response among state and local entities and officials; and

**WHEREAS**, NCDOT invoked its emergency powers under N.C. Gen. Stat. § 136-28.1(e) to mobilize agency resources and enter contracts to restore and maintain traffic; and

**WHEREAS**, the state has requested aid from the Federal Highway Administration ("FHWA") Emergency Relief program pursuant to 23 U.S.C. § 125 and 23 C.F.R. Part 668 to address the damages from the event; and

**WHEREAS**, the immediate repair and reconstruction of the damaged highways and surrounding infrastructure is vital to the security, well-being and health of North Carolinians; and

**WHEREAS**, N.C. Gen. Stat. §§ 166A-19.10 and 19.20 authorize the Governor to declare a state of emergency and exercise the powers and duties set forth therein to direct and aid in the response to, recovery from and mitigation against emergencies.

**NOW, THEREFORE**, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

**Section 1.**

Pursuant to N.C. Gen. Stat. § 166A-19.20, I hereby declare that a state of emergency, as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19), exists in Alexander, Ashe, Avery, Burke, Caldwell, Catawba, Franklin, Jackson, Wake, Watauga, Wilkes and Wilson counties due to continuous rains and ensuing flash floods, landslides, rockslides, washouts, undermining and erosion that damaged state and federal highway road systems. A preliminary damage assessment was initiated by NCDOT on or about 7 June 2019 and is ongoing. Based on the assessment, I have determined that the emergency response requirement exceeds the capabilities of the state to effectively respond to the event.

The emergency area as defined in N.C. Gen. Stat. §§ 166A-19.3(7) and 166A-19.20(b) is Alexander, Ashe, Avery, Burke, Caldwell, Catawba, Franklin, Jackson, Wake, Watauga, Wilkes and Wilson counties, North Carolina ("the Emergency Area").

**Section 2.**

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan ("the Plan").

**Section 3.**

I delegate to Erik A. Hooks, the Secretary of the North Carolina Department of Public Safety, or his designee, all power and authority granted to and required of me by Article 1A of Chapter 166A of the North Carolina General Statutes for the purpose of implementing the Plan and deploying the State Emergency Response Team to take the appropriate actions necessary to promote and secure the safety and protection of the populace in North Carolina.

**Section 4.**

Further, Secretary Hooks, as Chief Coordinating Officer for the State of North Carolina, shall exercise the powers prescribed in N.C. Gen. Stat. § 143B-602.

**Section 5.**

I further direct Secretary Hooks or his designee to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the state in responding to this emergency.

**Section 6.**

I hereby order that this declaration be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the state of emergency would prevent or impede this; and (3) distributed to others as necessary to ensure proper implementation of this declaration.

**Section 7.**

This declaration does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C. Gen. Stat. §§ 166A-19.30(c) and 166A-19.31(b).

**Section 8.**

This declaration will not trigger the prohibitions against excessive pricing in the Emergency Area, notwithstanding the provisions of N.C. Gen. Stat. § 166A-19.23.

**Section 9.**

This declaration is effective immediately and shall remain in effect until rescinded.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 9<sup>th</sup> day of August in the year of our Lord two thousand and nineteen.

  
\_\_\_\_\_  
Roy Cooper  
Governor

**ATTEST:**

  
\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State





# State of North Carolina

**ROY COOPER**  
GOVERNOR

August 9, 2019

**EXECUTIVE ORDER NO. 99**

**NOTICE OF TERMINATION OF EXECUTIVE ORDER NOS. 6, 8, 27 AND 94**

**WHEREAS**, Executive Order No. 6, 27 N.C. Reg. 1896-1898 (April 15, 2013), issued on March 12, 2013, declared a state of emergency for the counties of Buncombe, Cherokee, Clay, Graham, Haywood, Jackson, Macon, Madison, Mitchell, Swain and Yancy due to damage to road systems, highways, bridges and other facilities caused by floods and mudslides; and

**WHEREAS**, Executive Order No. 8, 27 N.C. Reg. 1900-1902 (April 15, 2013), issued on March 19, 2013, declared a state of emergency for North Carolina due to the reoccurring overwash and flooding to portions of NC Highway 12 that caused damage to the highway and surrounding transportation infrastructure in the Emergency Area from the temporary bridge on Pea Island to a point 3,250 feet south of SR 1495 (Corbina Drive) in the Village of Rodanthe.

**WHEREAS**, Executive Order No. 27, 28 N.C. Reg. 728-730 (October 15, 2013), issued on September 12, 2013, declared a state of emergency for Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Catawba, Cleveland, Jackson, Lincoln, Macon, Madison, Mitchell, Polk, Rutherford, Transylvania, Watauga, Wilkes and Yancey counties and the Qualla Boundary of the Eastern Band of Cherokee due to damage to public infrastructure caused by severe flooding and landslides; and

**WHEREAS**, Executive Order No. 94, 33 N.C. Reg. 2157-2158 (May 15, 2019), issued on April 17, 2019, declared a state of emergency for the counties of Alleghany, Ashe, Cherokee, Graham, Haywood, Jackson, Macon, Madison, McDowell, Mitchell, Surry, Swain and Yancey due to damage to roads, highways and surrounding infrastructure to Interstate 40 and other transportation roads and infrastructure due to continued rains, flash floods, landslides, rockslides, washouts, undermining and erosion.

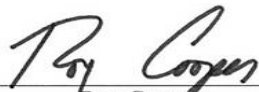
**WHEREAS**, the State of North Carolina requested aid from the appropriate programs as a result of these emergency declarations to assist with the repairs to the impacted areas; and

**WHEREAS**, these emergency declarations are no longer necessary.

**NOW, THEREFORE**, by the power vested in me as Governor by the Constitution and laws of North Carolina, **IT IS ORDERED**:

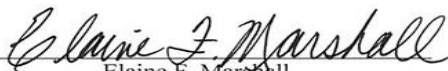
Pursuant to N.C. Gen. Stat. § 166A-19.20(c) the states of emergency that were declared by Executive Orders No. 6, 8, 27 and 94 are hereby terminated immediately.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 9<sup>th</sup> day of August in the year of our Lord two thousand and nineteen.



Roy Cooper  
Governor

ATTEST:



Elaine F. Marshall  
Secretary of State





**The 2020 Low-Income Housing Tax Credit Qualified Allocation Plan  
For the State of North Carolina**

|      |  |    |
|------|--|----|
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## I. INTRODUCTION

The 2020 Qualified Allocation Plan (the Plan) has been developed by the North Carolina Housing Finance Agency (the Agency) as administrative agent for the North Carolina Federal Tax Reform Allocation Committee (the Committee) in compliance with Section 42 of the Internal Revenue Code of 1986, as amended (the Code). For purposes of the Plan, the term “Agency” shall mean the Agency acting on behalf of the Committee, unless otherwise provided.

The Plan was reviewed in one public hearing and met the other legal requirements prior to final adoption by the Committee. The staff of the Agency was present at the hearing to take comments and answer questions.

The Agency will only allocate low-income housing tax credits in compliance with the Plan. The Code requires the Plan contain certain elements. These elements, and others added by the Committee, are listed below.

A. Selection criteria to be used in determining the allocation of tax credits:

- Project location and site suitability.
- Market demand and local housing needs.
- Serving the lowest income tenants.
- Serving qualified tenants for the longest periods.
- Design and quality of construction.
- Financial structure and long-term viability.
- Use of federal project-based rental assistance.
- Use of mortgage subsidies.
- Experience of development team and management agent(s).
- Serving persons with disabilities and persons who are homeless.
- Willingness to solicit referrals from public housing waiting lists.
- Tenant populations of individuals with children.
- Projects intended for eventual tenant ownership.
- Projects that are part of a community redevelopment effort.
- Energy efficiency.
- Historic nature of the buildings.

B. Threshold, underwriting and process requirements.

C. Description of the Agency’s compliance monitoring program, including procedures to notify the Internal Revenue Service of noncompliance with the requirements of the program.

In the process of administering the tax credit, Rental Production Program (RPP) and Workforce Housing Loan Program (WHLP), the Agency will make decisions and interpretations regarding project applications and the Plan. RPP and WHLP are state investments dedicated to making rental developments financially feasible and more affordable for working families and seniors. Unless otherwise stated, the Agency is entitled to the full discretion allowed by law in making all such decisions and interpretations. The Agency reserves the right to amend, modify, or withdraw provisions contained in the Plan that are inconsistent or in conflict with state or federal laws or regulations. In the event of a major:

- natural disaster,
- disruption in the financial markets, or
- reduction in subsidy resources available, including tax credits, RPP and WHLP funding,

the Agency may disregard any section of the Plan, including point scoring and evaluation criteria, that interferes with an appropriate response.

## II. SET-ASIDES, AWARD LIMITATIONS AND COUNTY DESIGNATIONS

The Agency will determine whether applications are eligible under Section II(A) or II(B). This Section II only applies to 9% Tax Credit applications.

### A. REHABILITATION SET-ASIDE

The Agency will award up to ten percent (10%) of tax credits available after forward commitments to projects proposing rehabilitation of existing housing. The Agency may exceed this limitation to completely fund a project request. In the event eligible requests exceed the amount available, the Agency will determine awards based on the evaluation criteria in Section IV(H)(3). The maximum award under this set-aside to any one Principal will be one project.

The following will be considered new construction under Section II(B) below:

- adaptive re-use projects,
- entirely vacant residential buildings,
- proposals to increase and/or substantially re-configure residential units.

### B. NEW CONSTRUCTION SET-ASIDES

#### 1. GEOGRAPHIC REGIONS

The Agency will award tax credits remaining after awards described above to new construction projects, starting with those earning the highest scoring totals within each of the following four geographic set-asides and continuing in descending score order through the last project that can be fully funded. The Agency reserves the right to revise the available credits in each set-aside to award the next highest scoring application statewide under Section II(G)(1).

| West 16%  |              | Central 234% |            | Metro 387%  | East 23%  |             |
|-----------|--------------|--------------|------------|-------------|-----------|-------------|
| Alexander | Lincoln      | Alamance     | Moore      | Buncombe    | Beaufort  | Jones       |
| Alleghany | Macon        | Anson        | Orange     | Cumberland  | Bertie    | Lenoir      |
| Ashe      | Madison      | Cabarrus     | Person     | Durham      | Bladen    | Martin      |
| Avery     | McDowell     | Caswell      | Randolph   | Forsyth     | Brunswick | Nash        |
| Burke     | Mitchell     | Chatham      | Richmond   | Guilford    | Camden    | New Hanover |
| Caldwell  | Polk         | Davidson     | Rockingham | Mecklenburg | Carteret  | Northampton |
| Catawba   | Rutherford   | Davie        | Rowan      | Wake        | Chowan    | Onslow      |
| Cherokee  | Surry        | Franklin     | Scotland   |             | Columbus  | Pamlico     |
| Clay      | Swain        | Granville    | Stanly     |             | Craven    | Pasquotank  |
| Cleveland | Transylvania | Harnett      | Stokes     |             | Currituck | Pender      |
| Gaston    | Watauga      | Hoke         | Union      |             | Dare      | Perquimans  |
| Graham    | Wilkes       | Iredell      | Vance      |             | Duplin    | Pitt        |
| Haywood   | Yadkin       | Lee          | Warren     |             | Edgecombe | Robeson     |
| Henderson | Yancey       | Montgomery   |            |             | Gates     | Sampson     |
| Jackson   |              |              |            |             | Greene    | Tyrrell     |
|           |              |              |            |             | Halifax   | Washington  |
|           |              |              |            |             | Hertford  | Wayne       |
|           |              |              |            |             | Hyde      | Wilson      |
|           |              |              |            |             | Johnston  |             |

#### 2. REDEVELOPMENT PROJECTS

- (a) If necessary, the Agency will adjust the awards under the Plan to ensure the overall allocation results in awards for two (2) Redevelopment Projects. Specifically, tax credits that would have been awarded to the lowest ranking project(s) that do(es) not meet the criteria below will be

awarded to the next highest ranking Redevelopment Project(s). The Agency may make such adjustment(s) in any geographic set-aside.

- (b) The following are required to qualify as a Redevelopment Project:
- (i) The site currently contains or contained at least one structure used for commercial, residential, educational, or governmental purposes.
  - (ii) The application proposes adaptive re-use with historic rehabilitation credits and/or new construction.
  - (iii) Any required demolition has been completed or is scheduled for completion in 2020 (not including the project buildings).
  - (iv) A unit of local government initiated the project, evidenced by a Request for Proposal, Council minutes, or other documentation stipulating the project was originally envisioned by the local government, and has invested community development resources in the Half Mile area within the last ten years. A resolution will not suffice as evidence of local government initiation.
  - (v) As of the preliminary application deadline, a unit of local government formally adopted a plan to address the deterioration (if any) in the Half Mile area and approved one or more of the following for the project:
    - donation of at least one parcel of land,
    - waiver of impact, tap, or related fees normally charged,
    - commitment to lend/grant at least \$750,000 in the Metro region and \$250,000 in the East, Central or West of its housing development funds (net of any amount paid to the unit of government) as a source of permanent funding, or
    - is part of the Rental Assistance Demonstration (RAD) program under the U.S. Department of Housing and Urban Development (HUD).

The Agency will require official documentation of each element of local government participation.

### 3. DISASTER RECOVERY

#### (a) Additional Tax Credits

Twelve point five percent (12.5%) of tax credits available will be added to the East region before the Rehabilitation Set-Aside and before any allocations under the New Construction Set-Aside.

#### (b) County Award Limits

Should each county with an eligible application in the East or Central region receive one new construction award and credits remain in the respective region, counties declared a federal disaster area (Individual Assistance designation) under Hurricane Florence are eligible to receive a second new construction award.

If necessary, the Agency will adjust the awards under the Plan to ensure the overall allocation results in no less than one award for Cumberland County in the Metro region. The initial maximum under II(F)(b) will not apply to Cumberland County should that county be eligible for a second new construction award.

#### (c) Disaster Recovery Funds

~~New construction applications receiving an allocation of 9% tax credits in counties declared federal disaster areas (Individual Assistance designation) under Hurricane Florence are eligible for Disaster Recovery funds. Loan amounts will be determined by the Agency and used to reduce tax credit~~

~~and/or WHLP requests. The terms will be zero percent (0%) interest, twenty-year balloon (no payments unless requesting RPP funds).~~

**C. USDA RURAL DEVELOPMENT**

Up to \$750,000 will be awarded to eligible rehabilitation and/or new construction project(s) identified by the U.S. Department of Agriculture, Rural Development (RD) state office as a priority. These projects will count towards the applicable set-asides and limits. The maximum award under this set-aside to any one Principal will be one project. Other RD applications will be considered under the applicable set-asides.

**D. NONPROFIT AND CHDO SET-ASIDES AND LIMITS AND NATIONAL HOUSING TRUST FUND**

**1. SET-ASIDES AND NATIONAL HOUSING TRUST FUND**

If necessary, the Agency will adjust the awards under the Plan to ensure that the overall allocation results in:

- ten percent (10%) of the state's federal tax credit ceiling being awarded to projects involving tax-exempt organizations (nonprofits),
- fifteen percent (15%) of the Agency's HOME funds being awarded to projects involving Community Housing Development Organizations certified by the Agency (CHDOs) and
- all funds available from the National Housing Trust Fund have been awarded.

Specifically, tax credits that would have been awarded to the lowest ranking project(s) that do(es) not fall into one of these categories will be awarded to the next highest ranking project(s) that do(es) until the overall allocation(s) reach(es) the necessary percentage(s). The Agency may make such adjustment(s) in any set-aside.

**(a) Nonprofit Set-Aside**

To qualify as a nonprofit application, the project must either:

- not involve any for-profit Principals or
- comply with the material participation requirements of the Code, applicable federal regulations and Section VI(A)(2).

**(b) CHDO Set-Aside**

To qualify as a CHDO application,

- the project must meet the requirements of subsection (D)(1)(a) above and 24 CFR 92.300(a)(1),
- the Applicant, any Principal, or any affiliate must not undertake any choice-limiting activity prior to successful completion of the U.S. Department of Housing and Urban Development (HUD) environmental clearance review, and
- the project and owner must comply with regulations regarding the federal CHDO set-aside.

The Agency may determine the requirements of the federal CHDO set-aside have been or will be met without implementing subsection (D)(1)(b).

**(c) National Housing Trust Fund**

To qualify for the National Housing Trust Fund, the project must:

- be located in a High Income county as designated in Section II(F)(2) and
- commit at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income. See **Appendix J** for additional information.

**2. LIMITS**

No more than twenty percent (20%) of the overall allocation will be awarded to projects where a nonprofit organization (or its qualified corporation) is the Applicant under Section III(C)(6). New construction awards will be counted towards this limitation first (in score order), then rehabilitation awards.

E. PRINCIPAL AND PROJECT AWARD LIMITS

1. PRINCIPAL LIMITS

- (a) The maximum awards to any one Principal will be a total of \$1,800,000 in tax credits, including all set-asides. New construction awards will be counted towards this limitation first (in score order), then rehabilitation awards.
- (b) The Agency may further limit awards based on unforeseen circumstances.
- (c) For purposes of the maximum allowed in this subsection (E)(1), the Agency may determine that a person or entity not included in an application is a Principal for the project. Such determination would include consideration of relationships between the parties in previously awarded projects and other common interests. Standard fee for service contract relationships (such as accountants or attorneys) will not be considered.

2. PROJECT LIMIT

The maximum award to any one project will be \$1,000,000.

3. AGENCY-DESIGNATED BASIS BOOST

The Agency can boost the eligible basis of new construction projects committing to the targeting in Section IV(B)(2) or that are located in an Opportunity Zone by up to ten percent (10%). Projects using the DDA or QCT basis increase are not eligible under this section.

F. COUNTY AWARD LIMITS AND INCOME DESIGNATIONS

1. AWARD LIMITS

- (a) Rehabilitation and East, Central, and West Regions

No county will be awarded more than one project under the rehabilitation set-aside. No county will be awarded more than one project under the new construction set aside except as specified under Section II(B)(3)(b).

- (b) Metro Region

The initial maximum award(s) for a county will be its percent share of the Metro region based on population (see **Appendix K**), unless exceeding this amount is necessary to complete a project request. If any tax credits remain, the Agency will make awards to the next highest scoring application(s). A county may receive one additional award, even if in excess of its share. See Section II(B)(3)(b) for Cumberland County exception.



**2. INCOME DESIGNATIONS**

The Agency is responsible for designating each county as High, Moderate or Low Income. The criteria used in making this determination was HUD's FY 2019~~8~~ Median Family Income.

| <b>High</b>       |                    | <b>Moderate</b>      |                   | <b>Low</b>        |                       |
|-------------------|--------------------|----------------------|-------------------|-------------------|-----------------------|
| Buncombe          | Gaston             | Alamance             | Nash              | Alleghany         | Macon                 |
| Brunswick         | Guilford           | Alexander            | Onslow            | Anson             | Martin                |
| Cabarrus          | <u>Henderson</u>   | Beaufort             | Pamlico           | Ashe              | McDowell              |
| Camden            | Iredell            | Burke                | Pasquotank        | Avery             | <del>Mitchell</del>   |
| Carteret          | Johnston           | Caldwell             | Pender            | Bertie            | Montgomery            |
| Chatham           | <del>Lincoln</del> | Catawba              | <u>Perquimans</u> | Bladen            | Northampton           |
| <del>Craven</del> | <u>Madison</u>     | <u>Craven</u>        | Person            | Caswell           | <del>Perquimans</del> |
| Currituck         | Mecklenburg        | Cumberland           | <del>Pitt</del>   | Cherokee          | Richmond              |
| Dare              | Moore              | Davie                | Polk              | Chowan            | Robeson               |
| Durham            | New Hanover        | Davidson             | Randolph          | Clay              | <del>Rutherford</del> |
| Forsyth           | Orange             | Edgecombe            | Rockingham        | Cleveland         | Sampson               |
| Franklin          | <u>Pitt</u>        | Gates                | Rowan             | Columbus          | Scotland              |
|                   | Union              | Granville            | <u>Rutherford</u> | Duplin            | <u>Surry</u>          |
|                   | Wake               | <u>Greene</u>        | Stanly            | Graham            | Swain                 |
|                   | Watauga            | Harnett              | Stokes            | <del>Greene</del> | Tyrrell               |
|                   |                    | Haywood              | <del>Surry</del>  | Halifax           | Vance                 |
|                   |                    | <del>Henderson</del> | Transylvania      | Hertford          | Warren                |
|                   |                    | Hoke                 | Wayne             | Hyde              | Washington            |
|                   |                    | Jackson              | <u>Wilkes</u>     | Jones             | <del>Wilkes</del>     |
|                   |                    | Lee                  | Wilson            | Lenoir            | Yancey                |
|                   |                    | <u>Lincoln</u>       | Yadkin            |                   |                       |
|                   |                    | <del>Madison</del>   |                   |                   |                       |
|                   |                    | <u>Mitchell</u>      |                   |                   |                       |

**G. OTHER AWARDS AND RETURNED ALLOCATIONS**

- The Agency may award tax credits remaining from the geographic set-asides to the next highest scoring eligible new construction application(s) in the East, Central, and West regions and/or one or more eligible rehabilitation applications. The Agency may also carry forward any amount of tax credits to the next year.
- An owner returning a valid allocation of 2017~~6~~ tax credits between October 1, 2019~~8~~ and December 31, 2019~~8~~ will receive an allocation of the same amount of 2020 tax credits if:
  - the project has obtained a building permit and closed its construction loan,
  - the owner pays a fee equal to the original allocation fee amount upon the return, and
  - the project's design is the same as approved at full application (other than changes approved by the Agency).

None of the Principals for the returned project may be part of a 2020 application.
- The Agency may make a forward commitment of the next year's tax credits in an amount necessary to fully fund project(s) with a partial award or to any project application that was submitted in a prior year if such application meets all the minimum requirements of the Plan. In the event that credits are returned or the state receives credits from the national pool, the Agency may elect to carry such credits forward, make an award to any project application (subject only to the nonprofit set aside), or a combination of both.

### III. DEADLINES, APPLICATION AND FEES

#### A. APPLICATION AND AWARD SCHEDULE

The following schedule will apply to the 2020 application process for 9% Tax Credits and the first round of tax-exempt bond volume and 4% Tax Credits.

|                                     |  |
|-------------------------------------|--|
| January <del>24</del> <sup>18</sup> | Deadline for submission of preliminary applications (12:00 noon)                         |
| March <del>16</del> <sup>4</sup>    | Market analysts will submit studies to the Agency and Applicants                         |
| March <del>27</del> <sup>2</sup>    | Notification of final site scores  |
| April <del>6</del> <sup>4</sup>     | Deadline for market-related project revisions (5:00 p.m.)                                |
| April <del>13</del> <sup>8</sup>    | Deadline for the Agency and Applicant to receive the revised market study, if applicable |
| May <del>15</del> <sup>9</sup>      | Deadline for full applications (12:00 noon)  |
| August                              | Notification of tax credit awards  |

The Agency will also accept tax-exempt bond volume and 4% Tax Credit applications any time between May 1 and October 1. When a preliminary application has been submitted in this timeframe, a schedule of milestones will be provided to the Applicant. The preliminary application submission date will determine when those milestones occur which will follow a time frame similar to the 9% Tax Credit round. The Agency will work with the Applicant to determine if the project will receive 2020 or 2021~~9~~ volume cap. Full applications can be submitted no later than January 17, 2021~~9~~.

The Agency reserves the right to change the schedule to accommodate unforeseen circumstances.

#### B. APPLICATION, ALLOCATION, MONITORING, AND PENALTY FEES

1. All Applicants are required to pay a nonrefundable fee of \$5,786~~0~~ at the submission of the preliminary application. This fee covers the cost of the market study or physical needs assessment and a \$1,386~~0~~ preliminary application processing fee (which will be assessed for every electronic application submitted). The Agency may charge additional fee(s) to cover the cost of direct contracting with other providers (such as appraisers).
2. All Applicants are required to pay a nonrefundable processing fee of \$1,386~~0~~ upon submission of the full application.
3. Entities receiving tax credit awards, including those involving tax-exempt bond volume, are required to pay a nonrefundable allocation fee equal to 0.84~~2~~% of the project's total qualified basis.
4. The allocation fee will be due at the time of either the carryover allocation or bond volume award. Failure to return the required documentation and fee by the date specified may result in cancellation of the allocation. The Agency may assess other fees for additional monitoring responsibilities.
5. Owners must pay a monitoring fee of \$~~TBD~~<sup>900</sup> per unit (includes all units, qualified, unrestricted, and employee) prior to issuance of the project's IRS Form 8609. Any project utilizing income averaging or for which the Agency is the bond issuer must pay an additional monitoring fee of \$300 per unit.
6. If expenses for legal services are incurred by the Committee or Agency to correct mistakes of the owner which jeopardize use of the tax credits, such legal costs will be paid by the owner in the amount charged to the Committee or Agency.
7. The Agency may assess Applicants or owners a fee of up to \$2,000 for each instance of failure to comply with a written requirement, whether or not such requirement is in the Plan. The Agency will

not process applications or other documentation relating to any Principal who has an outstanding balance of fees owed; such a delay in processing may result in disqualification of application(s).

8. The Agency will assess \$1,500 for a Workforce Housing Loan Program closing and \$2,000 for an RPP closing.

**C. APPLICATION PROCESS AND REQUIREMENTS**

1. The Agency may require Applicants to submit any information, letter, or representation relating to Plan requirements or point scoring as part of the application process.
2. Any failure to comply with an Agency request under subsection (C)(1) above or any misrepresentation, false information or omission in any application document may result in disqualification of that application and any other involving the same owner(s), Principal(s), consultant(s) and/or application preparer(s). Any misrepresentation, false information or omission in the application document may also result in a revocation of a tax credit allocation.
3. Only one application can be submitted per site (new construction or rehabilitation).
4. The Agency may elect to treat applications involving more than one site, population type (family/elderly) or activity (new/rehabilitation) as separate for purposes of the Agency's application process. Each application would require a separate initial application fee. The Agency may allow such applications to be considered as one for the full application underwriting if all sites are secured by one permanent mortgage and are not intended for separation and sale after the tax credit allocation.
5. The Agency will notify the appropriate unit of government about the project after submission of the full application.
6. For each application one individual or validly existing entity must be identified as the Applicant and execute the preliminary and full applications. An entity may be one of the following:
  - (a) corporation, including nonprofits,
  - (b) limited partnership, or
  - (c) limited liability company.

Only the identified Applicant will have the ability to make decisions with regard to that application and be considered under Section IV(D)(1). The Applicant may enter into joint venture or other agreements but the Agency will not be responsible for evaluating those documents to determine the relative rights of the parties. If the application receives an award the Applicant must become a managing member or general partner of the ownership entity.

**IV. SELECTION CRITERIA AND THRESHOLD REQUIREMENTS**

Applications must meet all applicable threshold requirements to be considered for award and funding. Scoring and threshold determinations made in prior years are not binding on the Agency for the 2020 cycle.

**A. SITE AND MARKET EVALUATION**

The Agency will not accept a full application where the preliminary application does not meet all site and market threshold requirements.

1. **SITE EVALUATION (MAXIMUM 60 POINTS)**
  - (a) **General Site Requirements:**
    - (i) Sites must be sized to accommodate the number and type of units proposed. The Applicant or a Principal must have site control by the preliminary application deadline as evidenced by an option, contract or deed. The documentation of site control must include a plot plan.

- (ii) Required zoning must be in place by the full application deadline, including special/conditional use permits, and any other discretionary land use approval required (includes all legislative or quasi-judicial decisions).
- (iii) Water and sewer must be available with adequate capacity to serve the site. Sites should be accessed directly by existing paved, publicly maintained roads. If not, it will be the owner's responsibility to extend utilities and roads to the site. In such cases, the Applicant must explain and budget for such plans and document the right to perform such work.
- (iv) To be eligible for RPP funds, the preliminary application must contain the Agency's "Notice of Real Property Acquisition" form. The form must be executed by all parties before or at the same time as the option or contract.

(b) Criteria for Site Score Evaluation:

Site scores will be based on the following factors. Each will also serve as a threshold requirement; the Agency may remove an application from consideration if the site is sufficiently inadequate in one of the categories. An application must have a minimum total score of 45 points.

(i) NEIGHBORHOOD CHARACTERISTICS (MAXIMUM 10 POINTS)

Good: 10 points if structures within a Half Mile are well maintained or the site qualifies as a Redevelopment Project (see Section II(B)(2)(b))

Fair: 5 points if structures within a Half Mile are not well maintained and there are visible signs of deterioration

Poor: 0 points if structures within a Half Mile are Blighted or have physical security modifications (e.g. barbed wire fencing or bars on windows)

Half Mile: The half mile radius from the approximate center of the site (does not apply to Amenities below).

Blighted: A structure that is abandoned, deteriorated substantially beyond normal wear and tear, a public nuisance, or appears to violate minimum health and safety standards.

(ii) AMENITIES (MAXIMUM 38 POINTS)

Other than applications with tribally-appropriated funds or near bus/transit stops (described at the end of this subsection), points will be determined according to the matrix below. For an amenity to be eligible for points, the application must include documentation required by the Agency of meeting the applicable criteria. In all cases the establishment must be open to the general public and operating as of the preliminary application deadline with no announced closing ~~as of the preliminary application deadline prior to the notification of final site scores.~~

|   | <u>Driving Distance in Miles</u> |         |        |        |
|---|----------------------------------|---------|--------|--------|
| <i>Primary Amenities</i><br>(maximum 26 points)   | ≤ 1                              | ≤ 1.5   | ≤ 2    | ≤ 3    |
| Grocery   | 12pts.                           | 10 pts. | 8 pts. | 6 pts. |
| Shopping  | 7 pts.                           | 6 pts.  | 5 pts. | 4 pts. |
| Pharmacy  | 7 pts.                           | 6 pts.  | 5 pts. | 4 pts. |
| <i>Secondary Amenities</i><br>(maximum 12 points) | ≤ 1                              | ≤ 1.5   | ≤ 2    | ≤ 3    |
| Other Primary Amenity                             | 5 pts.                           | 4 pts.  | 3 pts. | 2 pts. |
| Service   | 3 pts.                           | 2 pts.  | 1 pt.  | 0 pts. |
| Healthcare  | 3 pts.                           | 2 pts.  | 1 pt.  | 0 pts. |
| Public Facility                                   | 3 pts.                           | 2 pts.  | 1 pt.  | 0 pts. |

|                         |        |        |       |        |
|-------------------------|--------|--------|-------|--------|
| Public School (Family)  | 3 pts. | 2 pts. | 1 pt. | 0 pts. |
| Senior Center (Elderly) | 3 pts. | 2 pts. | 1 pt. | 0 pts. |
| Retail                  | 3 pts. | 2 pts. | 1 pt. | 0 pts. |

Driving Distance in Miles, Small Town\*

|   |         |         |        |        |
|---|---------|---------|--------|--------|
| <i>Primary Amenities</i><br>(maximum 26 points)   |         |         |        |        |
|   | ≤ 2     | ≤ 2.5   | ≤ 3    | ≤ 4    |
| Grocery   | 12 pts. | 10 pts. | 8 pts. | 6 pts. |
| Shopping  | 7 pts.  | 6 pts.  | 5 pts. | 4 pts. |
| Pharmacy  | 7 pts.  | 6 pts.  | 5 pts. | 4 pts. |
| <i>Secondary Amenities</i><br>(maximum 12 points) |         |         |        |        |
|   | ≤ 2     | ≤ 2.5   | ≤ 3    | ≤ 4    |
| Other Primary Amenity                             | 5 pts.  | 4 pts.  | 3 pts. | 2 pts. |
| Service   | 3 pts.  | 2 pts.  | 1 pt.  | 0 pts. |
| Healthcare  | 3 pts.  | 2 pts.  | 1 pt.  | 0 pts. |
| Public Facility                                   | 3 pts.  | 2 pts.  | 1 pt.  | 0 pts. |
| Public School (Family)                            | 3 pts.  | 2 pts.  | 1 pt.  | 0 pts. |
| Senior Center (Elderly)                           | 3 pts.  | 2 pts.  | 1 pt.  | 0 pts. |
| Retail  | 3 pts.  | 2 pts.  | 1 pt.  | 0 pts. |

\* A Small Town is a municipality with a population of less than 10,000 people. The list of town sizes can be found on the Office of State Budget and Management web site at <https://www.osbm.nc.gov/demog/municipal-population-estimates>. The Certified 2017 Population Estimates, Municipal Estimates – Alphabetically by municipality will be used to determine a town’s population. A site is not required to be within the town limits to qualify but must have an address of a Small Town. Any application in an unincorporated town not appearing on the Small Town list but recognized as a community must have Agency approval to be considered a Small Town prior to the preliminary application deadline.

Only one establishment will count for each row under Primary and Secondary Amenities. For example, an application for a site with a public park, library, and community center all between one mile and one and a half miles will receive only 2 points under Public Facility.

The driving distance will be the mileage as calculated by Google Maps and must be a drivable route as of the preliminary application deadline. The drivable route must be shown in satellite view map format (written directions optional). A photo of each amenity must also be provided. The measurement will be:

- the point closest to the site entrance to or from
- the point closest to the amenity entrance.

Driveways, access easements, and other distances in excess of 500 feet between the nearest residential building of the proposed project and road shown on Google Maps will be included in the driving distance. For scattered site projects, the measurement will be from the location with the longest driving distance(s). Scattered site is defined as buildings on separate parcels, not connected by internal drive, and with separate entrances.

The following establishments qualify as a Grocery:

|                  |                               |           |              |
|------------------|-------------------------------|-----------|--------------|
| Aldi             | Food Matters Market           | Just Save | Save-A-Lot   |
| Bi-Lo            | Fresh Air Galaxy Food Centers | Kroger    | Sprouts      |
| Bo’s Food Stores | The Fresh Market              | Lidl      | Super Target |

|               |                 |               |                             |
|---------------|-----------------|---------------|-----------------------------|
| Compare Foods | Harris Teeter   | Lowes Foods   | Trader Joe's                |
| Earth Fare    | Harveys         | Piggly Wiggly | Walmart Neighborhood Market |
| Fairvalue     | Hopey & Company | Publix        | Walmart Supercenter         |
| Family Foods  | IGA             | Red & White   | Weaver Street Market        |
| Food Lion     | Ingle's Market  | Sav-Mor       | Whole Foods                 |

The following establishments qualify as Shopping:

|                     |                        |                     |
|---------------------|------------------------|---------------------|
| Big Lots            | Kmart                  | Target              |
| Dollar General      | Maxway                 | Super Target        |
| Dollar Tree         | Ollie's Bargain Outlet | Walmart             |
| Family Dollar       | Roses                  | Walmart Supercenter |
| Fred's Super Dollar | Roses Express          |                     |

To qualify as a Pharmacy, the establishment must have non-medical general merchandise items for sale (not including pharmacies within hospitals).

To qualify as a Secondary Amenity, the establishment must meet the applicable requirement(s) below.

Other Primary Amenity: second Grocery, Shopping or Pharmacy (not used as Primary Amenity)

Service: restaurant, bank/credit union, or gas station with convenience store

Healthcare: hospital, urgent care business, general/family practice, or general dentist (not to include orthodontist); does not include medical specialists or clinics within pharmacies

Public Facility (any of the following):

- community center with scheduled activities operated by a local government
- public park owned and maintained by a local government containing, at a minimum, playground equipment and/or walking/bike trails and listed on a map, website, or other official means
- library operated by a local government open at least five days a week

Public School: non-alternative elementary, middle or high school (family properties only)

Senior Center: with scheduled activities operated by a local government (elderly properties only)

Retail: any Grocery or Shopping not listed as a Primary or Other Primary Amenity; any strip shopping center with a minimum of 4 operating establishments; any grocery or general merchandise establishment

A commitment of at least \$250,000 in tribally-appropriated funds (including through the Native American Housing Assistance and Self Determination Act) qualifies for 6 points, not to exceed the total for subsection (ii). The commitment must meet the requirements of Section VI(B)(6)(b) and be submitted as part of the preliminary application.

A bus/transit stop qualifies for 6 points, not to exceed the total for subsection (ii), if it is:

- in service as of the preliminary application date,
- at a fixed location and has a covered waiting area,
- served by a public transportation system six days a week, including for 12 consecutive hours on weekdays, and
- within 0.25 miles walking distance of the proposed project site entrance using existing continuous sidewalks (excluding the proposed project site) and crosswalks.

A bus/transit stop qualifies for 2 points, not to exceed the total for subsection (ii), if all of the above criteria are met except for a covered waiting area.

(iii) SITE SUITABILITY (MAXIMUM 12 POINTS)

3 points if there is no Incompatible Use, which includes the following activities, conditions, or uses within the distance ranges specified:

Half Mile

- airports
- chemical or hazardous materials storage/disposal
- industrial or agricultural activities with environmental concerns (such as odors or pollution)
- commercial junk or salvage yards
- landfills currently in operation
- sources of excessive noise
- wastewater treatment facilities

A parcel or right of way within 500 feet containing any of the following:

- adult entertainment establishment
- distribution facility
- factory or similar operation
- jail or prison
- large swamp

Any of the following within 250 feet of a proposed project building:

- electrical utility substation, whether active or not
- frequently used railroad tracks (not to include passenger light rail ~~except within 0.25 miles of an approved light rail passenger stop~~)
- high traffic corridor
- power transmission lines and tower

3 points if there are no negative features, design challenges, physical barriers, or other unusual and problematic circumstances that would impede project construction or adversely affect future tenants, including but not limited to: power transmission lines and towers, flood hazards, steep slopes, large boulders, ravines, year-round streams, wetlands, and other similar features (for adaptive re-use projects: suitability for residential use and difficulties posed by the building(s), such as limited parking, environmental problems or the need for excessive demolition)

3 points if the project would be visible to potential tenants using normal travel patterns and is within 500 feet of a building that is currently in use for residential, commercial, educational, or governmental purposes (excluding Blighted structures or Incompatible Uses)

3 points if traffic controls allow for safe access to the site; for example limited sight distance (blind curve) or having to cross three or more lanes of traffic going the same direction when exiting the site would not receive points.

(iv) SITE NEGATIVE POINTS (NEGATIVE 3 POINTS)

Up to 3 points will be deducted from a site deemed to be unsuitable for housing. This determination recognizes a site may meet all site evaluation scoring criteria but not be suitable for housing regardless of having required zoning or local government support.

2. MARKET ANALYSIS



The Agency will administer the market study process based on this Section and the terms of **Appendix A** (incorporated herein by reference).

- (a) The Agency will contract directly with market analysts to perform studies. Applicants may interact with market analysts and will have an opportunity to revise their project (unit mix, targeting). Any revisions must be submitted in writing to both the market analyst and to the Agency, following the schedule in Section III(A), and will be binding on the Applicant for the full application.
- (b) The Agency will limit the number of projects awarded in the same application round to those that it determines can be supported in the market.
- (c) The following four criteria are threshold requirements for new construction applications:
  - (i) the project's capture rate,
  - (ii) the project's absorption rate,
  - (iii) the vacancy rate at comparable properties (what qualifies as a comparable will vary based on the circumstances), and
  - (iv) the project's effect on existing or awarded properties with 9% Tax Credits or Agency loans.
- (d) Applicants may not increase rents ~~nor~~ the total number of units after submission of the preliminary application. Unless 2020 rent and income limits are released by the 9% preliminary application deadline, 2019 rent and income limits must be used for the preliminary application, market study, and any market study revision. After the deadline for completing market-related project revisions Applicants may not increase:
  - (i) rents, irrespective of a decrease in utility allowances,
  - (ii) the number of income targeted units in any bedroom type, or
  - (iii) the number of units in any bedroom type.Applicants are prohibited from decreasing unit square footage after the deadline for completing market-related revisions.
- (e) The Agency is not bound by the conclusions or recommendations of the market analyst(s), and will use its discretion in evaluating the criteria listed in this subsection (A)(2).
- (f) Projects may not give preferences to potential tenants based on:
  - (i) residing in the jurisdiction of a particular local government,
  - (ii) having a particular disability, or
  - (iii) being part of a specific occupational group (e.g. artists).
- (g) Age-restricted (elderly) projects may not contain three or more bedroom units.
- (h) No project can have more than four (4) income bands consisting of: 20%, 30%, 40%, 50%, 60%, 70%, 80% of area median income, and market rate.

## B. RENT AFFORDABILITY

### 1. FEDERAL RENTAL ASSISTANCE

Applicants proposing to convert tenant-based Housing Choice Vouchers (Section 8) to a project-based subsidy (pursuant to 24 CFR Part 983) must submit a letter from the issuing authority in a form approved by the Agency. Conversion of vouchers will be treated similar to a funding source under Section VI(B)(6)(e); a project will be ineligible for an allocation if it does not meet requirements set by the Agency as part of the application and award process. Such requirements may involve the public housing authority's (PHA's) Annual Plan, selection policy, and approval for advertising.

### 2. TENANT RENT LEVELS AND RPP (MAXIMUM 2 POINTS)

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An application may earn points under one of the following scenarios:

- (a) If the project is in a High Income county:
  - 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income.
  - 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income.
- (b) If the project is in a Moderate Income county:
  - 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of area median income.
  - 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of area median income.
- (c) If the project is in a Low Income county:
  - 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income.
  - 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income.

To qualify for an RPP loan, at least forty percent (40%) of qualified low-income units in a project will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income. ~~This requirement is waived for any new construction application in a county declared a federal disaster area (Individual Assistance designation) under Hurricane Florence.~~ Targeting in subsection (a), (b) or (c) above counts towards this requirement.

### 3. INCOME AVERAGING

Only new construction projects and rehabilitation projects not subject to an existing Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits are eligible to utilize income averaging. Applicants electing to use income averaging must comply with the following:

- (a) The income average for the property cannot exceed 60% of area median income,
- (b) The income average for any bedroom type cannot exceed 60% of area median income,
- (c) Market rate units are prohibited, ~~and~~
- (d) The election of Income Averaging at full application submission is irrevocable, and
- ~~(e)~~ For projects with more than one building, Owners must select that each building is part of a multiple building set-aside on line 8b in Part II of IRS Form 8609.

## C. PROJECT DEVELOPMENT COSTS, RPP LIMITATIONS, AND WHLP

### 1. MAXIMUM PROJECT DEVELOPMENT COSTS (NEGATIVE 10 POINTS)

- (a) The Agency will assess negative points to applications listing more than the following in lines 5 and 6 of the Project Development Costs (PDC) description, as outlined in Chart A below. The point structure in Chart B will apply to the following:
  - all units are detached single family houses or duplexes,
  - serving persons with severe mobility impairments,

- development challenges resulting from being within or adjacent to a central business district,
- public housing redevelopment projects, or
- building(s) with both steel and concrete construction and at least four stories of housing.

The per-unit amount calculation includes all items covered by the construction contract, Energy Star, certifications for green programs, and any other costs not unique to the specific proposal.

| Chart A        | Chart B        |
|----------------|----------------|
| \$78,000   -10 | \$89,000   -10 |

- (b) Lines 5 and 6 of the PDC description must total at least \$65,000 per unit and cannot exceed \$95,000 per unit.
- (c) The Agency will review proposed costs for historic adaptive re-use projects and approve the amount during the full application review process but in no case can lines 5 and 6 of the PDC exceed \$99,000 per unit.

See Section VI(B) for other cost restrictions.

## 2. RESTRICTIONS ON RPP AWARDS

- (a) Projects requesting RPP funds must submit the Agency's "Notice of Real Property Acquisition" form with the preliminary application and may not:
- (i) request RPP funds in excess of the following amounts per unit: \$15,000 in High Income counties; \$20,000 in Moderate Income counties; \$25,000 in Low Income counties,
  - (ii) include market-rate units,
  - (iii) involve Principals who have entered into a workout or deferment plan within the previous year for an RPP loan awarded after January 1, 2011,
  - (iv) request less than \$150,000 or more than \$800,000 per project,
  - (v) have a commitment of funds from a local government under terms that will result in more repayment than determined under subsection (C)(2)(b) below,
  - (vi) have a federally insured loan or one which would require the RPP loan to have a term of more than 20 years or limits repayment, or
  - (vii) have a Principal listed on SAM.gov as being ineligible to receive federal funds.

The maximum award of RPP funds to any one Principal will be a total of \$1,600,000. Requesting an RPP loan may result in an application being ineligible under Section VI(B)(6)(e) if the Agency has inadequate funds.

- (b) Projects may only request an RPP loan if the principal and interest payments for RPP and any local government financing will be equal to the anticipated net operating income divided by 1.15, less conventional debt service:

Repayment of RPP and local government loans = (NOI / 1.15) – conventional debt service.

The amount of repayment will be split between the RPP loan and local government lenders based on their relative percentage of loan amounts. For example:

|  |           |         |         |                 |
|--|-----------|---------|---------|-----------------|
| RPP Loan =                                 | \$400,000 |         |         |                 |
| local government loan =                    | \$200,000 |         |         |                 |
|  |           | Year 1  | Year 2  | Year 3   Year 4 |
| Anticipated amount available for repayment | \$10,000  | \$8,000 | \$6,000 | \$4,000         |
| RPP principal and interest payments        | \$6,667   | \$5,333 | \$4,000 | \$2,667         |

local government P&I payments                      \$3,333   \$2,667   \$2,000   \$1,333

Lien position will be determined by loan amount: the larger loan will have the higher lien position. For equal loan amounts, the local government will have the higher lien position.

- (c) Loan payments made to the Applicant, any Principal, member or partner of the ownership entity, or any affiliate thereof, will be taken out of cash flow remaining after RPP payments.
- (d) An application may be ineligible for RPP funds due to one or more of the listed parties (including but not limited to members/partners, general contractor, and management agent) having failed to comply with the Agency's requirements on a prior loan.

3. WORKFORCE HOUSING LOAN PROGRAM (Subject to appropriation)

- (a) Projects with 9% Tax Credits which meet the Agency's loan criteria are eligible for WHLP. As required under the legislation, these criteria support the financing of projects similar to those created under G.S. 105-129.42.
- (b) A loan will not be closed until the outstanding balance on the first-tier construction financing exceeds the principal amount and the entire loan must be used to pay down a portion of the then existing construction debt.
- (c) The terms will be zero percent (0%) interest, thirty year balloon (no payments). The Agency will take all eligible sources into consideration in setting the amount. The following percent of eligible basis will be the calculated loan amount. In no event will the loan amount exceed the statutory maximum.

| County Income Designation | Percent of Eligible Basis | Statutory Maximum |
|---------------------------|---------------------------|-------------------|
| High                      | 4%                        | \$250,000         |
| Moderate                  | 10 <del>2</del> %         | \$1,500,000       |
| Low                       | 16 <del>20</del> %        | \$2,000,000       |

Requesting a WHLP loan may result in an application being ineligible under Section VI(B)(6)(e) if the Agency has inadequate funds. Projects in the Metro geographic set-aside are ineligible to request WHLP. The maximum award of WHLP funds to any one Principal will be a total of \$2,000,000.

D. CAPABILITY OF THE PROJECT TEAM

1. DEVELOPMENT EXPERIENCE

- (a) To be eligible for an award of 9% Tax Credits, at least one Principal must have successfully developed, operated and maintained in compliance either one (1) 9% Tax Credit project in North Carolina or six (6) separate 9% Tax Credit projects totaling in excess of 200 units. The project(s) must have been placed in service between January 1, 2013~~2~~ and January 1, 2019~~8~~. Such Principal must:
  - (i) be identified in the preliminary application as the Applicant under Section III(C)(6),
  - (ii) become a general partner or managing member of the ownership entity, and
  - (iii) remain responsible for overseeing the project and operation of the project for a period of two (2) years after placed in service. The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.

- (b) All owners and Principals must disclose all previous participation in the low-income housing tax credit program. Additionally, owners and Principals that have participated in an out of state tax credit allocation may be required to complete an Authorization for Release of Information form.
- (c) The Agency reserves the right to determine that a particular development team does not meet the threshold requirement of subsection (D)(1)(a) due to differences between its prior work and the proposed project. Particularly important in this evaluation is the type of subsidy program used in the previous experience (such as tax-exempt bonds, RD).

## 2. MANAGEMENT EXPERIENCE

The management agent must:

- (a) have at least one similar tax credit project in their current portfolio,
- (b) have a valid North Carolina real estate license and be registered with the North Carolina Secretary of State as of the full application deadline (excluding public housing authorities),
- (c) be requesting Key assistance timely and accurately (if applicable),
- (d) be reporting in the Agency's Rental Compliance Reporting System (RCRS) timely and accurately (if applicable)
- (e) have at least one staff person in a supervisory capacity with regard to the project who has attended at least one Agency sponsored training within the past 12 months as of the full application deadline, and
- (f) have at least one staff person serving in a supervisory capacity with regard to the project who has been certified as a tax credit compliance specialist.

Such certification must be from an organization approved by the Agency (see **Appendix C**). None of the persons or entities serving as management agent may have in their portfolio a project with material or uncorrected noncompliance beyond the cure period unless there is a plan of action to address the issue(s). The management agent listed on the application must be retained by the ownership entity for at least two (2) years after project completion, unless the Agency approves a change.

## 3. PROJECT TEAM DISQUALIFICATIONS

The Agency may disqualify any owner, Principal or management agent, who:

- (a) has been debarred or received a limited denial of participation in the past ten years by any federal or state agency from participating in any development program;
- (b) within the past ten years has been in a bankruptcy; an adverse fair housing settlement, judgment or administrative determination; an adverse civil rights settlement, judgment or administrative determination; or an adverse federal, state or local government proceeding and settlement, judgment or administrative determination;
- (c) has been in a mortgage default or arrearage of three months or more within the last five years on any publicly subsidized project;
- (d) has been involved within the past ten years in a project which previously received an allocation of tax credits but failed to meet standards or requirements of the tax credit allocation or failed to fulfill one of the representations contained in an application for tax credits;
- (e) has been found to be directly or indirectly responsible for any other project within the past five years in which there is or was uncorrected noncompliance more than three months from the date of notification by the Agency or any other state allocating agency;

- (f) interferes with a tax credit application for which it is not an owner or Principal at a public hearing or other official meeting;
- (g) has outstanding flags in HUD's national 2530 National Participation system;
- (h) has been involved in any project awarded 9% Tax Credits in 2019<sup>8</sup> for which either the equity investment has not closed as of the full application deadline or the "10% test" has not been met;
- (i) has been involved in any project awarded tax credits after 2000 where there has been a change in general partners or managing members during the last five years that the Agency did not approve in writing beforehand;
- (j) would be removed from the ownership of a project that is the subject of an application under the rehabilitation set-aside in the current cycle;
- (k) requested a qualified contract for a North Carolina tax credit property; or
- (l) is not in good standing with the Agency.

A disqualification under this subsection (D)(3) will result in the individual or entity involved not being allowed to participate in the 2020 cycle and removing from consideration any application where they are identified.

#### E. UNIT MIX AND PROJECT SIZE

1. Ten (-10) points will be subtracted from any full application that includes market-rate units. This penalty will not apply where either
  - the rents for all market rate units are at least five percent (5%) higher than the maximum allowed for a unit at 60% AMI and the market study indicates that such rents are feasible, or
  - there is a commitment for a grant or no-payment financing equal to at least the amount of foregone federal tax credit equity.
2. New construction 9% Tax Credit projects may not exceed the following:
  - Metro Region - one hundred and twenty (120) units
  - Central, East, and West Regions - eighty-four (84) units.
3. New construction tax-exempt bond projects may not exceed two hundred (200) units unless approved by the Agency prior to the preliminary application submission.
4. All new construction projects must have at least twenty-four (24) qualified low-income units.

The Agency reserves the right to waive the penalties and limitations in this Section IV(E) for proposals that reduce low-income and minority concentration, including public housing projects, and subsection (E)(2) for proposals that are within a transit station area as defined by the Charlotte Region Transit Station Area Joint Development Principles and Policy Guidelines or adaptive re-use projects where made necessary by the building(s) physical structure.

#### F. SPECIAL CRITERIA AND TIEBREAKERS

##### 1. ENERGY STAR

New construction residential buildings must comply with all Energy Star standards as defined in **Appendix B** (incorporated herein by reference). Adaptive re-use and rehabilitation projects must comply to the extent doing so is economically feasible and as allowed by historic preservation rules.

##### 2. CREDITS PER UNIT AVERAGE (MAXIMUM 2 POINTS)

The Agency will calculate the average federal tax credits per low-income unit requested on a geographic set-aside basis among new construction full applications and award points based on the following:

|                          |          |
|--------------------------|----------|
| Within 4% of the average | 2 points |
| Within 8% of the average | 1 point  |

Any Applicant or Principal attempting to manipulate the average, as determined by the Agency, will have any application(s) they are involved with removed from the competition.

3. **APPLICANT BONUS POINT (MAXIMUM 1 POINT)**

An Applicant is entitled one bonus point which can be awarded to one application as part of the full application submission. No application can receive more than one bonus point. No Principal or Applicant is entitled to more than one bonus point for all applications in which they may be involved. If a Principal is part of an application in which he/she is not the Applicant but that application receives a Bonus Point, the Principal will not be entitled to use a Bonus Point as an Applicant or Principal on another application. Should an Applicant or Principal use a bonus point on two or more applications, the Agency will determine which application receives the bonus point.

4. **UNITS FOR THE MOBILITY IMPAIRED**

Five percent (5%) of all units in new construction projects must meet the accessibility standards as defined in **Appendix B** (incorporated herein by reference). THESE UNITS ARE IN ADDITION TO MOBILITY IMPAIRED UNITS REQUIRED BY FEDERAL AND STATE LAW (INCLUDING BUILDING CODES). If laws or codes do not require mobility impaired units for a project, a total of ten percent (10%) of the units must be fully accessible. Units for the mobility impaired should be available to all tenants who would benefit from their design and are not necessarily reserved under the Targeting Program requirements of subsection (F)(5).

5. **TARGETING PROGRAM**

All projects will be required to target ten percent (10%) of the total units to persons with disabilities and persons who are homeless. Projects with federal project-based rental assistance must target at least five (5) units regardless of size. Projects that have targeted units under this subsection are not required to provide onsite supportive services or a service coordinator.

Owners must submit the following documents, all of which are fully described in **Appendix D** (incorporated herein by reference).

- (a) Targeting Unit Agreement
- (b) Owner Agreement to Participate (if applicable)
- (c) Property Profile
- (d) Tenant Selection Plan
- (e) Rental Assistance Plan (if applicable)
- (f) Affirmative Fair Housing Marketing Plan

These documents must be submitted to the Agency no later than the times specified in **Appendix D** but in no case later than six months prior to the project's placed in service date. The Agency may set additional requirements, as needed. The requirements of this subsection (F)(5) may be fully or partially waived to the extent the Agency determines they are not feasible.

6. **OLMSTEAD SETTLEMENT INITIATIVE (MAXIMUM 4 POINTS)**

- (a) Projects proposing 1 bedroom units as a percentage of the total project units will be awarded points based on the following:

|                     |          |
|---------------------|----------|
| 7.5% of total units | 1 point  |
| 10% of total units  | 2 points |
| 15% of total units  | 3 points |

- (b) Projects proposed in the following DHHS priority counties will be awarded 1 point.

|          |            |          |             |         |
|----------|------------|----------|-------------|---------|
| Buncombe | Craven     | Gaston   | Mecklenburg | Robeson |
| Burke    | Cumberland | Guilford | New Hanover | Rowan   |
| Cabarrus | Durham     | Iredell  | Onslow      | Wake    |
| Caldwell | Forsyth    | Johnston | Pitt        | Wayne   |

**7. SECTION 1602 EXCHANGE PROJECTS (NEGATIVE 40 POINTS)**

The Agency may deduct up to forty (-40) points from any application if the Applicant, any owner, Principal or affiliate thereof is also involved in a Section 1602 Exchange project with uncorrected material noncompliance.

**8. TIEBREAKER CRITERIA**

The following will be used to award tax credits in the event that the final scores of more than one project are identical.

- (a) ~~First Tiebreaker:~~ The project in the census tract with the lowest percentage of families below the poverty rate (see Appendix H for listing of poverty rates by census tract).
- (a) ~~First~~Second Tiebreaker: The project requesting the least amount of federal tax credits per low-income unit based on the Agency's equity needs analysis.
- (b) Second Tiebreaker: The county with the least number of 9% tax credit units created over the last 5 years.
- (c) Third Tiebreaker: The project with the lowest average income targeting.
- (d) Fourth Tiebreaker: Tenants with Children: Projects that can serve tenant populations with children. Projects will qualify for this designation if at least twenty-five (25%) of the units are three or four bedrooms. This tiebreaker will only apply where the market study shows a clear demand for this population (as determined by the Agency).
- (e) Fifth Tiebreaker: Tenant Ownership: Projects that are intended for eventual tenant ownership. Such projects must utilize a detached single family site plan and building design and have a business plan describing how the project will convert to tenant ownership at the end of the 30-year compliance period.

In the event that a tie remains after considering the above tiebreakers, the project requesting the least amount of federal tax credits will be awarded.

**G. DESIGN STANDARDS**

All proposed measures must be shown in the application to receive points.

**1. THRESHOLD REQUIREMENTS**

The minimum threshold requirements for design are found in **Appendix B** (incorporated herein by reference) and must be used for all projects receiving tax credits or RPP funding.

2. CRITERIA FOR SCORE EVALUATION (MAXIMUM 30 POINTS)

The Agency will determine points based on the following criteria as applied to the site drawings submitted with the full application.

(a) Site Layout

The Agency will award up to 5 points based on its evaluation of the site layout. The following characteristics will be considered.

- (i) The location of residential buildings in relation to parking, site amenities, community building, postal facilities and trash collection areas.
- (ii) The degree to which site layout ensures a low, controlled traffic speed through the project.

(b) Quality of Design and Construction

(The points in this subsection are mutually exclusive with Section IV(G)(2)(c) below.)

The Agency will award up to 25 points for new construction projects based on its evaluation of the quality of the building design, and the materials and finishes specified. The following characteristics will be considered:

- (i) The extent to which the design uses multiple roof lines, gables, dormers and similar elements to break up large roof sections.
- (ii) The extent to which the design uses multiple types, styles, and colors of siding and brick veneer to add visual appeal to the building elevations.
- (iii) The level of detail that is achieved through the use of porches, railings, and other exterior features.
- (iv) Use of brick veneer or masonry products on building exteriors.

(c) Adaptive Re-Use

(The points in this subsection are mutually exclusive with Section IV(G)(2)(b) above.)

The Agency will award up to 25 points based on the following characteristics:

- (i) The extent to which the building(s) fit with surrounding streetscape after adaptation or have problems with orientation, sightlines, bulk and scale.
- (ii) Aesthetics after adaptation.
- (iii) Presence of special design elements or architectural features that may not be physically or financially available if new construction was introduced on the same site.

H. CRITERIA FOR SELECTION OF REHABILITATION PROJECTS

1. GENERAL THRESHOLD REQUIREMENTS

To be eligible for an allocation under Section II(A), a project must:

- (a) have either (i) received a tax credit allocation and be in the extended use period or (ii) federal project-based rental assistance for at least thirty percent (30%) of the total units,
- (b) have been placed in service on or before December 31, 2003,
- (c) require rehabilitation expenses in excess of \$25,000 per unit (as supported by a physical needs assessment conducted or approved by the Agency),
- (d) not have an acquisition cost in excess of sixty percent (60%) of the total replacement costs,



- (e) not be feasible using tax-exempt bonds (as determined by the Agency),
- (f) not have received an Agency loan in the last five years,
- (g) not be deteriorated to the point of requiring demolition,
- (h) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program) within the last five years, and
- (i) have total replacement costs of less than \$130,000 per unit, including all Agency-required rehabilitation work.

Rehabilitation expenses include hard construction costs directly attributable to the project, excluding costs for a new community building, as calculated using lines 2 through 7 (less line 6) in the PDC description.

## 2. THRESHOLD DESIGN REQUIREMENTS

In addition to the relevant sections of **Appendix B** (incorporated herein by reference), the Agency will require owners to complete the following as appropriate for their project.

- (a) Improve site amenities and common areas by upgrading or adding a freestanding community building, making repairs and additions to landscaping, adding new site amenities such as playgrounds, and repairing parking areas.
- (b) Improve building exteriors by replacing deteriorated siding, replacing aged roofing, adding gutters and downspouts, and adding new architectural features to improve appearance.
- (c) Upgrade unit interiors by replacing flooring, installing new cabinets and countertops, replacing damaged interior doors, replacing light fixtures, and repainting units.
- (d) Replace and upgrade mechanical systems and appliances including HVAC systems, water heaters and plumbing fixtures, electrical panels, refrigerators, and ranges.
- (e) Improve energy efficiency by replacing inefficient doors and windows, adding additional insulation in attics, and upgrading the efficiency of mechanical systems and appliances.
- (f) Improve site and unit accessibility for persons with disabilities by making necessary alterations at common areas, alterations at single story ground floor units, adding or improving handicapped parking areas, and repairing or replacing sidewalks along accessible routes.

## 3. EVALUATION CRITERIA

The Agency will evaluate applications under Section II(A) based on the following criteria, which are listed in order of importance. Each one will serve both to determine awards and as a threshold requirement; the Agency may remove an application from consideration if the proposal is sufficiently inadequate in any of the categories. For purposes of making awards, the Agency will not consider subsections (d) through (f) below if the outcome is determined by the criteria in subsections (a) through (c).

- (a) The Agency will give the highest priority to applications proposing to rehabilitate the most distressed housing with a tax credit allocation, particularly buildings with accessibility or life, health and safety problems.
- (b) Applications will have a reduced likelihood of receiving an award of tax credits if the Agency determines the property has not been properly maintained and any current owner will remain part of the new ownership.
- (c) Applications will have a reduced likelihood of being awarded tax credits to the extent that the purpose is to subsidize an ownership transfer.

- (d) Shortcomings in the above criteria will be mitigated to the extent that a tax credit allocation is necessary to prevent (i) conversion of units to market rate rents or (ii) loss of government resources (including past, present and future investments).
- (e) The Agency will give priority to applications that have mortgage subsidy resources committed as part of the application.
- (f) Applications will have priority to the extent that the rehabilitation improvements are a part of a community revitalization plan or will benefit the surrounding community. However, projects in severely distressed areas will have a reduced likelihood of being awarded tax credits.
- (g) Applications will have a reduced likelihood of being awarded tax credits based on the number of tenants that would be permanently relocated (including market-rate).
- (h) While the rehabilitation set-aside is not subject to any regional set-aside, the Agency will consider the geographic distribution of this resource and will attempt to avoid a concentration of awards in any one area of the state.

## V. ALLOCATION OF BOND CAP

### A. ORDER OF PRIORITY

The Committee will allocate the multifamily portion of the state's tax-exempt bond authority in the following order of priority:

1. Projects that serve as a component of an overall public housing revitalization effort.
2. Rehabilitation of existing rent restricted housing.
3. Rehabilitation of projects consisting of entirely market-rate units.
4. Adaptive re-use projects.
5. Other new construction projects.

Applications will only be allocated bond authority if there is enough remaining after awarding all eligible applications in higher priority levels. Within each category, applications seeking the least amount of authority per low-income unit will have priority.

### B. ELIGIBILITY FOR AWARD

Except as otherwise indicated, owners of projects with tax-exempt bonds and 4% Tax Credits must meet all requirements of the Plan. Even with an allocation of bond authority, projects must meet the threshold requirements to be eligible for tax credits.

1. All projects must meet the requirements under Section IV(F)(5).
2. Rehabilitation applications must:
  - (a) have been placed in service on or before December 31, 2003,
  - (b) require rehabilitation expenses in excess of \$15,000 per unit,
  - (c) not have an acquisition cost in excess of seventy percent (70%) of the total replacement costs,
  - (d) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program) within the last five years, and
  - (e) not be deteriorated to the point of requiring demolition.
3. The inducement resolution must be submitted with the full application.

4. To be eligible for an award of tax-exempt bond volume, at least one Principal must have successfully developed, operated and maintained in compliance either one 9% Tax Credit project in North Carolina or one tax-exempt bond project in any state. The project must have been placed in service between January 1, 2012 and January 1, 2018. Such Principal must:
  - be identified in the preliminary application as the Applicant under Section III(C)(6),
  - become a general partner or managing member of the ownership entity, and
  - remain responsible for overseeing the project and operation of the project for a period of two (2) years after placed in service.

The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.

## VI. GENERAL REQUIREMENTS

### A. GENERAL THRESHOLD REQUIREMENTS FOR PROJECT PROPOSALS

#### 1. PROJECTS WITH HISTORIC TAX CREDITS

Buildings either must be on the National Register of Historic Places or approved for the State Historic Preservation Office's study list at the time of the full application. Evidence of meeting this requirement should be provided.

#### 2. NONPROFIT SET-ASIDE

For purposes of being considered as a nonprofit sponsored application under Section II(D)(1)(a), at least one nonprofit entity (or, where applicable, its qualified corporation) involved in a project must:

- (a) be qualified under Section 501(c)(3) or (4) of the Code,
- (b) materially participate, as defined under federal law, in the acquisition, development, ownership, and ongoing operation of the property for the entire compliance period,
- (c) have as one of its exempt purposes the fostering of low-income housing,
- (d) be a managing member or general partner of the ownership entity.

The Agency reserves the right to make a determination that the nonprofit owner is not affiliated with or controlled by a for-profit entity or entities other than a qualified corporation. There can be no identity of interest between any nonprofit owner and for-profit entity, other than a qualified corporation.

#### 3. REQUIRED REPORTS

All projects involving use of existing structures must submit the following:

- (a) For projects built prior to 1978, a hazardous material report which provides the results of testing for asbestos containing materials, lead based paint, Polychlorinated Biphenyls (PCBs), underground storage tanks, petroleum bulk storage tanks, Chlorofluorocarbons (CFCs), and other hazardous materials. The testing must be performed by professionals licensed to do hazardous materials testing. A report written by an architect or building contractor or developer will not suffice. A plan and projected costs for removal of hazardous materials must also be included.
- (b) A report assessing the structural integrity of the building(s) being renovated from an architect or engineer. Report must be dated no more than six (6) months from the full application deadline.
- (c) A current termite inspection report. Report must be dated no more than six (6) months from the full application deadline.

#### 4. APPRAISALS

The Agency will not allow the project budget to include more for land or lease costs than the lesser of its appraised market value or the purchase or lease price. Applicants must submit with the full application a real estate "as is" appraisal that is a) dated no more than six (6) months from the full application deadline, b) prepared by an independent, state certified appraiser and c) complies with the Uniform Standards of Professional Appraisal Practice. The appraisal must encompass all parcels that comprise the project. Comparable properties used in the appraisal must be in reasonable proximity to the project. The Agency may order an additional appraisal with costs to be paid by the Applicant. Appraisals for rehabilitation and adaptive re-use projects must break out the land and building values from the total value.

5. CONCENTRATION

Projects cannot be in areas of minority and low-income concentration (measured by comparing the percentage of minority and low-income households in the site's census tract with the community overall). The Agency may make an exception for projects in economically distressed areas which have community revitalization plans with public funds committed to support the effort.

6. DISPLACEMENT

For rehabilitation projects and in every other instance of tenant displacement, including temporary, the Applicant must supply with the full application a plan describing how displaced persons will be relocated, including a description of the costs of relocation. The owner is responsible for all relocation expenses, which must be included in the project's development budget. Owners must also comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as revised in 49 C.F.R. Part 24.

7. FEASIBILITY

The Agency will not allocate tax credits or RPP funding to applications that may have difficulty being completed or operated for the compliance period. Examples include projects that may not secure an equity investment or a Principal that has inadequate capacity to successfully carry out the development process.

8. SMOKE-FREE HOUSING

Owners must prohibit smoking in all indoor common areas, individual living areas (including patios and balconies), and within 25 feet of building entries or ventilation intakes. A non-smoking clause must be included in the lease for each household.

B. UNDERWRITING THRESHOLD REQUIREMENTS

The following minimum financial underwriting requirements apply to all projects. Projects that cannot meet these minimum requirements, as determined by the Agency, will not receive tax credits or RPP funding. Any documentation required as part of the application must be dated and be within 6 months of the application deadline, unless otherwise stated.

1. LOAN UNDERWRITING STANDARDS

- (a) Projects applying for tax credits only will be underwritten with rents escalating at two percent (2%) and operating expenses escalating at three percent (3%).
- (b) All projects will be underwritten assuming a constant seven percent (7%) vacancy and must reflect a 1.15 Debt Coverage Ratio (DCR) for twenty (20) years.
- (c) Applications requesting RPP funds must use current Low HOME rents for fifteen percent (15%) of the total units (spread proportionally through all bedroom types) and may be required to comply with HOME program requirements, including 42 U.S.C. 12701 et seq., 24 C.F.R. Part 92

and all relevant administrative guidance. Projects awarded RPP funds must also comply with the RPP Guidelines in **Appendix G** (incorporated herein by reference).

- (d) The Agency may determine that the interest rate on a loan must be reduced where an application shows an excessive amount accruing towards a balloon payment.

## 2. OPERATING EXPENSES

- (a) New construction (excluding adaptive re-use): minimum of \$3,600 per unit per year not including taxes, reserves and resident support services.
- (b) Renovation (includes rehabilitation and adaptive re-use): minimum of \$3,800 per unit per year not including taxes, reserves and resident support services. For projects with RD loans, the operating expenses will be based upon the current RD approved operating budget.
- (c) The proposed management agent (or management staff if there is an identity of interest) must sign a statement (to be submitted with the full application) agreeing that the operating expense projections are reasonable.

## 3. EQUITY PRICING

- (a) Projects will be underwritten using Applicants proposed equity pricing. Pricing above \$0.94 will require a commitment letter from a syndicator or investor with as much detail as is possible. At a minimum, the letter should include the equity pricing, total capital contribution amount, estimated pay-in schedule and any reserve requirements. Should an Applicant receive an allocation of tax credits and fail to receive equity pricing at least equal to the pricing used in the awarded application, any equity shortfall will be the responsibility of the Applicant. The Agency will not approve an increase of the rents stated in the awarded application to support additional debt to cover the equity shortfall.
- (b) Equity should be calculated net of any syndication fees. Bridge loan interest typically incurred by the syndicator to enable an up front payment of equity should not be charged to the project directly, but be reflected in the net payment of equity. Equity should be based on tax credits to be used by the investor(s), excluding those allocated to the Principals unless these entities are making an equity contribution in exchange for the tax credits.

## 4. RESERVES

- (a) Rent-up Reserve: Required for all except tax-exempt bond projects. A reasonable amount must be established based on the projected rent-up time considering the market and target population, but in no event shall be less than \$300 per unit. These funds must be available to the management agent to pay rent-up expenses incurred in excess of rent-up expenses budgeted for in the PDC description. The funds are to be deposited in a separate bank account and evidence of such transaction provided to the Agency ninety (90) days prior to the expected placed in service date. All funds remaining in the rent-up reserve at the time the project reaches ninety-three (93%) occupancy must be transferred to the project replacement reserve account.

For those projects receiving loan funds from RD, the 2% initial operating and maintenance capital established by RD will be considered the required rent-up reserve deposit.

- (b) Operating Reserve: Required for all projects except those receiving loan funds from RD. The operating reserve will be the greater of a) \$1,500 per unit or b) six month's debt service and operating expenses (four months for tax-exempt bond projects), and must be maintained for the duration of the extended use period.

The operating reserve can be funded by deferring the developer fees of the project. If this method is utilized, the deferred amounts owed to the developer can only be repaid from cash flow if all required replacement reserve deposits have been made. For tax credit projects where no RPP

loan applies, the operating reserve can be capitalized by an equity pay in up to one year after certificate of occupancy is received. This will be monitored by the Agency. This reserve must stay with the project at the time of investor exit.

- (c) Replacement Reserve: All new construction projects must budget replacement reserves of \$250 per unit per year. Rehabilitation and adaptive re-use projects must budget replacement reserves of \$350 per unit per year. The replacement reserve must be capitalized from the project's operations, escalating by four percent (4%) annually. This reserve must stay with the project at the time of investor exit.

In both types of renovation projects mentioned above, the Agency reserves the right to increase the required amount of annual replacement reserves if the Agency determines such an increase is warranted after a detailed review of the project's physical needs assessment.

For those projects receiving RD loan funds, the required funding of the replacement reserve will be established, administered and approved by RD.

5. DEFERRED DEVELOPER FEES (NEGATIVE 2 POINTS)

Developer fees can be deferred to cover a gap in funding sources as long as:

- (a) the entire amount will be paid within fifteen years and meets the standards required by the IRS to stay in basis,
- (b) the deferred portion does not exceed fifty percent (50%) of the total amount as of the full application, and
- (c) payment projections do not negatively impact the operation of the project.

Each of these will be determined by the Agency. Nonprofit organizations must include a resolution from the Board of Directors allowing such a deferred payment obligation to the project. The developer may not charge interest on the deferred amount in excess of the long term AFR.

Deferment of more than twenty-five (25%) of the total developer fee will result in a deduction of 2 points.

6. FINANCING COMMITMENT

- (a) For all projects proposing private permanent financing, a letter of intent is required (see **Appendix E**). This letter must be on lender's letterhead, must clearly state the term of the permanent loan is at least fifteen (15) years, how the interest rate will be indexed and the current rate at the time of the letter, the amortization period, any prepayment penalties, anticipated security interest in the property, and lien position. The interest rate must be fixed and no balloon payments may be due for fifteen years.
- (b) For all projects proposing public permanent financing, binding commitments on lender's letterhead are required to be submitted by the full application deadline (see **Appendix E**). Local governments also must identify the source of funding (e.g. HOME, trust fund). All loans must have a fixed interest rate and no balloon payments for at least fifteen (15) years after project completion. A binding commitment is defined as a letter, resolution or binding contract from a unit of government. The same terms described for the letter of intent (using the format approved by the Agency) from a private lender must be included in the commitment.
- (c) The Agency may request a letter from a construction lender documenting the loan amount, interest rate, and any origination fees.
- (d) Any Owner Investment listed as a source cannot exceed \$10,000.
- (e) Applications may only include one set of proposed funding sources; the Agency will not consider multiple financial scenarios. A project will be ineligible for allocation if any of the listed funding

sources will not be available in an amount or under the terms described in the application. The Agency may waive this limitation if the project otherwise demonstrates financial feasibility. Project cash flow may not be used as a source of funds.

7. DEVELOPER FEES

- (a) Developer fees shall be up to \$13,500 per unit for new construction projects and twenty-eight point five percent (28.5%) of PDC line item 4 for rehabilitation projects, both being set at award.
- (b) Notwithstanding the amount calculated in subsection (7)(a), the developer fee for any project shall be a maximum of \$1,350,000 (the maximum for projects with tax-exempt bonds is \$2,700,000).
- (c) Contractor general requirements shall be limited to six percent (6%) of hard costs.
- (d) Contractor profit and overhead shall be limited to ten percent (10%) (8% profit, 2% overhead) of total hard costs, including general requirements.
- (e) Where an identity of interest exists between the owner and contractor, the contractor profit and overhead shall be limited to eight percent (8%) (6% profit, 2% overhead).

8. CONSULTING FEES

The total amount of any consulting fees and developer fees shall be no more than the maximum developer fee allowed to that project.

9. ARCHITECTS' FEES

The architects' fees, including design and inspection fees, shall be limited to three percent (3%) of the total hard costs plus general requirements, overhead, profit and construction contingency (total of lines 2 through 10 on the PDC description). This amount does not include engineering costs.

10. INVESTOR SERVICES FEES

Investor services fees must be paid from net cash flow and not be calculated into the minimum debt coverage ratio.

11. PROJECT CONTINGENCY FUNDING

All new construction projects shall have a hard cost contingency line item of five percent (5%) of total hard costs, including general requirements, contractor profit and overhead. Rehabilitation and adaptive re-use projects shall include a hard cost contingency line item of ten percent (10%) of total hard costs.

12. PROJECT OWNERSHIP

There must be common ownership between all units and buildings within a single project for the duration of the compliance period.

13. SECTION 8 PROJECT-BASED RENTAL ASSISTANCE

For all new construction projects that propose to utilize Section 8 project-based rental assistance, the Agency will underwrite the rents according to the tax credit and HOME limits. These limits are based on data published annually by HUD. If the Section 8 contract administrator is willing to allow rents above these limits, the project may receive the additional revenue in practice, but Agency underwriting will use the lower revenue projections regardless of the length of the Section 8 contract.

Given the uncertainty of long-term federal commitment to Section 8 rental assistance, the Agency considers underwriting to the more conservative revenue levels to best serve the project's long-term financial viability.



**14. WATER, SEWER, AND TAP FEES**

Any water, sewer, and tap fees charged to the project must be entered on a separate line item of the PDC description. Applications must provide letters from local provider(s) documenting either the amounts or if no fees will be charged.

**VII. POST-AWARD PROCESSES AND REQUIREMENTS**

**A. ALLOCATION TERMS AND REVOCATION**

1. At any time between award and issuance of IRS Form 8609, owners must have approval from the Agency prior to:
  - (a) changing the anticipated or final sources (amount, terms, or provider), including equity;
  - (b) increasing the anticipated or final uses by more than two percent (2%);
  - (c) altering the designs approved by
    - the Agency at full application, or
    - local building code office,
 including amenities, site layout, floor plans and elevations (Approved Design);
  - (d) starting construction, including sitework;
  - (e) increasing rents for new construction low-income units;
  - (f) increasing rents for rehabilitation low-income units above existing rents at time of award (rents shown in the approved application can be instituted once rehabilitation is complete);
  - (g) occupying units;
  - (gh) any other change to the awarded application.

At its discretion, the Agency can request any documentation related to project costs. If an increase in uses or design alteration is due to a local government requirement, owners do not need prior approval but rather must provide the Agency with prompt written notice. Failure to comply with a requirement of this subsection may result in a fine of up to \$25,000, revocation of the reservation or allocation, future disqualification under Section IV(D)(3) of any Principal involved, or other recourse available to the Agency.

2. Ownership entities must submit a completed carryover agreement and expend at least ten percent (10%) of the project's reasonably expected basis, both by dates to be determined by the Agency.
3. IRS Form 8609 will not be issued until:
  - (a) submission of a Final Cost Certification by an independent auditor that complies with the Agency's requirements;
  - (b) the owner documents attendance at an Agency sponsored or approved tax credit compliance seminar sponsored within the previous 12 months (see **Appendix C** for list of approved seminars); the management agent documents attendance at an Agency sponsored tax credit compliance seminar within the previous 12 months;
  - (c) monitoring fees have been paid;
  - (d) the project has been built according to the Approved Design;
  - (e) the Agency determines the project has adhered to all representations made in the approved application and will meet all relevant Plan requirements;
  - (f) documentation of the ownership entity having paid all applicable state and local taxes for the most recent year due; and



- (g) submission of a listing of the name and address for all contractors and subcontractors indicating if there exists an identity of interest with the Owner and a statement from each representing the entity will comply with all applicable employment rules and regulations.
- 4. The actual tax credits allocated will be the lesser of the tax credits reserved, the applicable rate multiplied by qualified basis (as approved by the Agency), or the amount determined by the Agency pursuant to its evaluation as required under Section 42(m)(2) of the Code. Projects will be required to elect a project-based allocation. An allocation does not constitute a representation or warranty by the Agency or Committee that the ownership entity or its owners will qualify for the tax credits. The Agency's interpretation of the Code, regulations, notices, or other guidance is not binding on the federal government.
- 5. Owners must record, prior to all other liens against the property in the registry of deeds in the county where the project is located, a thirty (30) year Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits (Extended Use Agreement) stating the owner will not apply for relief under Section 42(h)(6)(E)(i)(II) of the Code and will comply with other requirements under the Code, Plan, other relevant statutes and regulations, and all representations made in the approved application. The Extended Use Agreement also may contain other provisions as determined by the Agency. The owner must have good and marketable title and obtain the consent of any prior recorded lienholder (other than for construction financing) to be bound by the Extended Use Agreement terms. Owners may not claim tax credits in any taxable year unless the Extended Use Agreement is in effect and appropriately recorded.
- 6. The Agency may revoke an allocation if the owner fails to implement all representations in the approved application. In addition to the terms of Section VII(A)(1), owners will acknowledge that the following constitute conditions to their allocation:
  - (a) accuracy of all representations made to the Agency, including application uploads,
  - (b) adherence to the Plan and all applicable federal, state and local laws and ordinances, including the Code and Fair Housing Act,
  - (c) provision and maintenance of amenities for the benefit of the tenants, and
  - (d) not incurring a penalty under N.C.G.S. § 105-236 for failure to file a return, failure to pay taxes, or having a large tax deficiency (as defined under N.C.G.S. § 105-236). The Agency may request documentation demonstrating all project related taxes have been paid.

An owner's or project's failure to comply with all such conditions without written authorization from the Agency will entitle the Agency, in its discretion, to deem the allocation to be cancelled by mutual consent. After any such cancellation, the owner will acknowledge that neither it nor the project will have any right to claim tax credits pursuant to the allocation. The Agency reserves the right, in its discretion, to modify or waive any such failed condition.

#### B. COMPLIANCE MONITORING

- 1. Owners must comply with Section 42 of the Code, IRS regulations, rulings, procedures, decisions and notices, state statutes, the Fair Housing Act, state laws, local codes, Agency loan documents, **Appendix F** (incorporated herein by reference), and any other legal requirements. The Agency may treat any failure to do so as a violation of the Plan.
- 2. The Agency will adopt and revise standards, policies, procedures, and other requirements in administering the tax credit program. Examples include training and online reporting. Owners must comply with all such requirements regardless of whether or not they expressly appear in the Plan or **Appendix F**. The Agency will have access to any project information, including physical access to the property, all financial records and tenant information.

## VIII. DEFINITIONS

The terms listed below will be defined in the Plan as indicated below regardless of capitalization, unless the context clearly indicates otherwise. Terms used in the Plan but not defined below will have the same meaning as under the Code and IRS regulations.

4% Tax Credit: Low-income housing tax credits available pursuant to Section 42(h)(4) of the Code.

9% Tax Credit: Low-income housing tax credits available for allocation under the state's volume cap pursuant to Section 42(h)(3) of the Code.

Affiliate: As to any person or entity (i) any entity of which a majority of the voting interest is owned by such person or entity, (ii) any person or entity directly or indirectly controlling (10% or more) such person or entity, (iii) any person or entity under direct or indirect common control with any such person or entity, or (iv) any officer, director, employee, manager, stockholder (10% or more), partner or member of any such person or entity or of any person or entity referred to in the preceding clauses (i), (ii) or (iii).

Applicant: The entity considered under Section III(C)(6).

Choice-Limiting Activity: Includes leasing or disposition of real property and any activity that will result in a physical change to the property, including acquisition, demolition, movement, rehabilitation, conversion, repair, or construction.

Developer: Any individual or entity responsible for initiating and controlling the development process and ensuring that all, or any material portion of all, phases of the development process are accomplished. Furthermore, the developer is the individual or entity identified as such in the Ownership Entity Agreement and any and all Development Fee Agreements.

Entity: Without limitation, any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, public agency or other entity, other than a human being.

Management Agent: Individual(s) or Entity responsible for the day to day operations of the project, which may or may not be related to the Owner(s) or ownership entity.

Market-Rate Units: Units that are not subject to tax credit restrictions; does not include manager units.

Material Participation: Involvement in the development and operation of the project on a basis which is regular, continuous and substantial throughout the compliance period as defined in Code Sections 42 and 469(h) and the regulations promulgated thereunder.

Owner(s): Person(s) or entity(ies) that own an equity interest in the Ownership Entity.

Ownership Entity: The ownership entity to which tax credits and/or any RPP loan funds will be awarded.

Person: Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so requires.

Person with a Disability: An adult who has a permanent physical or mental impairment which substantially limits one or more major life activities as further defined in North Carolina's Persons with Disabilities Protection Act (N.C.G.S. § 168A-3 (7a)).

Person who is Homeless: An adult who is living in places not meant for habitation (such as streets, cars, parks), emergency shelter, or in transitional or temporary housing but originally came from a place not meant for habitation or emergency shelter.

Principal: Principal includes (1) all persons or entities who are or who will become partners or members of the ownership entity, (2) all persons or entities whose affiliates are or who will become partners or members of the ownership entity, (3) all persons or entities who directly or indirectly earn a portion of the development fee for development services with respect to a project and/or earn any compensation for development services rendered to such project, which compensation is funded directly or indirectly from the development fee of such project, and such amount earned exceeds the lesser of twenty-five percent (25%) of the development fee for such project or \$100,000, and (4) all affiliates of such persons or entities in clause (3) who directly or indirectly earn a portion of the development fee for development services with respect to any project in the current year and/or earn any compensation for development services rendered to any project in the current year, which compensation is funded directly or indirectly from the development fee of any such project, and such amount earned exceeds the lesser of twenty-five percent 25% of the development fee for such project or \$100,000. For purposes of determining Principal status the Agency may disregard multiple layers of pass-through or corporate entities. A partner or member will not be a Principal where its only involvement is that of the tax credit equity investor.

Qualified Corporation: Any corporation if, at all times such corporation is in existence, 100% of the stock of such corporation is held by a nonprofit organization that meets the requirements under Code Section 42(h)(5).

Rental Production Program (RPP): Agency loan program for multifamily affordable rental housing.

**Note from the Codifier:** The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

**TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Commission, please call a Commission staff attorney at 919-431-3000.

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Commission for Public Health intends to amend the rule cited as 10A NCAC 41C .0702 and readopt with substantive changes the rules cited as 10A NCAC 41C .0701 and .0703.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://cph.publichealth.nc.gov/>

**Proposed Effective Date:** January 1, 2020

**Public Hearing:**

**Date:** September 23, 2019

**Time:** 10:00 a.m.

**Location:** Cardinal Conference Room, located at 5605 Six Forks Road, Raleigh, NC 27609

**Reason for Proposed Action:** *The proposed rules update surveillance reporting requirements for occupational diseases, illnesses, and injuries to be more protective of public health. In particular, the proposed rules expand reporting of adult blood lead levels to NC DHHS, Division of Public Health because current science indicates that adverse health effects may occur with blood lead levels less than 5 ug/dL. In addition, 10A NCAC 41C .0701 and .0703 are being readopted pursuant to G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules.*

**Comments may be submitted to:** Virginia Niehaus, Rulemaking Coordinator, 1931 Mail Service Center, Raleigh, NC 27699-1931; phone (919) 707-5006; email [cphcomment@lists.ncmail.net](mailto:cphcomment@lists.ncmail.net)

**Comment period ends:** November 4, 2019

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☒ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact ( $\geq$  \$1,000,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required

**CHAPTER 41 - EPIDEMIOLOGY HEALTH**

**SUBCHAPTER 41C - OCCUPATIONAL HEALTH**

**SECTION .0700 - OCCUPATIONAL HEALTH SURVEILLANCE**

**10A NCAC 41C .0701 DEFINITION**

"Adult" for the purposes of this section means a person age 16 or older.

"Elevated blood lead level" means a blood lead of ~~40 ug/dL or greater.~~  $\geq 0$  ug/dL.

"Non-elevated blood lead level" means all blood lead levels that are not elevated regardless of threshold.

Authority G.S. 130A-455.

**10A NCAC 41C .0702 REPORTABLE DISEASES, ILLNESSES, AND INJURIES**

(a) The following named diseases, illnesses, and injuries are declared to be dangerous to the public health and shall be reported by a physician within the time period specified after the disease, illness, and injury is diagnosed:

- (1) asbestosis - 15 ~~working~~ business days;
- (2) silicosis - 15 ~~working~~ business days;
- (3) elevated blood lead levels for adults ~~aged 18 years of age and above~~ - 15 ~~working~~ business days;
- (4) injuries caused by tractors, farm equipment, or farm machinery that occur while working on a farm and require medical care – 15 ~~working~~ business days;
- (5) carbon monoxide poisoning - 15 ~~working~~ business days.

(b) All laboratories providing diagnostic service in North Carolina shall report to the Occupational and Environmental Epidemiology Branch within the Division of Public Health elevated blood lead levels for adults, ~~adults aged 18 years of age and above.~~

(c) Physicians shall not be required to report elevated blood lead levels for adults ~~aged 18 years of age and above~~ when a laboratory

providing diagnostic service in North Carolina reports elevated blood lead levels.

(d) Non-elevated blood lead levels shall be reported in same manner for surveillance purposes.

*Authority G.S. 130A-455; 130A-456; 130A-457; 130A-458.*

**10A NCAC 41C .0703 METHOD OF REPORTING**

(a) When a physician makes a report of a disease, illness, injury, or elevated blood lead level for adults ~~aged 18 years of age and above~~ pursuant to G.S. 130A-456 or a medical facility makes such a report pursuant to G.S. 130A-457, the report shall be made to the Occupational Health Section as follows:

- (1) The report shall be made on the surveillance forms provided by or approved by the Occupational Health Section and shall include the following information:
  - (A) The name, address, telephone number, date of birth, ~~social security number~~, race, ethnicity, gender, and job title of the person;
  - (B) The name, address, telephone number, and type of business of the person's employer;
  - (C) The name of the disease, illness, or injury being reported; and
  - (D) The name, address, and telephone number of the physician, laboratory, or medical facility.

- (2) Surveillance forms are available from the ~~SENSOR Program, Division of Public Health, 1915 Mail Service Center, Raleigh, North Carolina 27699-1915. Occupational and Environmental Epidemiology Branch, Epidemiology Section, Division of Public Health, N.C. Department of Health and Human Services, 1912 Mail Service Center, Raleigh, NC 27699-1912. The form can also be downloaded from the following website: <https://epi.publichealth.nc.gov/oe/pest/reporting.html>.~~

(b) When a laboratory providing diagnostic service in North Carolina reports laboratory findings related to occupational disease or illness pursuant to G.S. 130A-458, the report shall include:

- (1) the specimen collection date;
- (2) the person's name, ~~age, date of birth~~, gender, race, and ethnicity; ~~and social security number~~;
- (3) the submitting physician/employer name, address, and telephone number; and
- (4) the name, address, and telephone number of the laboratory.

*Authority G.S. 130A-455; 130A-456; 130A-458.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rules cited as*

*10A NCAC 43D .0202, .0408, .0501, .0701-.0703, .0705-.0708, .0710, .0908 and repeal the rule cited as 10A NCAC 43D .0704.*

*Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
*<https://cph.publichealth.nc.gov/>*

**Proposed Effective Date:** *January 1, 2020*

**Public Hearing:**

**Date:** *October 14, 2019*

**Time:** *10:00 a.m.*

**Location:** *Cardinal Conference Room, located at 5605 Six Forks Road, Raleigh, NC 27609*

**Reason for Proposed Action:** *The proposed rule amendments pertain to the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and will: (1) remove language associated with paper food instrument/cash-value voucher issuance and redemption, (2) expand the number of supplemental foods approved for issuance to WIC participants, (3) align the peer group structure with Federal requirements; and (4) update the fair hearing procedures.*

**Comments may be submitted to:** *Virginia Niehaus, Rulemaking Coordinator, 1931 Mail Service Center, Raleigh, NC 27699-1931; phone (919) 707-5006; email [cphcomment@lists.ncmail.net](mailto:cphcomment@lists.ncmail.net)*

**Comment period ends:** *November 4, 2019*

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☒ State funds affected
- ☒ Local funds affected
- ☒ Substantial economic impact ( $\geq$  \$1,000,000)
- ☒ Approved by OSBM

☐ No fiscal note required

**CHAPTER 43 - PERSONAL HEALTH**

**SUBCHAPTER 43D – WIC/NUTRITION**

**SECTION .0200 - WIC PROGRAM GENERAL INFORMATION**

**10A NCAC 43D .0202 DEFINITIONS**

(a) For the purposes of this Subchapter, all definitions set forth in 7 C.F.R. Part 246.2 are hereby incorporated by reference, including subsequent amendments and editions, with the following additions and modifications:

- (1) An "administrative appeal" is an appeal in accordance with Section .0800 of this Subchapter through which a local WIC agency, potential local WIC agency, authorized WIC vendor, or WIC vendor applicant may appeal the adverse actions listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii), and (a)(3)(i).
- (2) An "authorized store representative" includes an owner, manager, assistant manager, head cashier, or chief fiscal officer.
- (3) An "authorized WIC vendor" is a food retailer or free-standing pharmacy that has executed a currently effective North Carolina WIC Vendor Agreement, as set forth in 7 C.F.R. 246.12(h)(3).
- (4) A "chain store" is a store that is owned or operated by a corporation, partnership, cooperative association, or other business entity that has 20 or more stores owned or operated by the business entity.
- (5) An "Electronic Benefit Transfer (EBT) Processor" is an entity contracted by a government agency for the implementation, maintenance, and operation of the State WIC agency's WIC EBT system that acts as the agent of the State WIC agency to process and settle EBT transactions.
- (6) A "fair hearing" is the informal dispute resolution process in Section .0900 of this Subchapter through which any individual may appeal a State or local agency action that results in a claim against the individual for repayment of the cash value of issued benefits by which the individual is not eligible or results in the individual's denial of participation or disqualification from the WIC Program, as set forth in Rule .0410 of this Subchapter. This process must be complied with prior to requesting a contested case hearing in accordance with G.S. 150B, as set forth in 7 CFR 246.9.
- (7) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.
- (8) "Food benefits" are the prescribed amounts of WIC authorized foods and formulas or a fixed

dollar amount prescribed to WIC customers to receive fruits and vegetables.

- (9) "Food benefit balance" means the unspent food benefits for the current month that are available to use by the cardholder.
- ~~(8)~~(10) "Free-standing pharmacy" means a pharmacy that does not operate within another retail store. Free-standing pharmacy includes free-standing pharmacies that are chain stores and free-standing pharmacies participating under a WIC corporate agreement.
- ~~(9)~~(11) The "local WIC agency" is the local agency that enters into an agreement with the Division of Public Health to operate the Special Supplemental Nutrition Program for Women, Infants and Children.
- ~~(40)~~(12) A "local WIC program plan" is a written compilation of information on the local WIC agency policies concerning program operation, including administration, nutrition education, personnel functions, costs and other information prepared by the local WIC agency and submitted to the Nutrition Services Branch.
- ~~(44)~~(13) A "personal identification number" (PIN) is a numeric password selected and used by a WIC participant to authenticate the participant to the EBT system.
- ~~(42)~~(14) A "point of sale terminal" (POS) is an electronic device used to process EBT card payments at authorized vendor locations.
- ~~(43)~~(15) A "predominantly WIC vendor" is an "above-50-percent vendor" as defined in 7 C.F.R. 246.2.
- ~~(44)~~(16) A "product look-up (PLU) code" is an identification number placed on produce sold at authorized vendor locations.
- (17) "Redeemed food benefits" means the benefits that have been used by the WIC customer.
- ~~(45)~~(18) "Redemption" is the process by which a vendor deposits for receives payment from the State agency (or its financial agent) for food benefits a food instrument or cash value voucher transacted at that vendor location, and the State agency (or its financial agent) makes payment to the vendor for the food instrument or cash value voucher.
- ~~(46)~~(19) "Shelf price" is the price a vendor charges a non-WIC customer for a WIC supplemental food.
- ~~(47)~~(20) "SNAP-eligible food sales" means "food sales" as defined in 7 C.F.R. 246.2, which are those foods that can be purchased with Supplemental Nutrition Assistance Program ("SNAP") benefits.
- ~~(48)~~(21) The "State agency" is the Nutrition Services Branch, Women's and Children's Health Section, Division of Public Health, North Carolina Department of Health and Human Services.

- (19)(22) "Store" means a food retailer or free-standing pharmacy operating at a single, fixed location.
- (20)(23) "Supplemental food" or "WIC supplemental food" is a food that satisfies the requirements of 10A NCAC 43D .0501.
- (21)(24) "Support costs" are clinic costs, administrative costs, and nutrition education costs.
- (22)(25) "Transaction" is the process by which a WIC customer tenders ~~a food instrument or a cash-value voucher to a~~ food benefits at an authorized vendor in exchange for authorized supplemental foods.
- (23)(26) "Universal Product Code (UPC)" means an identification code printed on the packaging of WIC approved foods sold at WIC authorized vendor locations.
- (24)(27) "Vendor applicant" is a store that has submitted an application to become an authorized WIC vendor but is not yet authorized.
- (25)(28) A "vendor overcharge" is intentionally or unintentionally charging more for supplemental food provided to a WIC customer than to a non-WIC customer or charging more than the current shelf price for supplemental food provided to a WIC customer.
- (26)(29) A "WIC corporate agreement" is a single WIC Vendor Agreement with a corporate entity that has 20 or more stores authorized as WIC vendors under the Agreement.
- (27)(30) "WIC customer" means a WIC participant, parent, or caretaker of an infant or child participant, proxy for the eligible participant, or compliance investigator who ~~tenders a food instrument or a cash-value voucher to~~ transacts food benefits at a vendor in exchange for WIC supplemental food.
- (28)(31) "WIC program" means the Special Supplemental Nutrition Program for Women, Infants, and Children authorized by 42 U.S.C. 1786 of the Child Nutrition Act of 1966 as amended.

(b) A copy of 7 C.F.R. Part 246 is available for inspection at the Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section, Nutrition Services Branch, 5601 Six Forks Road, Raleigh, North Carolina 27609. Copies are available at no cost from the Supplemental Nutrition Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302, by calling (703) 305-2730 or online at <https://www.ecfr.gov/cgi-bin/text-idx?SID=a42889f84f99d56ec18d77c9b463c613&node=7:4.1.1.1.10&rgn=div5>.

*Authority G.S. 130A-361; 7 C.F.R. 246; U.S.C. 1786.*

#### **SECTION .0400 - ELIGIBILITY FOR WIC PROGRAM PARTICIPATION**

#### **10A NCAC 43D .0408 WAITING LIST**

- (a) If a local WIC agency is serving its maximum caseload or spending its maximum food money and additional participants cannot be issued food ~~instruments~~, benefits, a waiting list must be established in accordance with 7 C.F.R. 246.7.
- (b) Local WIC agencies maintaining a waiting list shall continue to provide WIC program benefits to all individuals enrolled in the program until the expiration of their certification period.
- (c) Local WIC agencies shall enroll individuals in a manner which ensures that applicants in a higher priority group are first given an opportunity to receive food ~~instruments~~ benefits in accordance with 7 C.F.R. 246.7(e)(4) which is incorporated by reference with all subsequent amendments and editions.

*Authority G.S. 130A-361.*

#### **SECTION .0500 – WIC PROGRAM FOOD PACKAGE**

##### **10A NCAC 43D .0501 SUPPLEMENTAL FOODS**

- (a) The foods which may be provided to WIC program participants are specified in 7 C.F.R. 246.10, which is incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Health and Human Services, Division of Public Health, 5601 Six Forks Road, Raleigh, North Carolina 27609 and may be obtained from Nutrition Services at no cost.
- (b) The following exclusions from the food package have been adopted by the North Carolina WIC ~~program~~ Program and approved by the United States Department of Agriculture, Food and Nutrition Service:

- (1) ~~shredded, diced, grated and organic cheese;~~
- (2) ~~eggs other than white, fresh, grade A large;~~
- (3)(1) ~~mackerel and sardines;~~
- (4) ~~organic foods other than fruits and vegetables obtained with cash-value vouchers;~~
- (5)(2) ~~goat milk; and~~
- (6)(3) ~~dried fruits and vegetables.~~

- (c) The state agency may exclude foods other than those described in Paragraph (b) of this Rule if it determines such foods to be inappropriate for provision as supplemental foods through the WIC ~~program~~ Program as a result of their cost, nutritional composition, packaging, statewide availability, participant acceptance, or promotion in a manner which is contrary to the purpose of the program as contained in 7 C.F.R. 246.1.

*Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.*

#### **SECTION .0700 - WIC PROGRAM FOOD DELIVERY SYSTEM**

##### **10A NCAC 43D .0701 THE NORTH CAROLINA AUTOMATED WIC SYSTEM**

The WIC program shall provide supplemental foods through a uniform retail distribution system in accordance with 7 C.F.R. 246.12. An automated data processing system shall be utilized to promote the provision of and accounting for food ~~instruments and cash-value vouchers~~ benefits issued to participants.

*Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246.*

**10A NCAC 43D .0702    ~~ISSUANCE OF FOOD INSTRUMENTS AND CASH-VALUE VOUCHERS~~ BENEFITS**

(a) Local WIC agencies shall issue WIC program food ~~instruments and cash value vouchers~~ benefits to program participants in a manner which ensures that participants can receive the appropriate supplemental foods that have been prescribed for them.

(b) Local WIC agencies shall issue food ~~instruments and cash value vouchers~~ benefits in a manner which prevents theft and shall retain documentation of ~~the disposition of the food instruments and cash value vouchers issuance.~~ The documentation of issuance shall include the dated signature of the authorized individual receiving the food ~~instruments or cash value vouchers~~ benefits, ~~unless the food instruments or cash value vouchers are mailed.~~

(c) Participants shall be given appointments to receive food ~~instruments or cash value vouchers~~ benefits in a manner which promotes coordination with WIC program certification, nutrition education, other health services and the services being received by other family members.

(d) Food ~~instruments and cash value vouchers~~ benefits shall be issued only to the participant, the participant's parent, the participant's caretaker, a proxy, or a compliance investigator.

*Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.*

**10A NCAC 43D .0703    ~~USE OF FOOD INSTRUMENTS AND CASH-VALUE VOUCHERS~~ BENEFITS**

(a) Participants may transact food ~~instruments and cash value vouchers~~ benefits on any day on or between the "First Date to Spend" and "Last Date to Spend" ~~printed on the food instrument or cash value voucher~~ for their certification period.

(b) Food ~~instruments and cash value vouchers~~ benefits shall be transacted only at authorized WIC vendors in accordance with the terms of the signed WIC Vendor Agreement and WIC program rules, regulations, and statutes. Authorized WIC vendors shall not be reimbursed for food ~~instruments and cash value vouchers~~ benefits that are not properly transacted as set forth in Rule .0708 of this Section. ~~Stores that are not authorized WIC vendors shall not be reimbursed for food instruments and cash value vouchers transacted at their store.~~

(c) ~~Printed food instruments and cash value vouchers shall be deposited at the vendor's bank~~ Authorized WIC Vendors ~~vendors that use EBT~~ shall have their bank account credited with payments for completed EBT transactions. Food ~~instruments and cash value vouchers~~ benefits shall not be assigned, transferred, sold, or otherwise negotiated.

*Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.*

**10A NCAC 43D .0704    ~~VALIDITY OF WIC FOOD INSTRUMENTS AND CASH-VALUE VOUCHERS~~**

*Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.*

**10A NCAC 43D .0705    ~~PAYMENT OF WIC FOOD INSTRUMENTS AND CASH-VALUE VOUCHERS~~ BENEFITS**

The State of North Carolina shall:

- (1) accept EBT transactions for North Carolina WIC food ~~instruments and cash value vouchers~~ benefits through the Federal Reserve and commercial banking systems;
- (2) ~~ensure that WIC food instruments and cash value vouchers are valid in accordance with Rule .0704 of this Subchapter;~~
- (3)(2) provide payment for all valid WIC food ~~instruments and cash value vouchers.~~ benefits. To the extent that sufficient funds are available in the WIC disbursing account, payment shall be provided according to established Department of Health and Human Services procedures for payment of WIC food ~~instruments and cash value vouchers.~~ benefits.
- (4) ~~ensure that every invalid WIC food instrument or cash value voucher is stamped to indicate the reason for invalidity;~~
- (5) ~~ensure that invalid WIC food instruments and cash value vouchers are returned to the banks from which they were received, according to established banking procedures.~~

*Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246.*

**10A NCAC 43D .0706    ~~VENDOR PEER GROUPS~~**

Vendor applicants and authorized vendors shall be placed into peer groups in accordance with as follows:

- (1) When annual WIC supplemental food sales are not yet available, vendor applicants and authorized vendors, excluding chain stores, stores under a WIC corporate agreement, military commissaries, and free-standing pharmacies, shall be placed into peer groups based on the number of cash registers in the store and the geographic location of the store until annual WIC supplemental food sales become available. ~~The following are the peer groups based on the number of cash registers in the store:~~

~~Peer Group I — zero to two cash registers;~~

~~Peer Group II — three to five cash registers; and~~

~~Peer Group III — six or more cash registers.~~

WIC sales figures of new vendors shall be reviewed six months from authorization. A vendor whose first six months of WIC sales exceed twenty five thousand dollars (\$25,000) shall be placed in a peer group ~~in accordance with the dollar thresholds of Item (2) of this Rule.~~ based on redemption.

- (2) Authorized vendors for which annual WIC supplemental food sales are available, ~~excluding~~ including chain stores, stores under a WIC corporate agreement, military commissaries, and free-standing pharmacies, shall be placed into peer ~~groups~~ groups. as



follows, except as provided in Item (9) of this Rule:

~~Peer Group I—two thousand dollars (\$2,000) to twenty five thousand dollars (\$25,000) annually in WIC supplemental food sales at the store;~~  
~~Peer Group II—greater than twenty five thousand dollars (\$25,000) but not exceeding seventy five thousand dollars (\$75,000) annually in WIC supplemental food sales at the store;~~  
~~Peer Group III—greater than seventy five thousand dollars (\$75,000) but not exceeding three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store;~~  
~~and~~  
~~Peer Group IV—greater than three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store.~~

as set forth in 7 CFR 246.12(g)(4) and 7 CFR 246.12(h)(3), which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>.

- (3) ~~Chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), military commissaries, and free standing pharmacies, including free standing pharmacy chain stores and free standing pharmacies participating under a WIC corporate agreement, shall be placed into peer groups as follows:~~

~~Peer Group IV—chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), and military commissaries; and~~  
~~Peer Group V—free standing pharmacies, including free standing pharmacy chain stores and free standing pharmacies participating under a WIC corporate agreement.~~

- (4)(3) "Annual WIC supplemental food sales" is the dollar amount an authorized vendor redeems in WIC food instruments and cash value vouchers food benefits within a 12-month period.
- (5)(4) In determining a vendor's peer group designation based on annual WIC supplemental food sales sales, ~~under Item (2) of this Rule~~, the state agency shall look at the most recent 12-month period of redemption data.
- (6)(5) The state agency may reassess an authorized vendor's peer group designation at any time during the vendor's agreement period and place the vendor in a different peer group if upon reassessment the state agency determines that

the vendor is no longer in the appropriate peer group.

- (7)(6) If the state agency determines that a vendor applicant is expected to be a predominantly WIC vendor as defined in Rule .0202 of this Subchapter, the vendor application shall be denied. The store must wait 90 days to reapply for vendor authorization. The state agency shall apply the methodology set forth in 7 CFR 246.12(g)(4)(i)(E) for determining whether a vendor applicant is expected to be a predominantly WIC vendor.

- (8)(7) If at any time during a vendor's authorization the state agency determines that the vendor has become a predominantly WIC vendor as defined in Rule .0202 of this Subchapter, the vendor's WIC Vendor Agreement shall be terminated. The store must wait 90 days to reapply for vendor authorization. The state agency shall apply the methodology set forth in 7 CFR 246.12(g)(4)(i)(F) for determining whether an authorized vendor has become a predominantly WIC vendor.

- (9)(8) A vendor applicant previously authorized in a peer group ~~under Item (2) of this Rule~~ based on annual WIC supplemental food sales that is being reauthorized following the nonrenewal or termination of its agreement or disqualification or withdrawal from the WIC Program shall be placed into the same peer group the vendor applicant was previously ~~in~~ in, ~~under Item (2) of this Rule~~, provided that no more than one year has passed since the nonrenewal, termination, disqualification or withdrawal. If more than one year has passed, the vendor applicant shall be placed into a peer group ~~in accordance with Item (1) of this Rule~~ using criteria for new vendor applicants as set forth in Item (1) of this Rule.

Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.

#### 10A NCAC 43D .0707 VENDOR APPLICANTS

To become authorized as a WIC vendor, a vendor applicant shall comply with the following vendor selection criteria:

- (1) A vendor applicant shall complete a WIC Vendor Application, a WIC Price List, as set forth in Item (4) of this Rule, and a WIC Vendor Agreement, as set forth in 7 C.F.R. 246.12(h)(3). A vendor applicant shall submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List, as set forth in Item (4) of this Rule.
- (2) A vendor applicant, at the time of application and throughout the term of authorization, shall submit all completed forms to the local WIC agency, except that a corporate entity operating under a WIC corporate agreement shall submit one completed WIC corporate agreement and

the WIC Price Lists to the State agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store.

- (3) A vendor applicant shall purchase all infant formula, exempt infant formula, and WIC-eligible nutritionals directly from:

- (a) The sources specified in 42 U.S.C 1786(h)(8)(A)(ix), which is incorporated by reference with all subsequent amendments and editions;
- (b) Retail food stores that purchase directly from the sources referenced in Sub-item (3)(a) of this Item; or
- (c) A source on another state's list of approved infant formula sources as verified by that state's agency.

A vendor applicant shall make available to the State or local WIC agency invoices or receipts documenting purchases of all infant formula, exempt infant formula, and WIC-eligible nutritionals. Receipts and invoices shall satisfy the requirements of Sub-items ~~(32)(a)~~(24)(a) through ~~(32)(e)~~(24)(c) of Rule .0708 of this Section. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for failure to purchase infant formula, exempt infant formula, or WIC-eligible nutritionals from the sources specified in this Item. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for providing infant formula, exempt infant formula, or WIC-eligible nutritionals to WIC customers that was not purchased from the sources specified in this Item.

- (4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List shall not exceed the maximum price set by the State agency for each supplemental food within that vendor applicant's peer group, except as provided in Sub-item (4)(b) of this Item. The maximum price for each supplemental food shall be established as follows:

- (a) The most recent ~~WIC Price Lists~~ prices submitted through the EBT system by authorized vendors within the same peer group shall be used to determine the maximum price for each supplemental food. The maximum price shall be ~~the 97th percentile of~~

two standard deviations above the average current highest shelf prices for price of each supplemental food within a vendor peer group. The State agency shall reassess the maximum price set for each supplemental food at least four times a year. ~~For two of its price assessments, the State agency shall use the WIC Price Lists which shall be submitted by all vendors by April 1 and October 1 each year in accordance with Item (34) of Rule .0708 of this Section. The other two price assessments shall be based on WIC Price Lists requested from a sample of vendors within each peer group in January and July of each year.~~

- (b) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the State agency for that applicant's peer group, the agency shall send the applicant written notice. Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it will charge the State WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the State agency, the vendor applicant shall be deemed to have met the requirements of Item (4) of this Rule. If any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the State agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, the agency shall send the applicant a written notice of denial. The vendor applicant shall wait 90 days from the date of receipt of the written denial to reapply for authorization.

- (5) A vendor applicant shall pass an announced monitoring review by the local WIC agency to determine whether the store has minimum inventory of supplemental foods as specified in Item ~~(25)~~(17) of Rule .0708 of this Section. A vendor applicant that fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the application shall be denied in writing and the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application.

- (6) A vendor applicant shall either attend, or cause a manager or another authorized store

- representative to attend, WIC Vendor Training provided by the local WIC agency prior to vendor authorization and ensure that the vendor applicant's employees receive instruction in WIC program procedures and requirements.
- (7) An applicant shall mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case at all times.
  - (8) The store shall be at a single, fixed location within North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site where WIC supplemental foods are selected by the WIC customer.
  - (9) A vendor applicant shall use point of sale (POS) terminals to support the WIC Program that are deployed in accordance with the minimum lane coverage provisions of 7 C.F.R. 246.12(z)(2)(ii).
  - (10) The store shall be open throughout the year for business with the public at least six days a week for at least 40 hours per week between 8:00 a.m. and 11:00 p.m.
  - (11) The store shall not use the acronym "WIC" or the WIC logo, including facsimiles, in total or in part, in the official name under which the business is registered or in the name under which it does business.
  - (12) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC agency. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for submitting false, erroneous, or misleading information.
  - (13) The owner(s), officer(s), or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the State WIC program, or the local WIC program serving the county where the vendor applicant conducts business. A vendor applicant shall not have an employee who ~~handles, transacts, deposits, or stores WIC food instruments or cash value vouchers~~ handles or transacts WIC food benefits who is employed, or has a spouse, child, or parent who is employed by the State WIC program or the local WIC program serving the county where the vendor applicant conducts business. Such situations present a conflict of interest.
  - (14) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice, as set out in 7 C.F.R. 246.12(g)(3)(ii). For purposes of this Item, "convicted" or "conviction" includes:
    - (a) a plea of guilty;
    - (b) a verdict or finding of guilt by a jury, judge, magistrate, or adjudicating body, tribunal, or official, either civilian or military;
    - (c) a plea of no contest, nolo contendere, or the equivalent; or
    - (d) entry of a prayer for judgment continued following a conviction as defined in this Item is the same as a conviction for purposes of this Item.
  - (15) A vendor applicant shall not be authorized if it is currently disqualified from the Supplemental Nutrition Assistance Program ("SNAP") or it has been assessed a SNAP civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired.
  - (16) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:
    - (a) a SNAP vendor that is disqualified from participation in the SNAP or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or
    - (b) another WIC vendor that is disqualified from participation in the WIC Program or has been assessed a monetary or civil money penalty pursuant to G.S. 130A-22(c1), Paragraph (e) or Paragraph (f) of Rule .0710 of this Section as the result of violation of Paragraphs (a) or (b) of Rule .0710 of this Section and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing.

The requirements of this Item shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Item shall not be met even if such transfer or conveyance of financial interest in a SNAP vendor under Sub-item (16)(a) of this Item prematurely ends the disqualification period applicable to that

- SNAP vendor. The requirements of this Item shall apply until the time the SNAP vendor disqualification otherwise would have expired.
- (17) A vendor applicant, excluding free-standing pharmacies, shall have SNAP authorization for the store as a prerequisite for WIC vendor authorization and shall provide its SNAP authorization number to the State agency.
- (18) A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired. A vendor applicant shall not be authorized as a WIC vendor if any of the vendor applicant's owner(s), officer(s) or manager(s) currently has or previously had a financial interest in a WIC vendor that was assessed a claim by the WIC Program and the claim has not been paid in full.
- (19) A vendor applicant shall enter into contract with the State WIC Program's EBT processor or a third party processor certified according to criteria established by the State WIC Program's EBT processor prior to WIC authorization and comply with all requirements detailed in the EBT or third party processor's Vendor Agreement.

For a food retailer or free-standing pharmacy to participate in the WIC Program, a current WIC Vendor Agreement must be signed by the vendor, the local WIC agency, and the State agency. If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.

*Authority G.S. 130A-361; 7 C.F.R. 246; 7 C.F.R. 246.12(g)(3); 7 C.F.R. 246.12(g)(3)(ii); 7 C.F.R. 246.12(h)(3)(xix); 7 C.F.R. 246.12(t); 42 U.S.C. 1786.*

#### **10A NCAC 43D .0708 AUTHORIZED VENDORS**

By signing the WIC Vendor Agreement, the vendor agrees to:

- (1) Process WIC Program food ~~instruments and cash value vouchers~~ benefits in accordance with the terms of the WIC Vendor Agreement and 42 U.S.C. 1786, 7 C.F.R. 246.1-246.28, and the rules of this Subchapter;
- (2) Accept WIC Program food ~~instruments and cash value vouchers~~ benefits in exchange for WIC supplemental foods. Supplemental foods are those foods that satisfy the requirements of 10A NCAC 43D .0501;
- (3) ~~Provide only the authorized supplemental foods listed on the printed food instrument, or authorized fruits and vegetables with a printed cash value voucher. Determine the charges to the WIC Program and complete the "Pay Exactly" box on the printed food instrument, or printed cash value voucher, as set forth in Item (4) of this Rule, prior to obtaining the signature of the WIC customer. When transacting EBT,~~

~~the vendor shall provide~~ Provide to the WIC customer only the approved supplemental foods, fruits, and vegetables contained in the authorized product list (APL) after it has been determined that the WIC customer has an available balance on the date of the transaction. The WIC customer is not required to get all of the supplemental foods listed on ~~the printed food instrument or the full dollar value of the printed cash value voucher.~~ his or her food benefit balance. However, a WIC customer may obtain more fruits and vegetables than the full dollar value of ~~a cash value voucher~~ his or her cash-value benefit if the WIC customer pays the difference, as set forth in 7 C.F.R. 246.12(h)(3)(xi);

- (4) ~~Enter in the "Pay Exactly" box on the printed food instrument or printed cash value voucher only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental food provided and shall not charge or collect sales taxes for the supplemental food provided. Vendors that utilize EBT shall only transmit~~ Transmit only the current shelf price of all WIC-approved supplemental foods purchased in the correct sizes, quantities, and the total dollar amount of all WIC-approved supplemental foods purchased in the EBT systems; system and shall not charge or collect sales taxes for the supplemental food provided;
- (5) Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less;
- (6) Accept payment from the State WIC Program only up to the maximum price set by the State agency for each supplemental food within that vendor's peer group. The maximum price for each supplemental food shall be based on the maximum prices set by the State agency for each supplemental food, as described in Sub-item (4)(a) of Rule .0707 of this ~~Section, listed on the food instrument.~~ Section. A request for payment submitted over the maximum price allowed by the State agency will only be paid up to the maximum price for that supplemental food;
- (7) Accept payment from the State WIC Program only up to the full dollar value of the cash-value ~~voucher;~~ benefit;
- (8) Not charge the State WIC Program more than the maximum price set by the State agency under Item (4)(a) of Rule .0707 of this Section for each supplemental food within the vendor's peer group;
- (9) Provide to WIC customers infant formula, exempt infant formula, and WIC eligible nutritionals purchased only from the sources

- specified in Item (3) of Rule .0707 of this Section. Providing infant formula, exempt infant formula, or WIC eligible nutritionals that has not been purchased from the sources specified in Item (3) of Rule .0707 of this Section shall result in termination of the WIC Vendor Agreement;
- (10) For free-standing pharmacies, provide only exempt infant formula and WIC-eligible nutritionals;
- (11) Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must wait 180 days to reapply for authorization;
- (12) ~~Accept WIC Program food instruments and cash value vouchers only on or between the "First Date to Spend" and the "Last Date to Spend" dates;~~
- (13) ~~Prior to obtaining the WIC customer's signature on the printed food instrument and cash value voucher, enter in the "Date Transacted" box the month, day, and year the WIC food instrument or cash value voucher is exchanged for supplemental food;~~
- (14)(12) ~~Ensure that the WIC customer signs the food instrument or cash value voucher in the presence of the cashier. Vendors that utilize EBT shall ensure~~ Ensure that a personal identification number (PIN) is used by the WIC customer to complete the EBT transaction in lieu of a signature;
- (15)(13) Ensure that the WIC customer enters the PIN to initiate the EBT transaction. The vendor shall not enter the PIN for the WIC customer;
- (16) ~~Refuse to transact any food instrument or cash value voucher that has been altered;~~
- (17)(14) ~~Not transact food instruments or cash value vouchers~~ benefits in whole or in part for cash, credit, unauthorized foods, or non-food items;
- (18)(15) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food ~~instruments or cash value vouchers,~~ benefits, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An "identical authorized supplemental food" means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;
- (19) ~~Imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the printed food instrument or cash value voucher to enable the vendor number to be read during the WIC Program's editing process;~~
- (20) ~~Imprint the vendor's bank deposit stamp or the vendor's name, address, and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement on the printed food instrument or cash value voucher;~~
- (21) ~~Deposit WIC program printed food instruments and cash value vouchers in the vendor's bank. All North Carolina WIC program printed food instruments and cash value vouchers must be deposited in the vendor's bank within 60 days of the "First Date to Spend" on the printed food instrument or cash value voucher;~~
- (22) ~~Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by the Agreement and be responsible for the unauthorized use of the authorized WIC vendor stamp;~~
- (23) ~~Maintain storage of the authorized WIC vendor stamp so only the staff designated by the vendor owner or manager have access to the stamp and report loss of this stamp within two business days to the local WIC agency;~~
- (24)(16) Notify the local WIC agency of misuse (attempted or actual) of WIC Program food ~~instruments or cash value vouchers;~~ benefits;
- (25)(17) Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. Free-standing pharmacies are not required to maintain a minimum inventory of supplemental foods. The following items and sizes constitute the minimum inventory of supplemental foods for vendors in Peer Groups I through III of Item (1), vendors in Vendor Peer Groups I through IV of Item (2), and vendors in Vendor Peer Group IV of Item (3) of Rule .0706 of this Section: vendors:

| Food Item | Type of Inventory                  | Quantities Required |
|-----------|------------------------------------|---------------------|
| Milk      | Whole fluid: gallon                | 2 gallons           |
|           | -and-<br>Skim/lowfat fluid: gallon | 6 gallons           |

**PROPOSED RULES**

|   |   |   |
|---|---|---|
| Cheese  | 1 pound package   | 2 packages  |
| Cereals   | 2 types: whole grain<br>(minimum package size 12 ounce)   | 6 packages total                                  |
| Eggs  | Grade A, large, white:<br>1 dozen size carton   | 2 dozen   |
| Juices  | Single strength:<br>48 ounce container<br>64 ounce container  | 4 containers<br>4 containers                      |
| Dried Peas and Beans  | 1 pound package   | 2 packages  |
| Peanut Butter   | 16 to 18 ounce container  | 2 containers                                      |
| Tuna  | 5 to 6 ounce can  | 6 cans  |
| Bread/Tortillas   | 16 ounce loaf of bread or package of tortillas  | 2 loaves or 2 packages OR 1<br>loaf and 1 package |
| Rice  | 14 to 16 ounce package  | 2 packages  |
| Infant Cereal   | 8 ounce box   | 6 boxes   |
| Infant Fruits and<br>Vegetables                                       | 3.5 to 4 ounce container<br>1 type of fruit and 1 type of vegetable   | 64 ounces   |
| Infant Formula  | milk-based powder; 11.0 to 14.0 ounce<br>-and-<br>soy-based powder; 11.0 to 14.0 ounce<br>Brands must be the primary contract infant formulas | 8 cans<br>4 cans                                  |
| Fruits  | 14 to 16 ounce can: 2 varieties   | 10 cans total                                     |
| Vegetables<br>(Excludes foods in<br>Dried Peas and Beans<br>category) | 14 to 16 ounce can: 2 varieties   | 10 cans total                                     |

~~All vendors~~ vendors, except free-standing pharmacies, in Vendor Peer Groups I through III of Item (1), Peer Groups I through IV of Item (2), and Vendor Peer Groups IV and V of Item (3) of Rule .0706 of this Section shall supply milk, soy-based or lactose-free infant formula in 32 ounce ready-to-feed or lactose-free powder within 48 hours of request by the State or local WIC agency; agency. Free-standing pharmacies shall only supply exempt infant formula or WIC-eligible nutritionals within 48 hours of request;

- ~~(26)~~(18) Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date;
- ~~(27)~~(19) Permit the purchase of supplemental food without requiring other purchases;
- ~~(28)~~(20) Comply with the following EBT provisions:
  - (a) Sign the WIC Vendor Agreement of the EBT Processor selected by the State WIC Program or a third-party processor that has been certified according to criteria established by the EBT Processor selected by the State

- (b) Process EBT transactions in accordance with the terms of the North Carolina WIC Vendor Agreement, WIC Program. Failure by a vendor to sign and retain a WIC Vendor Agreement with the State WIC Program's EBT Processor or a third-party processor that has been certified by the State WIC Program's EBT Processor shall result in termination of the WIC Vendor Agreement. Vendors shall notify the WIC Program within 24 hours of any periods of time during which they do not maintain an Agreement with the State WIC Program's EBT Processor or a third-party processor that has been certified by the State WIC Program's EBT Processor;

- WIC Program State Rules, federal regulations, and statutes;
- (c) Maintain Point of Sale (POS) terminals used to support the WIC Program in accordance with the minimum lane provisions of 7 C.F.R. 246.12(z)(2);
- (d) Maintain a North Carolina EBT Processor certified in-store EBT system that is available for WIC redemption processing during all hours the store is open;
- (e) Request the North Carolina EBT Processor re-certify its in-store system if the vendor alters or revises the system in any manner that impacts the EBT redemption or claims processing system after initial certification is completed;
- (f) For vendors with integrated systems, obtain EBT card readers to support EBT transactions within their store(s). The vendor shall ensure that the EBT card readers they obtain meets all EBT and North Carolina EBT Processor requirements;
- (g) Require an owner, manager or other authorized store representative to complete training on WIC EBT procedures. The vendor shall ensure that all cashiers and staff are fully trained on WIC EBT requirements, including training in the acceptance and processing of WIC EBT transactions;
- (h) Require the WIC customer to approve the WIC transaction. Vendors shall ensure that the vendor's staff does not approve the WIC transactions for WIC customers under any circumstances;
- (i) Release supplemental food to WIC customers when the transaction has been completed to include receipt of transaction approval by the EBT processing system, printing of the receipt, and updated balance of the WIC customer's account;
- (j) Scan or manually enter Universal Product Codes (UPC) only from approved supplemental foods being purchased by the WIC customer in the types, sizes and quantities available on the WIC customer's EBT account. The vendor shall not scan codes from UPC codebooks or reference sheets;
- (k) Return any EBT card found on the vendor's property and unclaimed for 24 hours to the WIC Program. The vendor shall not hold or use a WIC customer's EBT card and PIN for any purpose whatsoever;
- (l) Connect the vendor's in-store system for each outlet covered by the WIC Vendor agreement to the State's WIC EBT system at least once each 24-hour period to download reconciliation files and the WIC Authorized Product UPC/Product Look-Up (PLU) list.
- ~~(29)~~(21) Attend, or cause a manager or other authorized store representative to attend, annual vendor training upon notification by the local WIC agency. Failure to attend annual vendor training by September 30 of each year shall result in termination of the WIC Vendor Agreement;
- ~~(30)~~(22) Inform and train vendor's cashiers and other staff on WIC Program requirements;
- ~~(31)~~(23) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit vendor violations;
- ~~(32)~~(24) Allow monitoring and inspection by State and local WIC Program staff of the store premises and procedures to ensure compliance with the agreement and State, and federal WIC Program rules, regulations, and applicable law. This includes providing access to all program-related records, including access to all WIC food instruments and cash-value vouchers at the store; vendor records pertinent to the purchase and sale of WIC supplemental foods, including invoices, receipts, copies of purchase orders, and any other proofs of purchase; federal and state corporate and individual income tax and sales and use tax returns and all records pertinent to these returns; and books and records of all financial and business transactions. These records must be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Notwithstanding any other provision of this Rule and Rules .0707 and .0710 of this Section, failure or inability to provide these records for an inventory audit or providing false records for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Subparagraph (a)(1) of Rule .0710 of this Section. Invoices, receipts, purchase orders, and any other proofs of purchase for WIC supplemental foods shall include:
  - (a) the name of the seller and be prepared entirely by the seller without alteration by the vendor or on the seller's business letterhead;
  - (b) the date of purchase and the date the authorized vendor received the WIC supplemental food at the store if different from the date of purchase; and

- (c) a description of each WIC supplemental food item purchased, including brand name, unit size, type or form, and quantity;
- ~~(33)~~(25) Maintain a record of all SNAP-eligible food sales and provide to the State agency upon request a statement of the total amount of revenue derived from SNAP-eligible food sales and written documentation to support the amount of sales claimed by the vendor, such as sales records, financial statements, reports, tax documents or other verifiable documentation;
- ~~(34)~~(26) Submit a current completed WIC Price List when signing this agreement, and ~~by April 1 and October 1 of each year. The vendor also agrees to submit a WIC Price List~~ within two weeks of any written request by the State or local WIC agency;
- ~~(35)~~(27) Reimburse the State agency in full or agree to a repayment schedule with the State agency within 30 days of written notification of a claim assessed due to a vendor violation that affects payment to the ~~vendor or a claim assessed due to the unauthorized use of the WIC vendor stamp.~~ vendor. Failure to reimburse the State agency in full or agree to a repayment schedule within 30 days of written notification of a claim shall result in termination of the WIC Vendor Agreement. ~~The State agency shall deny payment or assess a claim in the amount of the full purchase price of each food instrument or cash value voucher invalid under Subparagraphs (a)(2), (a)(5), (a)(6) or (a)(7) of Rule .0704 of this Section. Denial of payment by the State agency or payment~~ Payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under Rule .0710 of this Section for the vendor violation(s);
- ~~(36)~~(28) Not seek restitution paid by the vendor to the State agency or for WIC food ~~instruments or cash value vouchers~~ benefits not paid or partially paid by the State agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food ~~instruments or cash value vouchers;~~ benefits;
- ~~(37)~~(29) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food ~~instruments or cash value vouchers;~~ benefits;
- ~~(38)~~(30) Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in store location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in store location of more than three miles from the store's previous

location, cessation of operations, withdrawal from the WIC Program, or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the State agency. Change of ownership, change in store location, ceasing operations, withdrawal from the WIC Program, or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store;

- ~~(39)~~ ~~Return the authorized WIC vendor stamp to the local WIC agency upon termination of the WIC Vendor Agreement or disqualification from the WIC Program;~~
- ~~(40)~~(31) Not discriminate on the basis of WIC participation, such as failing to offer WIC customers the same courtesies, as set forth in 7 C.F.R. 246.12(g)(3)(iii), offered to other customers or requiring separate WIC lines;
- ~~(41)~~(32) Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store shall reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant is subject to the vendor peer group criteria of ~~Rule .0706 of this Section~~ set forth in 7 CFR 246.12(g)(4), 7 CFR 246.12(h)(3), and the vendor selection criteria of Rule .0707 of this Section; and
- ~~(42)~~(33) Comply with all the requirements for vendor applicants of Items (3), (4), and (7) through (17), and (19) of Rule .0707 of this Section throughout the term of authorization. The State agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The State agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Items (3), (4), (8), (9), (10), (11), (12), (13), (14), (16), (17), or (19) of Rule .0707 of this Section during the vendor's period of authorization, and terminate the agreement of or sanction or both any vendor that fails to comply with Items (7), (15), (17), or (19) of Rule .0707 of this Section during the vendor's period of authorization.

*Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.*

#### **10A NCAC 43D .0710 VENDOR VIOLATIONS AND SANCTIONS**

(a) Title 7 C.F.R. 246.12(l)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments and editions. In accordance with 7 C.F.R. 246.12(l)(1)(i), the State agency shall not allow imposition of a civil money penalty in lieu of disqualification for a vendor permanently disqualified. A pattern, as referenced in 7 CFR 246.12 (l)(1)(iii)(B) through (F) and 246.12(l)(1)(iv)(A), shall be established as follows:



- (1) claiming reimbursement for the sale of an amount of a specific supplemental food item that exceeds the store's documented inventory of that supplemental food item for six or more days within a 60-day period. The six or more days do not have to be consecutive days within the 60-day period. Failure or inability to provide records or providing false records required under Item ~~(32)~~(24) of Rule .0708 for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and this Subparagraph;
- (2) two occurrences of vendor overcharging within a 12-month period;
- (3) two occurrences of receiving, transacting or redeeming food ~~instruments or cash value vouchers~~ benefits outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person within a 12-month period;
- (4) two occurrences of charging for supplemental food not received by the WIC customer within a 12-month period;
- (5) two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food ~~instruments or cash value vouchers~~ benefits within a 12-month period; or
- (6) three occurrences of providing unauthorized food items in exchange for food ~~instruments or cash value vouchers~~ benefits, including charging for supplemental food provided in excess of those listed on the food ~~instrument~~ benefit balance within a 12-month period.

(b) Title 7 C.F.R. 246.12(l)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except as provided in 7 C.F.R. 246.12 (l)(1)(xii), a vendor shall be disqualified from the WIC Program for the following state-established violations in accordance with the number of occurrences and sanctions set forth below:

- (1) One year for two occurrences within a 12-month period of discrimination on the basis of WIC participation as referenced in Item ~~(40)~~(31) of Rule .0708. Each date this violation is detected is a separate occurrence;
- (2) One year for three occurrences within a 12-month period of failure to properly transact a WIC food ~~instrument or cash value voucher by not completing the date and purchase price on the WIC food instrument or cash value voucher before obtaining the WIC customer's signature, by not obtaining the WIC customer's signature in the presence of the cashier, or by accepting a WIC food instrument or cash value voucher prior to the "Issue Date" or after the "Participant Must Use By" dates on the food instrument or cash value voucher.~~ benefits by manually

- (3) entering the EBT card number or entering the PIN into the POS instead of the WIC participant, scanning the UPC or PLU codes from UPC codebooks or reference sheets when completing a WIC participant's EBT transaction, not entering the correct quantity and item price, or not providing the WIC participant with a receipt that shows the items purchased and the participant's remaining food benefit balance. Except as provided in 7 C.F.R. 246.12(l)(3)(iv), each ~~improperly transacted food instrument or cash value voucher~~ improper transaction is a separate occurrence;
- (4) One year for three occurrences within a 12-month period of requiring a cash purchase to transact a WIC food ~~instrument or cash value voucher~~ benefits. Except as provided in 7 C.F.R. 246.12(l)(3)(iv), each ~~transacted food instrument or cash value voucher~~ transaction requiring a cash purchase is a separate occurrence;
- (5) 270 days for three occurrences within a 12-month period of contacting a WIC customer in an attempt to recoup funds for a food ~~instrument or cash value voucher~~ benefits or contacting a WIC customer outside the store regarding the transaction or redemption of a WIC food ~~instrument or cash value voucher~~ benefits. Each contact with any WIC customer is a separate occurrence, whether each contact is with the same or different WIC customers;
- (6) 180 days for three occurrences within a 12-month period of failure to provide program-related records referenced in Item ~~(32)~~(24) of Rule .0708 when requested by WIC staff, except as provided in Item ~~(32)~~(24) of Rule .0708 and Subparagraph (a)(1) of this Rule for failure or inability to provide records for an inventory audit. Each request for records is a separate occurrence, whether each request is for the same or different records;
- (7) 180 days for three occurrences within a 12-month period of failure to provide the information referenced in Item ~~(33)~~(25) of Rule .0708 when requested by WIC staff. Each request for information is a separate occurrence, whether each request is for the same or different information;
- (8) 180 days for three occurrences within a 12-month period of failure to stock the minimum inventory specified in Item ~~(25)~~(17) of Rule .0708. Each date this violation is detected is a separate occurrence;
- (9) 90 days for three occurrences within a 12-month period of stocking WIC supplemental foods outside of the manufacturer's expiration date. Each date this violation is detected is a separate occurrence;

- (9) 90 days for three occurrences within a 12-month period of failure to allow monitoring of a store by WIC staff. Each attempt to monitor the store is a separate occurrence;
- (10) 90 days for five occurrences within a 12-month period of failure to submit a WIC Price List as required by Item ~~(34)~~(26) of Rule .0708. Each written request by the state or local WIC agency for submission of a WIC Price List is a separate occurrence, whether each request is for the same or different WIC Price Lists;
- (11) 60 days for three occurrences within a 12-month period of failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case. Each date this violation is detected is a separate occurrence; ~~and~~
- (12) 60 days for five occurrences within a 12-month period of requiring the purchase of a specific brand when more than one WIC supplemental food brand is available. Except as provided in 7 C.F.R. 246.12(l)(3)(iv), each ~~transacted food instrument or cash value voucher transaction~~ requiring the purchase of a specific brand when more than one WIC supplemental food brand is available is a separate ~~occurrence~~; occurrence;
- (13) 180 days for three occurrences of failure to make EBT point of sale equipment accessible to WIC customers to ensure that EBT transactions are completed in accordance with Rule .0708; and
- (14) 90 days for three occurrences within a 12-month period of failure to comply with minimum lane coverage criteria required by 7 CFR 246.12(z)(2) and Rule .0708(20)(c) of this Section;
- (D) vendor overcharging;
- (E) receiving, transacting, or redeeming food ~~instruments or cash value vouchers~~ benefits outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person;
- (F) charging for supplemental food not received by the WIC customer;
- (G) providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food ~~instruments or cash value vouchers~~; benefits;
- (H) providing unauthorized food items in exchange for food ~~instruments or cash value vouchers~~, benefits, including charging for supplemental food provided in excess of those listed on the food ~~instrument~~; benefit balance;
- (I) failure to properly transact a WIC food ~~instrument or cash value voucher~~; benefits;
- (J) requiring a cash purchase to transact a WIC food ~~instrument or cash value voucher~~; benefits; or
- (K) requiring the purchase of a specific brand when more than one WIC supplemental food brand is available.
- (2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect the following violations:
  - (A) failure to stock the minimum inventory specified in Item ~~(25)~~(17) of Rule .0708;
  - (B) stocking WIC supplemental food outside of the manufacturer's expiration date;
  - (C) failure to allow monitoring of a store by WIC staff;
  - (D) failure to provide program-related records referenced in Item ~~(32)~~(24) of Rule .0708 when requested by WIC staff;
  - (E) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case; ~~or~~
  - (F) unauthorized use of the "WIC" acronym or the ~~logo~~; logo;
  - (G) failure to ensure that EBT point of sale equipment is accessible to the WIC customer; or
  - (H) failure to comply with minimum lane coverage criteria required by 7 CFR

If during the course of a single investigation the state agency determines that a vendor has committed multiple state-established violations, the disqualification periods shall be cumulative, provided that the total period of disqualification shall not exceed one year for state-established violations investigated as part of a single investigation, as defined in Paragraph (c) of this Rule.

(c) For investigations pursuant to this Section, a single investigation is:

- (1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the following violations:
  - (A) buying or selling food ~~instruments or cash value vouchers~~ benefits for cash (trafficking);
  - (B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food ~~instruments or cash value vouchers~~; benefits;
  - (C) selling alcohol or alcoholic beverages or tobacco products in exchange for food ~~instruments or cash value vouchers~~; benefits;

246.12(z)(2) and Rule .0708(20)(c) of this Section

- (3) Any other method used by the state or local agency to detect the following violations by a vendor within a 12-month period:
- (A) failure to attend annual vendor training;
  - (B) failure to submit a WIC Price List as required by Item ~~(34)~~(26) of Rule .0708;
  - (C) discrimination on the basis of WIC participation as referenced in Item ~~(40)~~(31) of Rule .0708.
  - (D) contacting a WIC customer in an attempt to recoup funds for food ~~instruments or cash value vouchers~~ benefits or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food ~~instruments or cash value vouchers~~ benefits;
  - (E) nonpayment of a claim assessed by the state agency;
  - (F) providing false, erroneous, or misleading information to the state or local WIC agency;
  - (G) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time, or failure or inability to provide records or providing false records required under Item ~~(32)~~(24) of Rule .0708 for an inventory audit;
  - (H) failure to purchase infant formula, exempt infant formula or WIC-eligible medical foods from the sources specified in Item (3) of Rule .0707; or
  - (I) providing WIC customers infant formula, exempt infant formula, or WIC eligible medical food that was not purchased from the sources specified in Item (3) of Rule .0707.

(d) The SNAP disqualification provisions in 7 C.F.R. 246.12(l)(1)(vii) are incorporated by reference with all subsequent amendments and editions.

(e) The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and 246.12(l)(8) are incorporated by reference with all subsequent amendments and editions. The existence of any of the factors listed in Parts (f)(3)(A), (f)(3)(B) or (f)(3)(C) of this Rule shall show adequate participant access provided there is no geographic barrier, such as an impassable mountain or river, to using the other authorized WIC vendors referenced in these Parts. The agency shall not consider other indicators of inadequate participant access when any of these factors exist.

(f) The following provisions apply to monetary and civil money penalties assessed in lieu of disqualification of a vendor:

- (1) The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the six-month period ending with the month immediately preceding the month during which the notice of administrative action is dated.
- (2) The state agency may also impose monetary penalties in accordance with G.S. 130A-22(c1) in lieu of disqualification of a vendor for the state-established violations listed in Paragraph (b) of this Rule when the state agency determines that disqualification of a vendor would result in participant hardship in accordance with Subparagraph (f)(3) of this Paragraph.
- (3) In determining whether to disqualify a WIC vendor for the state-established violations listed in Paragraph (b) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which show lack of hardship, are found to exist:
  - (A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within seven miles of the noncomplying vendor;
  - (B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within three miles of the noncomplying vendor; or
  - (C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants ~~pick up their food instruments or cash value vouchers~~ are certified to receive WIC food benefits.
- (4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated by reference with all subsequent amendments and editions. These provisions also apply to a vendor that fails to pay a monetary penalty imposed under G.S. 130A-22(c1).
- (g) The provisions of 7 C.F.R. 246.12(l)(1)(viii) prohibiting voluntary withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement as an alternative to disqualification are incorporated by reference with all subsequent amendments and editions.
- (h) The provisions of 42 USC 1786 (f)(26) and 7 CFR 246.12(l)(3) regarding vendor notification of violations are incorporated by reference with all subsequent amendments and editions.
- (i) The state agency may offset payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Item ~~(35)~~(27) of Rule .0708.

(j) In accordance with 7 C.F.R. 246.12(l)(7) or 246.12(u)(5) or both, North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal or state law.

~~(k) Notwithstanding other provisions of this Rule and Rules .0707 and .0708, for the purpose of providing a one time payment to a non authorized store for WIC food instruments or cash value vouchers accepted by the store, an agreement for a one time payment need only be signed by the store manager and the state agency. The store may request such one time payment directly from the state agency. The store manager shall sign an agreement indicating that the store has provided foods as prescribed on the food instrument or as allowed with the cash value voucher, charged current shelf prices or less than current shelf prices, not charged sales tax, and verified the identity of the WIC customer. Any agreement entered into in this manner shall automatically terminate upon payment of the food instruments or cash value vouchers. After entering into an agreement for a one time payment, a non authorized store shall not be allowed to enter into any further one time payment agreements for WIC food instruments or cash value vouchers accepted thereafter.~~

~~(H)(k)~~ Except as provided in 7 C.F.R. 246.18(a)(2), an authorized WIC vendor shall be given at least 15 days advance written notice of any adverse action which affects the vendor's participation in the WIC Program. The vendor appeal procedures shall be in accordance with 10A NCAC 43D .0800.

Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.

## **SECTION .0900 - WIC PROGRAM PARTICIPANT FAIR HEARINGS**

### **10A NCAC 43D .0908 NOTICE OF HEARING**

(a) The agency official shall notify the ~~aggrieved party, appellant, or his or her representative,~~ the local WIC agency and the Nutrition Services Branch in writing that a request for a hearing has been received. ~~received and shall appoint a time, date, and place for the hearing within 10 days of receipt of the request.~~

(b) Notice of the date, time, and place of the hearing shall be given to all parties at least 10 days in advance of the hearing.

(c) The notice to the aggrieved party shall include a stamped envelope with the return address of the agency official with a request that it be returned indicating whether the date, time, and place for the hearing is satisfactory. If a response is not received at least 24 72 hours prior to the time proposed for the hearing, it shall be assumed that the date, time, and place are satisfactory.

(d) The notice shall contain:

- (1) a simplified explanation of the procedure for the hearing;
- (2) a statement of the date, hour, place and nature of the hearing;
- (3) a reference to the particular sections of the statutes and rules involved; and
- (4) a short and plain statement of the factual allegations.

(e) If the ~~aggrieved party~~ appellant, or his or her representative, indicates that ~~he she~~ he or she desires another time and date, the

agency official shall set a new time and date for the hearing. The hearing shall be accessible to the ~~appellant,~~ appellant, or his or her representative.

(f) The hearing shall be held within ~~three weeks~~ 21 days from the date ~~of the receipt of~~ the agency official receives the request.

Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786.

## **TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .1901, .1902, .1904, and .1905.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://deq.nc.gov/permits-regulations/rules-regulations/proposed-rules>

**Proposed Effective Date:** February 1, 2020

### **Public Hearing:**

**Date:** September 18, 2019

**Time:** 1:15 p.m.

**Location:** New Hanover County Government Center, 230 Government Center Drive, Wilmington, NC 28403

**Reason for Proposed Action:** Section 07H .1900 defines specific development requirements for the construction of temporary structures in the Estuarine and Ocean System Area of Environmental Concern (AEC). The proposed rule change amends language in Rules 07H .1901, 07H .1902, 07H .1904 and 07H .1905 to make the General Permit consistent with other rules related to General Permits for structures as well as incorporates language for the permitting of research structures as temporary structures within the Estuarine and Ocean System. The proposed amendments will expand the General Permit to include temporary research structures within the Estuarine and Public Trust Waters.

**Comments may be submitted to:** Braxton Davis, 400 Commerce Ave, Morehead City, NC 28557

**Comment period ends:** November 4, 2019

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any

further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☒ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact ( $\geq \$1,000,000$ )
- ☒ Approved by OSBM
- ☐ No fiscal note required

## CHAPTER 07 - COASTAL MANAGEMENT

### SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

#### SECTION .1900 – GENERAL PERMIT TO ALLOW FOR TEMPORARY STRUCTURES WITHIN COASTAL SHORELINES THE ESTUARINE AND OCEAN HAZARD SYSTEMS AECs

##### 15A NCAC 07H .1901 PURPOSE

A permit under this Section shall allow for the placement of temporary structures within ~~estuarine and public trust shorelines, and ocean hazard~~ the estuarine and ocean systems AECs according to the provisions provided in ~~Subchapter 7J .1100~~ 15A NCAC 07J .1100 and according to the rules in this Section.

*Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1.*

##### 15A NCAC 07H .1902 APPROVAL PROCEDURES

(a) The applicant ~~must~~ shall contact the Division of Coastal Management ~~and complete a general permit application form at the address provided in 15A NCAC 07A .0101 and complete an application requesting approval for development. Applicants shall provide information on site location, dimensions of the project area, proposed activity, name, address, and telephone number. For temporary structures associated with scientific research, permit applicants shall be lead investigators on behalf of accredited educational institutions, or state or federal agencies.~~

(b) ~~The applicant must provide:~~ If a temporary structure is to be located less than 400 feet waterward of normal high water or normal water level, or within the established pier head line as determined by the Division of Coastal Management, the applicant shall provide:

- (1) ~~confirmation that a written statement has been obtained~~ signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice should instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within ten days of receipt of the ~~notice, and, notice, and~~

indicate that no response will be interpreted as no objection. DCM staff will review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. ~~If DCM staff finds that the comments are worthy of more in depth review, the applicant will be notified that he must submit an application for a major development permit. If DCM determines that the project exceeds the conditions established by this General Permit, DCM shall notify the applicant that a Major Permit application shall be required.~~

(c) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative to inspect and mark the site of construction of the proposed development. ~~Written authorization to proceed with the proposed development may be issued by the Division during this visit. All work must be completed and the structure removed within 180 days following the day written authorization is issued. Temporary structures authorized by this General Permit may remain in place for a maximum of one year from the date of issuance. The project site shall be restored to pre-development conditions and all structures shall be removed within one year of permit issuance, or by the date specified with the General Permit.~~

*Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1.*

##### 15A NCAC 07H .1904 GENERAL CONDITIONS

(a) Temporary structures for the purpose of this general permit are those which are constructed or installed within the ~~ocean hazard or~~ estuarine and ocean system AECs and because of dimensions or functions ~~do not meet the criteria of the existing general permits (i.e. are not a bulkhead, pier, rip rap, groin, etc.).~~ cannot be authorized by another General Permit within this Subchapter.

(b) There shall be no encroachment oceanward of the first line of stable vegetation within the ocean hazard AEC except for the placement of auxiliary structures such as signs, fences, posts, ~~pilings, etc. or pilings.~~

(c) There shall be no fill or excavation activity below ~~the plane of mean normal high water associated with the structure, or normal water level.~~

(d) This permit ~~will~~ shall not be applicable to proposed ~~construction development~~ where the ~~Department~~ Division of Coastal Management has determined, based on ~~an initial~~ a review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

(e) Individuals shall allow authorized representatives of the Department of ~~Environment and Natural Resources~~ Environmental Quality to make periodic inspections at any time necessary to ensure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.

(f) This permit does not eliminate the need to obtain any other state, local or federal authorization, nor, to abide by regulations adopted by any federal, state, or local agency.

(g) Development carried out under this permit ~~must~~ shall be consistent with all local requirements, and local land use plans current at the time of authorization.

*Authority* G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1.

#### **15A NCAC 07H .1905 SPECIFIC CONDITIONS**

Proposed temporary structures ~~must~~ shall meet each of the following specific conditions to be eligible for authorization by the general permit:

- (1) All aspects of the structure shall be removed and the site returned to pre-project conditions at the ~~termination~~ expiration of this general permit.
- (2) There shall be no work within any productive shellfish ~~beds~~, beds without authorization from the Division of Marine Fisheries.
- (3) The proposed ~~project structure~~ shall not involve the disturbance of any marsh, submerged aquatic vegetation, or other wetlands including excavation ~~and/or~~ or filling of these areas.
- (4) The proposed activity shall not ~~involve the disruption of normal~~ disrupt navigation and transportation channels and shall be ~~properly~~ marked to prevent being a hazard to navigation.
- (5) The proposed structure shall not impede public access or other public trust uses.
- ~~(5)(6)~~ The proposed ~~project structure~~ shall not ~~serve as a habitable place of residence.~~ be habitable.
- ~~(6)(7)~~ There shall be no ~~adverse~~ disturbance of existing ~~dune structures.~~ dunes.
- ~~(7)(8)~~ Development carried out under Temporary structures authorized by this permit shall not individually or cumulatively exceed one acre in size in accordance with 15A NCAC 2H .1002(1) and 15A NCAC 2H .1003(a)(1). 100 square meters in size.
- ~~(8)(9)~~ No sewage disposal system will be allowed without a permit authorized by either the Division of Environmental Health or the Division of Environmental Management. Structures shall not be constructed in a designated Primary Nursery Area without approval from the Division of Marine Fisheries or the Wildlife Resources Commission.

*Authority* G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1.

## **TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

### **CHAPTER 54 – PSYCHOLOGY BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Psychology Board intends to readopt with substantive changes the rules cited as 21 NCAC 54 .1602, .1605, .1610-.1612, .1701-.1703, .1705-.1707, .1802, .1803, .1901, .1903, .1904, .2001, .2002, .2005, .2006, .2008, .2009, .2101, .2103, .2104, .2202, .2304, .2701, .2703-.2706, readopt without substantive changes the rules cited as 21 NCAC 54 .1606-.1609, .2007, .2102, .2203, .2305, .2308, .2309, .2311, .2314, .2401, .2402, .2601, .2801-.2806, and repeal through readoption the rules cited as 21 NCAC 54 .2301-.2303.*

*Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.*

*Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** <http://www.ncpsychologyboard.org/>

**Proposed Effective Date:** April 1, 2020

**Public Hearing:**

**Date:** September 27, 2019

**Time:** 9:30 a.m.- 12:00 p.m.

**Location:** LaQuinta Hotel, 1201 Lanada Road, Greensboro, NC

**Reason for Proposed Action:** Rules scheduled for readoption pursuant to periodic review set forth in G.S. 150B-21.3.

**Comments may be submitted to:** Daniel Collins, 895 State Farm Rd., Boone, NC 28607; phone (828) 262-2258; email [dcollins@ncpsychologyboard.org](mailto:dcollins@ncpsychologyboard.org)

**Comment period ends:** November 4, 2019

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact ( $\geq \$1,000,000$ )
- ☐ Approved by OSBM
- ☒ No fiscal note required

**SECTION .1600 - GENERAL PROVISIONS**

**21 NCAC 54 .1602 BOARD ADDRESS AND FORMS**

(a) The mailing address for the North Carolina Psychology Board is 895 State Farm Road, Suite ~~402~~, 101, Boone, North Carolina 28607.

(b) The Board's website address is www.ncpsychologyboard.org.

(c) All forms required by the rules may be found on the Board's website.

Authority G.S. 90-270.9.

**21 NCAC 54 .1605 FEES**

In addition to fees specified in G.S. 90, Article 18A, the following charges shall be ~~assessed for the indicated services; assessed;~~

- (1) Register of licensed psychologists - \$8.00; eight dollars (\$8.00) - register of licensed psychologists;
- (2) Renewal of license - \$250.00; two hundred fifty dollars (\$250.00) - renewal of license;
- (3) National written examination - \$50.00 plus the cost of the examination set by the vendor; plus fifty dollars (\$50.00) - national written examination;
- (4) State examination - \$200.00; two hundred dollars (\$200.00) - state examination;
- (5) Ethics renewal examination - \$150.00;
- (5)(6) costs for copies of public records as follows:
  - (a) "actual costs" as defined in G.S. 132-6.2(b) and provided on the Board's website;
  - (b) mailing costs if applicable; and
  - (c) 10 pages or less - no charge; if 10 pages or less;
- (6)(7) Application fee - \$100.00; one hundred dollars (\$100.00) - application fee;
- (7)(8) Reinstatement fee - \$100.00; one hundred dollars (\$100.00) - reinstatement fee;
- (8)(9) Returned check - \$20.00; twenty dollars (\$20.00) - returned check;
- (9)(10) ten dollars (\$10.00) - each written license verification, whether submitted individually or on a list;
- (10)(11) costs of disciplinary action as follows:
  - (a) three hundred dollars (\$300.00) - consent order; and
  - (b) three hundred dollars (\$300.00) per hour for a hearing ~~which that~~ results in disciplinary action, with a minimum charge of three hundred dollars (\$300.00) for the first hour or portion thereof, and then prorated thereafter for each half-hour;

~~(14)(12)~~ fifty dollars (\$50.00) - registration fee for certificate of registration for professional corporation or professional limited liability company; and

~~(12)(13)~~ twenty-five dollars (\$25.00) - renewal fee for certification of registration for professional corporation or professional limited liability company.

Authority G.S. 12-3.1(c); 55B-10; 55B-11; 90-270.9; 90-270.15(c); 90-270.18(b)(c); 132-6.2(b).

**21 NCAC 54 .1606 WAIVER OF COMPLIANCE WITH RULES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**21 NCAC 54 .1607 DELEGATION OF AUTHORITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**21 NCAC 54 .1608 ETHICAL VIOLATIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**21 NCAC 54 .1609 TERMINATION OF PRACTICE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**21 NCAC 54 .1610 PRACTICE BY NONRESIDENT PSYCHOLOGISTS WHO ARE NOT RESIDENTS OF NORTH CAROLINA**

(a) To practice psychology in North Carolina for up to five days in a calendar year, a ~~nonresident~~ psychologist who is not a resident of North Carolina shall submit the following information to the Board ~~at least five working business days~~ prior to the psychologist engaging in the practice of psychology in North Carolina:

- (1) a written statement from a jurisdiction which that is a member of the Association of State and Provincial Psychology Boards verifying that the psychologist's license is in good standing, that there is no pending disciplinary action against the license, and describing any supervision requirements under which the individual shall practice practices in that jurisdiction;
- (2) notarized a signed or digitally signed supervision statement from non-resident psychologist showing compliance with Paragraph (b) of this Rule; and
- (3) a written report from the nonresident psychologist who is not a resident of North Carolina describing his or her intended practice in North Carolina and, if applicable, the name of the North Carolina psychologist(s) with whom he or she will be associating.

(b) Supervision shall be provided at the same level as that which is required for the ~~nonresident psychologist's practice psychologist who is not a resident of North Carolina~~ in the jurisdiction verifying licensure in Subparagraph (a)(1) of this Rule by a North Carolina permanently ~~Licensed Psychologist~~ licensed psychologist or ~~Licensed Psychological Associate~~

licensed psychological associate who meets the requirements of 21 NCAC 54 .2001.

(c) The Board shall waive the five day notice period specified in Paragraph (a) of this Rule for ~~nonresident licensed psychologists who~~ licensed psychologists or licensed psychological associates who are not residents of North Carolina and are placed in North Carolina by the American Red Cross due to a ~~national, area, or local~~ disaster.

(d) This Rule applies only to the practice of psychology when the psychologist or client/patient are physically located in North Carolina.

*Authority G.S. 90-270.4(f); 90-270.9.*

#### **21 NCAC 54 .1611 PRACTICE BY POSTDOCTORAL TRAINEES**

An individual pursuing postdoctoral training or experience in psychology shall be exempt from licensure pursuant to G.S. 90-270.4(d) if the following criteria are met:

- (1) the postdoctoral training or experience in psychology meets all the criteria set forth in 21 NCAC 54 .2009(i); and
- (2) the individual has completed all doctoral degree requirements ~~for a program in psychology from an institution of higher education as defined in G.S. 90-270.2(5).~~ of a program that was accredited by the American Psychological Association or Canadian Psychological Association at the time the individual graduated from the program. Evidence of completion of all degree requirements shall be in the form of either an official transcript showing the date on which the degree was ~~conferred;~~ conferred or a letter from the registrar, dean of graduate school, or director of graduate studies verifying that all substantive and administrative requirements for the doctoral degree have been met without ~~exception;~~ exception and stating the date on which the doctoral degree will be awarded.

*Authority G.S. 90-270.4(d); 90-270.9.*

#### **21 NCAC 54 .1612 CRIMINAL HISTORY RECORD CHECK**

A licensee who is under investigation by the Board shall submit to the Board the following within 30 days of receipt of written communication from the Board or its agent that a criminal history record check is required:

- (1) signed consent ~~form;~~ form, which may be found on the Board's website;
- (2) completed Fingerprint Record ~~Card;~~ Card, which may be requested from the Board or a local sheriff's department;
- (3) payment of fee required by the North Carolina Department of Justice to conduct a criminal history record check; and

- (4) other such form(s) or information as required by the North Carolina Department of Justice to perform a criminal history record check.

*Authority G.S. 90-270.9; 90-270.22(a).*

### **SECTION .1700 - APPLICATION FOR LICENSURE**

#### **21 NCAC 54 .1701 INFORMATION REQUIRED**

(a) Except as provided in Paragraph (b) of this Rule and Rule .1707 of this Section, the information required for each applicant for licensure shall consist of:

- (1) a typed or legibly printed, ~~notarized signed or digitally signed~~ application form; form. The form shall include the following information:
  - (A) legal name;
  - (B) home mailing address and telephone number;
  - (C) business name, mailing address and telephone number;
  - (D) preferred mailing address;
  - (E) Social Security number;
  - (F) e-mail address;
  - (G) date and place of birth;
  - (H) licensure or applicant for licensure by another psychology board;
  - (I) if taken, the score on the Examination for Professional Practice in Psychology;
  - (J) if previously applicant for a license to practice psychology in North Carolina;
  - (K) if denied a professional license or permit, or privilege of taking an examination, or had a professional license or permit ever disciplined by any licensing authority in North Carolina or elsewhere, or aware of any pending charges against a professional license or permit which are held;
  - (L) if ever withdrawn an application for licensure, or an application to take a professional licensing examination, in North Carolina or elsewhere;
  - (M) if ever been convicted of, or entered a plea of guilty or nolo contendere to any felony or misdemeanor other than a minor traffic violation;
  - (N) other fields of work for which licensed or certified; or made application for licensure or certification;
  - (O) if hold a diploma from the American Board of Professional Psychology;
  - (P) whether doctoral program was APA accredited at the time of your graduation;
  - (Q) names of graduate programs attended and dates degrees awarded;



- (R) names and mailing addresses of three professional references, other than supervisors;
  - (S) list all work experience to cover the complete time frame, and including, any graduate internship, practicum, or other supervised training experience that serves as the basis for current application for licensure;
  - (T) brief describe for applying for licensure in North Carolina;
  - (U) any disability which may require some special accommodation in taking licensing examinations;
  - (V) if applying for Health Services Provider Certification;
  - (W) if applying for senior psychologist as specified in Rule .1707 of this Section;
  - (X) employee misclassification certification.
- (2) the application fee;
- (3) a typed or legibly printed, notarized signed or digitally signed supervision contract form; form. The form shall include the following information:
- (A) supervisee's name, North Carolina psychology license number and level, mailing address, e-mail address and telephone number;
  - (B) supervisee's current work setting;
  - (C) if supervision contract form is for an applicant or replaces previous supervision contract form(s);
  - (D) supervisor's name and psychology license number, business telephone number, business name and address;
  - (E) if the supervisor or the supervisee have ever been denied a professional license or permit or had any disciplinary, remedial, rehabilitative, or other action taken against a professional license, certificate, or permit by any licensing or certification authority in North Carolina or elsewhere; if aware of any pending charges against a professional license, certificate, or permit;
  - (F) number of hours per week engaged in the practice of psychology;
  - (G) number of hours allotted for individual supervision per week;
  - (H) number of individual supervision sessions per week; and
  - (I) if supervision is not required.
- (4) a signed consent form, which may be downloaded from the Board's website; a completed Fingerprint Record Card, which can be obtained from the Board office or a local Sheriff's office; and other such form(s) or information as required by the North Carolina Department of Justice to perform a criminal history record check;
- (5) payment of fee required by the North Carolina Department of Justice to conduct a criminal history record check;
- (6) an official transcript(s) sent ~~directly~~ to the Board by any institution of higher education from which the applicant received a graduate degree or otherwise completed graduate course work in psychology;
- (7) the completed supervisor forms from present and past ~~supervisors~~; supervisor. The form shall include the following information:
- (A) names of applicant and supervisor;
  - (B) institution or setting where applicant was supervised;
  - (C) supervisor's position at the time supervision occurred;
  - (D) applicant's position or title;
  - (E) dates of applicant's employment or training;
  - (F) dates of supervision of applicant;
  - (G) number of hours per week applicant practiced psychology under supervisor's direction
  - (H) number of weeks during which applicant practiced psychology under supervisor's direction;
  - (I) number of practice of psychology hours accumulated;
  - (J) number of health services hours accumulated;
  - (K) number of hours per week of individual face-to-face supervision;
  - (L) duties performed by applicant;
  - (M) if supervisor is licensed as a psychologist in North Carolina or in any other state or jurisdiction in the U.S. or Canada; and
  - (N) if the applicant is competent to practice psychology.
- (8) three completed reference forms from professionals who are familiar with the applicant's current work, one of which is from a doctoral level ~~psychologist~~; psychologist and the reference form shall include names of reference and applicant, time period reference has known applicant, nature of professional relationship, judgment regarding the applicant's training, experience, professional skills, adherence to legal and ethical standards and areas of concern, further comments, and recommendations to the Board;
- (9) a written verification and report on the status of any occupational licensure, including dates of licensure and any disciplinary action ~~which that~~ is pending or has been taken, sent directly to the

- Board from any other regulatory agency in North Carolina and any other jurisdiction in which the applicant has applied for a license, is currently licensed, or previously was licensed, if applicable;
- (10) an official report of any previous score obtained on the Examination for Professional Practice in Psychology sent directly to the Board from the Association of State and Provincial Psychology Boards, if applicable; and
- (11) any additional documentation regarding educational credentials described in ~~21 NCAC 54~~ Rules .1802 and ~~21 NCAC 54~~ .1803, .1803 of this Chapter, if ~~applicable~~ requested by the Board.
- (b) The information required for each applicant applying for licensure on the basis of holding a current credential for psychology licensure mobility shall consist of:
- (1) typed or ~~legibly~~ printed, ~~notarized~~ signed or digitally signed application form; form. The form shall include the following information:
- (A) applicant's legal name;
- (B) mailing address and telephone number;
- (C) business name, mailing address and telephone number;
- (D) Social Security number;
- (E) e-mail address;
- (F) date and place of birth;
- (G) if ever been licensed or certified by a psychology regulatory board, or made application to such a board;
- (H) if ever been denied a professional license or permit, or privilege of taking an examination, or had a professional license or permit ever disciplined in any way or if aware of any pending charges against a professional license or permit;
- (I) if ever have withdrawn an application for licensure, or an application to take a professional licensing examination;
- (J) if ever have been convicted of, or entered a plea of guilty or nolo contendere to any felony or misdemeanor other than a minor traffic violation;
- (K) other fields of work for which licensed or certified; or made application for licensure or certification;
- (L) if holds a CPQ issued by the Association of State and Provincial Psychology Boards;
- (M) if registrant in the National Register of Health Service Providers in Psychology;
- (N) if holds a diploma from the American Board of Professional Psychology;
- (O) names of graduate programs attended and dates degrees awarded;
- (P) names and mailing addresses of three professional references, other than supervisors;
- (Q) list all work experience to cover the complete time frame, and including, any graduate internship, practicum, or other supervised training experience that serves as the basis for current application for licensure;
- (R) brief description for applying or reapplying for licensure in North Carolina;
- (S) any disability which may require some special accommodation in taking licensing examinations;
- (T) if applying for Health Services Provider Certification; and
- (U) employee misclassification certification.
- (2) affidavit ~~which that~~ attests to having no unresolved complaint in any jurisdiction at the time of application in North Carolina;
- (3) application fee;
- (4) typed or ~~legibly~~ printed, ~~notarized~~ signed or digitally signed supervision contract form; form as described in Subparagraph (a)(3) of this Rule;
- (5) signed consent form, which can be downloaded from the Board's website, completed Fingerprint Record Card, which can be obtained from the Board office or a local Sheriff's office, and other such form(s) or information as required by the North Carolina Department of Justice to perform a criminal history record check;
- (6) payment of fee required by the North Carolina Department of Justice to conduct a criminal history record check;
- (7) official transcript sent ~~directly~~ to the Board by the institution of higher education from which the applicant received his or her doctoral degree in psychology; or if applicable, a copy of the transcript sent directly to the Board by either the Association of State and Provincial Psychology Boards, National Register of Health Service Providers in Psychology, or American Board of Professional Psychology;
- (8) three completed reference ~~forms~~ forms, as described in Subparagraph (a)(8) of this Rule, from professionals who are familiar with the applicant's current work, one of which is from a doctoral level psychologist;
- (9) written verification and report on the status of any occupational licensure, including dates of licensure and any disciplinary action which is pending or has been taken, sent directly to the Board from any other regulatory agency in

- North Carolina and any other jurisdiction in which the applicant has applied for a license, is currently licensed, or previously was licensed;
- (10) written verification sent directly to the Board from the applicable organization(s) that the applicant holds a current credential in good standing for psychology licensure mobility, as follows:
- (A) Certificate of Professional Qualification (CPQ) from the Association of State and Provincial Psychology Boards;
  - (B) registrant in the National Register of Health Service Providers in Psychology; or
  - (C) diplomate of the American Board of Professional Psychology; and
- (11) documentation of meeting requirements for health services provider certification as specified in Section .2700 of this Chapter, if applicable.

(c) An application shall contain all ~~required~~ materials required under Paragraph (a) or (b) of this Rule or as requested by the Board to be complete. The application forms may be found on the Board website. An incomplete application shall be active for three months from the date on which the application is received in the Board office. At the end of such time, if still incomplete, the application shall be void, and the applicant shall be deemed to have discontinued the application process. If the individual chooses to pursue licensure at a later date, the individual shall ~~totally~~ reapply.

(d) To be considered to have made application pursuant to G.S. 90-270.5(a), the information specified in Subparagraphs (a)(1) through (a)(5) of this Rule, or Subparagraphs (b)(1) through (b)(6) of this Rule if applying on the basis of a mobility credential, shall be filed in the Board office within 30 days of offering to practice or undertaking the practice of psychology in North Carolina.

*Authority G.S. 90-270.4(h); 90-270.5(a); 90-270.9; ~~90-270.11(a),(b); 90-270.11(a); 90-270.11(b); 90-270.13(a)(b); 90-270.13(a); 90-270(a1)(6); 90-270.13(b); 90-270.15; 90-270.22(a).~~*

#### **21 NCAC 54 .1702 FOREIGN DEGREE APPLICATION POLICY**

(a) Applicants applying for licensure on the basis of a foreign degree shall provide documentation, in addition to the information required in 21 NCAC 54 ~~.1701, .1701~~ which that establishes the following:

- (1) the existence of the ~~degree-granting~~ degree-granting institution;
- (2) the ~~authenticity~~ validity of the degree, transcripts, and any supporting documents;
- (3) the equivalence of the degree in terms of level of training, content of curriculum, and course credits; and
- (4) the equivalence of any supervised experience obtained ~~in the foreign country.~~ outside the United States.

Documentation shall be in the form of a course-by-course evaluation of credentials submitted directly to the Board from an evaluation service that is a member of the National Association of Credentials Evaluation Services, Inc. A listing of members can be found on the National Association of Credentials Evaluation Services, Inc. website, www.naces.org.

(b) Except as described in Paragraph (c) of this Rule, only ~~official~~ original documents shall be submitted in support of the application and shall be received directly from the institution(s) or individual(s) involved.

(c) When an ~~official~~ original document cannot be provided directly by the institution or individual involved, an original document possessed by the applicant ~~may~~ shall be reviewed and copied by a Board member or designee.

(d) Any document ~~which that~~ is in a language other than English shall be accompanied by a translation with ~~notarized a written verification of the translation's accuracy and completeness.~~ that the translation into English is accurate and complete. This translation shall be completed by an individual, other than the applicant, who upon written request is approved by the ~~Board~~ Board, or a Board designee, and ~~demonstrates no conflict of interest.~~ who does not have a close personal relationship with the applicant. Such individuals include college or university language faculty, a translation service, or an American consul.

~~(e) An applicant's references shall include individuals from member jurisdictions of the Association of State and Provincial Psychology Boards, including a doctoral level psychologist familiar with the applicant's professional practice of psychology.~~

*Authority G.S. 90-270.9; 90-270.11(c).*

#### **21 NCAC 54 .1703 TEMPORARY LICENSES**

(a) To be issued a temporary license to practice psychology in North Carolina, a ~~nonresident~~ psychologist who is not a resident of North Carolina shall submit the following information to the Board at least 10 ~~working~~ business days prior to the psychologist engaging in the practice of psychology in North Carolina:

- (1) a typed, or legibly printed, notarized signed or digitally signed temporary license application form, including an affidavit that the standards under which the nonresident psychologist who is not a resident of North Carolina is licensed in another jurisdiction are substantially equivalent to or higher than the requirements of G.S. 90-270.1 et seq.; seq., as determined by the Board;
- (2) For a five day temporary license, the temporary license application form shall include the following information: name of application; degree awarded; mailing address; telephone number; Social Security number; name of jurisdiction in which you licensed, including date of licensure, and license number; dates of intended practice in North Carolina, name of North Carolina psychologist(s) with whom you will be associating, if applicable; description of intended practice in North Carolina; and whether required to be supervised for practice in the jurisdiction in which applicant is licensed. An applicant for a 30 day temporary

license shall also include the following information: whether ever disciplined by any licensing authority in North Carolina or elsewhere, or aware of any pending charges against a professional license or permit which is held; brief description for applying for temporary licensure in North Carolina; and if applicant wants to be considered for temporary health services provider certification.

- (2)(3) a written statement from a any jurisdiction ~~which is a member of the Association of State and Provincial Psychology Boards where the psychologist is licensed~~ that the psychologist's license is in good standing, that there is no pending disciplinary action against the license, and describing any supervision requirements under which the individual ~~shall practice practices~~ in that jurisdiction;
- (3)(4) ~~notarized~~ a signed or digitally signed statement showing compliance with supervision requirements specified in ~~this Paragraph; Subparagraph (a)(2) of this Rule; and~~
- (4)(5) the temporary license ~~fee~~. fee set forth in G.S. 90-270.18(b)(8).

Only one 30-day temporary license shall be issued to an individual in any calendar year. Supervision shall be provided at the same level as that which is required for the ~~psychologist's~~ psychologist who is not a resident of North Carolina in the jurisdiction verifying licensure in Subparagraph ~~(a)(2)(a)(3)~~ of this Rule by a North Carolina permanently ~~Licensed Psychologist~~ licensed psychologist or ~~Licensed Psychological Associate~~ licensed psychological associate who meets the requirements of ~~21 NCAC 54 Rule .2001~~. 2001 of this Chapter.

(b) ~~To be issued a temporary license to practice psychology in North Carolina, a psychologist requesting reinstatement of licensure shall submit~~ A psychologist requesting reinstatement of licensure may apply for a temporary license to practice psychology in North Carolina by submitting the information listed in 21 NCAC 54 .2103. A temporary license issued under this Paragraph is shall be valid until the applicant takes the first examination to which he or she is admitted by the Board, if applicable, and is notified of the results, and until the reinstatement fee set forth in Rule .1605(8) of this Chapter is paid. This license shall not be issued, reissued, or extended if the applicant fails the examination, fails to appear for the examination, or fails to remit the required fees within the time period stipulated in ~~21 NCAC 54 Rule .2103~~. 2103 of this Chapter. A temporary licensee shall comply with supervision requirements specified in Section .2000 of this Chapter for the same level of licensure for which application for reinstatement is approved.

Authority G.S. ~~90-270.5(f),(g);~~ 90-270.5(f); 90-270.5(g); 90-270.9.

#### 21 NCAC 54 .1705 ISSUANCE OF LICENSE

An applicant who has met all of the requirements for licensure as either a licensed psychologist or licensed psychological associate is shall be issued a certificate of licensure. This license shows the

date, license number, licensee's ~~name and name~~, academic degree upon which licensure is based, level of licensure, and the signatures of all current Board members. The official seal is affixed to ~~each~~. the certificate of licensure. A The licensee shall display the licensure certificate ~~in his or her principal place of employment~~. or have the Board-issued wallet licensure card available for view upon request by the licensee's patients or clients, at any time when the licensee is practicing psychology.

Authority G.S. 90-270.9.

#### 21 NCAC 54 .1706 REAPPLICATION

To ~~reapply~~, reapply for licensure, an applicant must again submit all information listed in ~~21 NCAC 54 Rule .1701 of this Section~~ Information Required and, if applicable, Rule .1702 Foreign Degree Application Policy of this Section. A reapplication will be reviewed under the statutes and rules in effect on the date of reapplication.

Authority G.S. 90-270.9; 150B-11(1).

#### 21 NCAC 54 .1707 SENIOR PSYCHOLOGIST

(a) A senior psychologist is someone who has achieved longevity in the practice of psychology as set forth in Subparagraphs (b)(1) and (d)(1) of this Rule and has demonstrated exemplary professional behavior over the course of ~~his/her~~ his or her career, ~~career as defined in this Rule~~. as set forth in Subparagraphs (b)(2) and (d)(2) of this Rule.

(b) Except as provided in Paragraph (c) of this Rule, to be approved for licensure at the Licensed Psychologist level on the basis of senior psychologist status, an applicant shall hold a doctoral degree in psychology from an institution of higher education and shall meet all of the following requirements:

- (1) is licensed and has been licensed for 12 continuous years at the doctoral level by one or more other state or provincial psychology boards which are members of the Association of State and Provincial Psychology Boards, during which time, and in which jurisdiction(s), ~~he/she~~ he or she has practiced psychology for a minimum of 10 years for at least on at least a half time (i.e., 20 hours per week; week) basis;
- (2) has had no disciplinary sanction during ~~his/her~~ his or her period of licensure in any jurisdiction;
- (3) has no unresolved disciplinary complaint with a licensing board in any jurisdiction at the time of application or during the pendency of application in North Carolina; and
- (4) passes the ~~North Carolina State State Examination~~. examination.

(c) An applicant who received the doctoral degree prior to January 1, 1978, upon which his or her psychology licensure in another jurisdiction is based, shall hold a doctoral degree from an institution of higher education and meet all of the requirements specified in Subparagraphs (b)(1) through (b)(4) of this Rule.

(d) Except as provided in Paragraph (e) of this Rule, to be approved for licensure at the Licensed Psychological Associate level on the basis of senior psychologist status, an applicant shall hold a master's, specialist, or doctoral degree in psychology from

an institution of higher education and shall meet all of the following requirements:

- (1) is licensed and has been licensed for 12 continuous years at the master's level by one or more other state or provincial psychology boards which are members of the Association of State and Provincial Psychology Boards, during which time, and in which jurisdiction(s), ~~he/she~~ he or she has practiced psychology for a minimum of 10 years ~~for at least on at least a half time (i.e., 20 hours per week; week) basis;~~
  - (2) has had no disciplinary sanction during ~~his/her~~ his or her entire period of licensure in any jurisdiction;
  - (3) has no unresolved disciplinary complaint with a licensing board in any jurisdiction at the time of application or during the pendency of application in North Carolina; and
  - (4) passes the ~~North Carolina State State Examination.~~ examination.
- (e) An applicant who received the degree prior to January 1, 1978, upon which his or her psychology licensure in another jurisdiction is based, shall hold a master's, specialist, or doctoral degree from an institution of higher education and meet all of the requirements specified in Subparagraphs (d)(1) through (d)(4) of this Rule.
- (f) The information required for each applicant shall consist of:
- (1) a typed or legibly printed ~~notarized~~ signed or digitally signed application form; form, as described in Rule .1701(a)(1) of this Section, including and an affidavit which that attests to meeting the requirements specified in Subparagraphs (b)(1) through (b)(3) or Subparagraphs (d)(1) through (d)(3) of this Rule, as applicable;
  - (2) a typed or legibly printed, ~~notarized~~ signed or digitally signed supervision contract form; form as described in Rule .1701(a)(3) of this Section;
  - (3) the application fee;
  - (4) a signed consent form, completed Fingerprint Record Card, and other such form(s) or information as required by the North Carolina Department of Justice to perform a criminal history record check;
  - (5) payment of fee required by the North Carolina Department of Justice to conduct a criminal history record check;
  - (6) an official college transcript(s) sent ~~directly~~ to the Board by any training institution(s) from which the applicant received a graduate degree;
  - (7) three completed reference forms forms, as described in Rule .1701(a)(8) of this Section, from professionals who are familiar with the applicant's current work, one of which is from a doctoral level psychologist; and
  - (8) a written verification and report on the status of any occupational licensure, including dates of licensure and any disciplinary action which is pending or has been taken, sent directly to the Board from any other regulatory agency in

North Carolina and any other jurisdiction ~~in~~ which where the applicant has applied for a license, is currently licensed, or previously was licensed.

(g) An application shall contain all ~~required~~ required materials required under Paragraph (f) of this Rule or as requested by the Board to be complete. An incomplete application shall be active for three months from the date on which the application is received in the Board office. At the end of such time, if still incomplete, the application shall be void, and the applicant shall be deemed to have discontinued the application process. If the individual chooses to pursue licensure at a later date, the individual shall ~~totally~~ reapply.

(h) To be considered to have made application pursuant to G.S. 90-270.5(a), the information specified in Subparagraphs (f)(1) through (f)(5) of this Rule shall be filed in the Board office within 30 days of offering to practice or undertaking the practice of psychology in North Carolina.

Authority ~~G.S. 90-270.4(h); 90-270.5(a); 90-270.9; 90-270.13(a),(e); 90-270.13(a); 90-270.13(e); 90-270.22(a).~~

## SECTION .1800 - EDUCATION

### 21 NCAC 54 .1802 PSYCHOLOGICAL ASSOCIATE

(a) Licensure for the level of psychological associate ~~shall requires~~ require a master's degree or specialist degree in psychology from an institution of higher education. The degree program shall meet all of the following requirements:

- (1) The program shall be identified and labeled as a psychology ~~program; program. such a~~ The program shall specify in institutional catalogues its intent to educate and train students to engage in the activities ~~which that~~ constitute the practice of psychology as defined in G.S. 90-270.2(8).
- (2) The program shall maintain authority and primary responsibility for the core and specialty ~~areas even if the program crosses administrative lines.~~ areas.
- (3) The program shall have an identifiable body of students in residence at the physical campus of the institution who are matriculated in that program for a degree.
- (4) There shall be an identifiable full-time psychology faculty in residence at the physical campus of the institution, sufficient in size and breadth to carry out its responsibilities, employed by and providing instruction at the ~~home campus of~~ physical campus of the institution.
- (5) There shall be a psychologist responsible for the student's ~~program~~ program, either as the administrative head of the program, or as the advisor, ~~major~~ professor, or committee chair for the individual student's program.
- (6) The program shall be an integrated, organized sequence of study in psychology as demonstrated by ~~an identifiable~~ a curriculum

- track or tracks wherein course sequences and course content are described in institutional catalogues, departmental handbooks, or other institutional publications.
- (7) The program shall encompass the equivalent of a minimum of one academic year of full-time graduate study in student residence at the institution from which the degree is granted. Residence requires in person interaction with psychology faculty and other matriculated psychology students at the physical campus of the institution. One year's residency is defined as 30 semester (45 quarter or 40 trimester) hours taken on a full-time or part-time basis in person at the physical campus of the institution over the course of one year.
- (8) The program shall ~~include~~, include supervised training experience as listed on the ~~transcript~~, transcript. For purposes of this Rule, "supervised trained experience" shall include an internship, externship, practicum, or other supervised field experience ~~appropriate related~~ to the area of specialty and the practice of psychology, as defined in G.S. 90-270.2(8). ~~G.S. 90-270.2(8), which shall be referred to hereinafter as supervised training experience.~~ This supervised training experience shall meet all of the following criteria:
- (A) It shall be a planned and directed program of training for the practice of psychology, in contrast to on-the-job training, and shall provide the trainee with a planned and directed sequence of training that is integrated with the educational program in which the student is enrolled. This supervised training experience shall be planned by the educational program faculty and training site staff, rather than by the student.
- (B) The supervised training experience shall have a written description ~~detailing~~ of the program of training, or a written agreement, developed prior to the time of the training, between the student's educational program and the training site, detailing the responsibilities of the student and the supervised training experience site. ~~Such an~~ The agreement shall be approved by the student's educational program prior to the beginning of the supervised training experience.
- (C) The supervised training experience site shall have a designated ~~and~~ appropriately licensed or certified psychologist or psychological associate responsible for the integrity and quality of the supervised training experience.
- (D) A student enrolled in a supervised training experience shall be designated as any of the following: an "intern," "extern," or "practicum student," or shall hold a title ~~which that indicates~~ provides training status for the practice of psychology.
- (E) The supervised training experience shall be a minimum of 12 weeks consisting of at least 500 hours of supervised training. At least 400 hours of the training shall be in the practice ~~in psychology of psychology~~, as defined by ~~G.S. 90-270.2(8)~~. Supervision for this supervised training experience shall be provided as required by Parts ~~(a)(8)(G)~~ (G) or ~~(a)(8)(H)~~ (H) of this Subparagraph. Rule.
- (F) The supervised training experience shall be completed within a period of 12 consecutive months at not more than two training sites.
- (G) Except as provided in Part ~~(a)(8)(H)~~ (H) of this Subparagraph, Rule, ~~regularly scheduled individual face-to-face~~ in person supervision ~~with the specific intent of that overseeing~~ oversees the practice of psychology shall be provided by a North Carolina licensed ~~or certified~~ psychologist or psychological associate or by a psychologist who is exempt from licensure, pursuant to G.S. 90-270.4(b), at a rate of not less than one hour per week during at least 12 separate weeks of the supervised training experience. The supervisor shall establish and maintain a level of supervisory contact consistent with professional standards and shall be accessible to the student.
- (H) If completing a supervised training experience outside of North Carolina, the student shall be provided regularly scheduled individual ~~face-to-face in person~~ supervision ~~with the specific intent of that overseeing~~ oversees the practice of psychology by a licensed or certified psychologist or psychological associate or by an individual holding a master's, specialist, or doctoral degree in psychology, at a rate of not less than one hour per week during at least 12 separate weeks of the supervised training experience. The supervisor

shall establish and maintain a level of supervisory contact consistent with professional standards and shall be accessible to the student. Proof of the supervisor's license or degree program, as applicable, may program shall be required by the Board to establish the supervisor's training in psychology.

- (9) Except as provided in Paragraph (b) of this Rule, the program of study shall include a minimum of 45 semester (68 quarter or 60 trimester) hours of graduate study in standard psychology courses, including courses drawn from academic psychology (e.g., social, experimental, physiological, and developmental, developmental psychology, and history and systems), of psychology), statistics and research design, scientific and professional ethics and standards, and a specialty area. Of the required 45 semester (68 quarter or 60 trimester) program hours, not more than 6 semester (9 quarter or 8 trimester) hours shall be credited for internship/practicum supervised training experience and not more than 6 semester (9 quarter or 8 trimester) hours shall be credited for thesis/dissertation. No credit shall be allowed for audited courses or courses taken at an institution which does not meet the definition of an "institution of higher education" as defined by G.S. 90-270.2(5).

(b) If an individual's degree program did not include a minimum of 45 semester (68 quarter or 60 trimester) hours of course content, as defined in Subparagraph (a)(9) of this Rule, but included a minimum of 39 semester (59 quarter or 52 trimester) hours of graduate study in standard psychology courses, as specified in Subparagraph (a)(9) of this Rule, allowing not more than 6 semester (9 quarter or 8 trimester) hours for practicum/internship supervised training experience and 6 semester (9 quarter or 8 trimester) hours for thesis/dissertation, the individual shall be allowed to take, and must pass with a grade of "B" or above, additional graduate level course work to meet the hourly requirement specified in Subparagraph (a)(9) of this Rule. The individual shall complete specified course content, as defined by Subparagraph (a)(9) of this Rule, to meet the minimum educational requirements to apply for licensure. The ~~forementioned~~ course work shall be completed at an institution of higher education, as defined by G.S. 90-270.2(5), in a graduate psychology program in the same specialty area as the degree program completed by the individual and shall be reported on an official transcript. ~~The institution of higher education which permits a student to take additional course work shall be construed as being responsible only for the specific course work taken at that institution and not for the student's entire course of study, unless the student's entire program was completed at that institution.~~ No credit shall be accepted by the Board for audited courses. This additional graduate level course work shall not duplicate course work taken by the individual in his or her degree program or prior

to admittance to his or her degree program and shall be completed in one or more of the following areas:

- (1) academic psychology (e.g., social, experimental, physiological, and/or developmental, developmental psychology, and history and systems); of psychology);
- (2) statistics and research design;
- (3) scientific and professional ethics and standards; or
- (4) electives offered in the course of study for the individual's specialty area (e.g., clinical psychology, counseling psychology, school psychology, or other specialty area in psychology).

(c) If an individual's degree program did not include a minimum of 39 semester (59 quarter or 52 trimester) hours in standard psychology courses, as specified in Subparagraph (a)(9) of this Rule, allowing not more than 6 semester (9 quarter or 8 trimester) hours for practicum/internship supervised training experience and not more than 6 semester (9 quarter or 8 trimester) hours for thesis/dissertation, the individual shall not be allowed to obtain additional hours at a post-graduate level to meet the hourly requirements in Subparagraph (a)(9) of this Rule.

(d) An individual shall not, under any circumstance following the completion of the individual's master's or specialist degree in psychology, be allowed to complete a practicum, internship, or other supervised training experience requiring the individual to practice psychology in order to meet the minimum educational requirement.

(e) An applicant whose credentials have been approved by the Board for examination at the licensed psychologist level may be issued a license as a psychological associate if the applicant fails an examination at the licensed psychologist level but passes such at the psychological associate level. To receive this license, the applicant shall make a written request to the Board for licensure at the psychological associate level within 30 days from the date ~~on which~~ when the applicant is notified of his or her examination score.

*Authority G.S. 90-270.9; 90-270.11(b).*

## **21 NCAC 54 .1803 LICENSED PSYCHOLOGIST**

(a) Licensure for the level of licensed psychologist requires a doctoral degree based on a planned and directed program of studies in psychology from an institution of higher education. The applicant's doctoral program, hereinafter referred to as "program," shall ~~be one which was~~ have been accredited by the American Psychological Association or the Canadian Psychological Association at the time of the individual's graduation from the program, or one which meets all of the following requirements:

- (1) The program shall be publicly identified and clearly labeled as a psychology program; such a program shall specify in ~~pertinent~~ institutional catalogues its intent purpose to educate and train psychologists to engage in the activities ~~which that~~ constitute the practice of psychology as defined in G.S. 90-270.2(8).
- (2) The program shall maintain authority and primary responsibility for the core and specialty

- ~~areas areas, whether or not the program crosses administrative lines.~~
- (3) The program shall have an identifiable body of students in residence at the physical campus of the institution who are matriculated in that program for a degree.
  - (4) There shall be an identifiable full-time psychology faculty in residence at the physical campus of the institution, sufficient in size and breadth to carry out its responsibilities, employed by and providing instruction at the ~~home~~ physical campus of the institution.
  - (5) There shall be a psychologist responsible for the applicant's program either as the administrative head of the program, or as the advisor, ~~major~~ professor, or committee chair for the individual applicant's program.
  - (6) The program shall be an integrated, organized sequence of study in psychology as demonstrated by an ~~identifiable~~ curriculum track or tracks wherein course sequences are outlined.
  - (7) The program shall encompass the equivalent of a minimum of three academic years of full-time graduate study, two years of which are at the institution from which the degree is granted, and one year of which is in residence at the institution from which the degree is granted. Residence requires in person interaction with psychology faculty and other matriculated psychology students. One year's residence is defined as 30 semester (45 quarter or 40 trimester) hours taken on a full-time or part-time basis in person at the physical campus of the ~~institution.~~ institution over the course of one year.
  - (8) The program shall include practicum, internship, field experiences, or laboratory training appropriate to the area of specialty and the practice of ~~psychology.~~ psychology; this This experience shall be supervised by a licensed psychologist.
  - (9) Except as provided in Paragraph (b) of this Rule, the program of study shall include a minimum of 60 semester (90 quarter or 80 trimester) hours of graduate study in standard psychology courses, exclusive of credits for internship/practicum and thesis/dissertation, including instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, and the specialty area. No credit shall be allowed for audited courses or courses taken at an institution which does not meet the definition of an "institution of higher education" as defined by G.S. 90-270.2(5).
  - (10) The program shall include coursework ~~demonstrated competency~~ in the four substantive content areas identified in this

Subparagraph; this shall be met through a minimum of three semester (five quarter or four trimester) hours in each of these content areas:

- (A) biological bases of ~~behavior~~ behavior, such as, (e.g., physiological psychology, comparative psychology, neuropsychology, sensation and perception, ~~psychopharmacology;~~ psychopharmacology);
- (B) cognitive-affective bases of ~~behavior~~ behavior, such as, (e.g., cognition, memory, learning, thinking, motivation, ~~emotion;~~ emotion);
- (C) social bases of ~~behavior~~ behavior, such as, (e.g., social psychology, group processes, organizational and systems theory, cultural and ethnic bases, sex ~~roles;~~ roles); and
- (D) individual ~~differences~~ differences, such as, (e.g., personality theory, human development, abnormal psychology, individual differences. ~~differences).~~

(b) If an individual's degree program did not include a minimum of 60 semester (90 quarter or 80 trimester) hours in standard psychology courses, as specified in Subparagraphs (a)(9) and (a)(10) of this Rule, but included a minimum of 54 semester (81 quarter or 72 trimester) hours of graduate study in standard psychology courses, as specified in Subparagraphs (a)(9) and (a)(10) of this Rule, exclusive of credits for internship/practicum and thesis/dissertation, the individual shall be allowed to take, and must pass with a grade of "B" or above, additional graduate level course work to meet the hourly requirement specified in Subparagraphs (a)(9) and (a)(10) of this Rule. The individual shall complete specified course content, as defined by Subparagraphs (a)(9) and (a)(10) of this Rule, to meet the minimum educational requirements to apply for licensure. The ~~forementioned~~ course work shall be completed at an institution of higher education ~~education, as defined by G.S. 90-270.2(5),~~ in a graduate psychology program in the same specialty area as the degree program completed by the individual and shall be reported on an official transcript. Alternately, the ~~forementioned~~ course work may be completed in a formal re-specialization program in psychology, which shall be reported on an official transcript. A formal re-specialization program in psychology means a program in which individuals already holding a doctoral degree in psychology complete additional education and training in order to change their specialist area of study. Re-specialization programs involve coursework in a health service psychology field, including clinical, counseling, school or combinations of these areas. Respecialization programs also include education in profession-wide competencies, such as, ethics, assessment, intervention; experiential education such as practicum; and a one-year internship. The individual shall provide a certificate of completion of a respecialization program, issued by the program. The institution of higher education which permits a student to take additional course work shall be construed as being responsible only for the specific course work taken at that institution and not for the student's entire course of study, unless the student's entire



~~graduate program was completed at that institution.~~ No credit shall be accepted by the Board for audited courses. This additional graduate level course work shall not duplicate course work taken by the individual in his or her degree program or prior to admittance to his or her degree program.

(c) If an individual's degree program did not include a minimum of 54 semester (81 quarter or 72 trimester) hours of graduate study in standard psychology courses, as specified in Subparagraphs (a)(9) and (a)(10) of this Rule, exclusive of credits for internship/practicum and thesis/dissertation, the individual shall not be allowed to obtain additional hours at a post-graduate level to meet the hourly requirements in Subparagraphs (a)(9) and (a)(10).

*Authority G.S. 90-270.9; 90-270.11(a).*

## SECTION .1900 – EXAMINATION

### 21 NCAC 54 .1901 TYPES EXAMINATIONS

(a) Qualifying Examinations. ~~National and state~~ National, State, and ethics renewal examinations shall be administered. ~~The examinations shall be taken only for licensure purposes.~~ The applicant shall comply with deadlines and procedures established by the Board, the examination ~~contractor~~ contractor, and the testing vendor. ~~vendor when approved to take a computer administered examination.~~

- (1) National Examination. The national examination is the Examination for Professional Practice in Psychology (EPPP) ~~which that~~ is developed by the Association of State and Provincial Psychology Boards (ASPPB). ~~The EPPP assesses the applicant's knowledge of the subject matter of psychology and his or her understanding of professional and ethical problems in the practice of psychology.~~ The passing point for licensed psychologist shall be a scaled score of 500, and the passing point for licensed psychological associate shall be a scaled score of ~~440~~ 440, ~~unless a licensed psychological associate applies to practice under Rule .2008(h)(3) of this Chapter. Then in order to be approved under Rule .2008(h)(3) of this Chapter, he or she must meet the passing point of a scaled score of 500. If a licensed psychological associate does not meet the passing point of a scaled score of 500, he or she must have been practicing for 5 years, as set forth in Rule .2008(h)(2) of this Chapter in order to apply to practice under Rule .2008(h)(3) of this Chapter.~~ This examination shall not be required for an applicant who has previously taken the EPPP and whose score met the North Carolina passing point which was established for that particular administration date of the ~~examination~~ examination, unless the Board determines pursuant to G.S. 90-270.15 that an individual shall be required to take and pass a current form of the EPPP. ~~Further, this examination~~ The EPPP shall not be required for

an applicant who documents meeting requirements for licensure specified in Rule .1707 of this Chapter.

- (2) State Examination. The Board-developed State ~~state~~ examination shall assess ~~assesses~~ the applicant's knowledge of the North Carolina Psychology Practice Act, ~~selected~~ rules of the ~~Board~~ Board, ~~covering such topics as education and supervision,~~ and other ethical and legal requirements. ~~The passing point for all licensees shall be set at 78% of the total scored items on the examination. This is an educational examination that shall be completed for licensure.~~
- (3) Ethics Renewal Examination. The Board-developed ethics renewal examination shall be taken every two years in order to renew a license and completion of this examination shall count for three Category A continuing education credits in ethics. This is an educational examination that shall be completed for license renewal.

~~(b) Oral Examination. Upon proof that an applicant or licensee has engaged in any of the prohibited actions specified in G.S. 90-270.15(a), the Board may administer a state oral examination which assesses knowledge of the North Carolina Psychology Practice Act, selected rules of the Board covering such topics as education and supervision, and other legal requirements.~~

~~(e)(b) Special Administrations. Applicants with disabilities as defined by the Americans with Disabilities Act of 1990 (ADA), which is hereby incorporated by reference, including subsequent amendments and editions, available at no cost at [www.ada.gov](http://www.ada.gov), and documented by a licensed medical professional shall be administered the EPPP and State examination under conditions that shall minimize the effect of the disabilities on their performance. Special test administrations shall be as comparable as possible to a standard administration and shall be granted upon request of the applicant and Board approval. Candidates with documented impairments or disabilities which meet compliance requirements of the Americans with Disabilities Act of 1990 (ADA) shall be administered the EPPP and State Examination under conditions that shall minimize the effect of the impairments or disabilities on their performance. In general, those lifestyle accommodations which an individual uses to compensate for impairments or disabilities, and which have become accepted practice for the individual in his or her graduate program or since the onset of the applicant's impairment of disability, shall be considered as the most appropriate accommodation for testing. Special test administrations shall be as comparable as possible to a standard administration.~~

*Authority G.S. 90-270.9; 90-270.11; 90-270.14(a)(2); 90-270.15(b).*

### 21 NCAC 54 .1903 RETAKING THE NATIONAL EXAMINATION

An applicant may take the national examination no more than 4 times in a 12-month period and no more frequently than every 60 days upon payment of the required fee. The 12-month period

begins on the date of the letter ~~which notifies~~ notifying the applicant that his or her credentials have been approved for national examination by the Board. After failing the national examination for the fourth time or after the passage of 12 months, whichever occurs first, an applicant must ~~totally~~ reapply for licensure. Except as exempt under G.S. 90-270.4, after failing the examination for the second time, an applicant shall not practice or offer to practice psychology without first becoming licensed.

*Authority G.S. 90-250.5(b); 90-270.9.*

#### **21 NCAC 54 .1904 FAILURE TO APPEAR FOR THE NATIONAL EXAMINATION**

If an applicant does not appear for ~~an~~ the national examination within four months after being approved for examination by the Board, he or she shall be deemed to have failed the examination. The four-month period begins on the date of the letter ~~sent by the Board which notifies~~ notifying the applicant that his or her credentials have been approved for national examination by the Board. The applicant shall be permitted to take the examination within the next consecutive four months without reapplying for licensure. If the applicant does not appear for an examination within the second four-month period, he or she shall be deemed to have failed the examination a second time and must reapply for licensure. Except as exempt under G.S. 90-270.4, after failing to appear for the examination for the second time, an applicant shall not practice or offer to practice psychology without first becoming licensed by the Board.

*Authority G.S. 90-270.5(b); 90-270.9.*

### **SECTION .2000 - SUPERVISION**

#### **21 NCAC 54 .2001 SUPERVISOR**

(a) Except as provided in Paragraph (b) of this Rule, the following individuals shall be recognized as ~~appropriate contract~~ qualified supervisors for individuals requiring supervision to practice psychology:

- (1) ~~a licensed psychologist, permanent;~~ a licensed psychologist who has been issued a permanent license by the Board;
- (2) any person who was in a psychology position with the State of North Carolina on December 31, 1979, and who is still so employed, provided that such supervision is, and was on December 31, 1979, within the psychologist's regular job description and is only for activities which are part of the regular duties and responsibilities of the supervisee within his or her regular position at a State agency or department;
- (3) a doctoral level licensed psychologist who is licensed in the jurisdiction where the supervisee is practicing psychology; or
- (4) a licensed psychological associate ~~as provided for in Rule .2005 in this Section,~~ who is approved to practice under Rule .2008(h)(3) of this Chapter and is certified as a health services

provider psychological associate (HSP-PA) under Rule .2706 of this Chapter.

(b) The Board may disapprove an otherwise qualified supervisor for the following reasons:

- (1) ~~evidence~~ documentation that the supervisor is not competent or qualified to supervise the supervisee;
- (2) ~~evidence~~ documentation the supervisor has failed to adhere to legal or ethical standards;
- (3) ~~evidence~~ documentation that there is a lack of congruence between the supervisor's training, experience, and area of practice and the supervisee's proposed area(s) of practice; ~~or~~
- (4) ~~evidence~~ documentation that the supervisor has a license against which disciplinary or remedial action has been ~~taken~~ taken by the Board or any other occupational licensing Board; or
- (5) documentation that the supervisor has not completed the training described, and within the time frame set forth, in Paragraph (c) of this Rule.

(c) A licensee who engages in the supervision of an applicant for licensure, a licensed psychological associate, or a provisionally licensed psychologist in North Carolina must complete a three-hour training session, the content of which shall be determined and approved by the Board, which meets the following requirements:

- (1) is sponsored or co-sponsored by an entity designated by the Board;
- (2) is presented by an individual or individuals designated by the Board; and
- (3) addresses how to legally and ethically supervise in accordance with Board rules regarding supervision requirements.

If the training session is taken on-line, there shall be an examination at the completion of the session, and the licensee must pass and provide documentation to the Board that he or she has passed such examination. The sponsor or co-sponsor of a training session shall submit a list of attendees who complete the three-hour training session to the Board no later than 30 days following the training session. The training shall be completed, and documentation of completion received in the Board's office, no later than September 1, 2022. If the training is not completed by September 1, 2022, a licensee shall not enter into a supervision contract with an applicant, a licensed psychological associate, or a licensed psychologist-provisional until he or she completes the training and the Board receives documentation of such. A licensee who completes the training and passes the examination shall be permitted to count the three hours toward the minimum continuing education hours required in Rule .2104 of this Chapter for the renewal period it was when completed.

(d) The training described in Paragraph (c) of this Rule is required to be completed only one time, except when the Board requires that a licensee repeat it based on evidence that the licensee is failing to competently supervise or adhere to supervision requirements.

~~(e)(e)~~ Each supervisor shall:

- (1) ~~carefully~~ assess his or her ~~own~~ ability to meet the supervisory needs of supervisees and potential supervisees;
- (2) offer and provide supervision only within the supervisor's ~~own~~ area(s) of competence and ~~assure that~~ the professional expertise and experience of the supervisor shall be ~~congruent~~ consistent with the practice of the supervisee;
- (3) enter into a written agreement with the supervisee on a Board adopted supervision contract ~~form~~ form, which ~~details~~ sets forth the supervisee's obligations as well as the supervisor's responsibilities to the supervisee;
- (4) direct the supervisee to practice psychology only within areas for which ~~he or she~~ the supervisee ~~shall be~~ is qualified by education, training, or supervised experience;
- (5) establish and maintain a level of supervisory contact consistent with ~~established professional standards that described in the supervision contract form on file with the Board~~ and be accessible to the supervisee;
- (6) direct the supervisee to keep the supervisor informed of services performed by the supervisee;
- (7) advise the Board if the supervisor has reason to believe that the supervisee is practicing in a manner ~~which~~ that indicates that ethical or legal violations have been committed;
- (8) maintain a clear and accurate record of supervision with a supervisee ~~which~~ that documents the following:
  - (A) dates and appointment times of each supervision session, including the length of time of each session;
  - (B) summary content of each session including treatment or assessment issues addressed, concerns identified by the supervisor and supervisee, recommendations of the supervisor, and intended outcome for recommendations of the supervisor; and
  - (C) fees charged, if any, to the supervisee for supervision;
- (9) except when prevented from doing so by circumstances beyond the supervisor's control, retain securely and confidentially the records reflecting supervision with a supervisee for at least seven years from the date of the last session of supervision with a supervisee. If there are pending legal or ethical matters or if there is any other compelling circumstance, the supervisor shall retain the complete record of supervision securely and confidentially for a period of seven years from the final resolution of such legal or ethical matter;

~~(9)~~(10) report on the ~~required~~ supervision report form to the Board that agreed upon supervision has occurred; and

~~(10)~~(11) file a final supervision report within two weeks of termination of supervision.

~~(d)~~(f) To maintain the professional nature of the supervision, a familial or strongly personal relationship shall not exist between the supervisor and supervisee, except in extraordinary circumstances, such as the lack of availability of any other qualified supervisor. In such cases, the Board shall require documentation from the supervisor or supervisee that no other supervision is available and three reference letters from ~~colleagues commenting on the appropriateness of the proposed supervisory relationship.~~ other mental health professionals.

Authority G.S. 90-270.5; 90-270.9.

## **21 NCAC 54 .2002 NATURE OF SUPERVISION**

(a) The nature of ~~mandated~~ supervision shall depend on the specific areas of practice, experience, and training ~~germane~~ related to the area of specialty of the supervisee. ~~This supervision shall be the process to assure that an appropriate professional standard is being applied to the solution of a client's problem, and that the laws that govern the practice of psychology and the ethics that guide that practice are understood and followed.~~ The purpose of ~~such~~ Board ~~mandated~~ required supervision shall not be exclusively for introductory training of the supervisee in additional skills, methods, or interventions, ~~but may and include~~ includes enhancement and refinement of previously learned skills. Supervision shall include consideration of the following areas:

- (1) ethical, legal, and professional standards;
- (2) technical skills and competency;
- (3) supervisee's utilization of supervision; and
- (4) supervisee's ability to function independently or with reduced ~~supervision.~~ supervision, as set forth in Rule .2008 of this Section.

(b) Each supervisee shall:

- (1) attend scheduled supervision sessions;
- (2) provide the supervisor with a disclosure of psychological services being offered or rendered by the supervisee;
- (3) cooperate with the supervisor to assure that all conditions in ~~Paragraph (c) of Rule .2001~~ .2001(c) of this Section are met;
- (4) provide the supervisor with information necessary for the supervisor to advise the supervisee on cases giving rise to professional, ethical, and legal concerns;
- (5) notify the Board if he or she has reason to believe that the supervisor has behaved in a manner which ~~shall indicate~~ indicates that the supervisor has committed an ethical or legal violation; and
- (6) file a revised supervision contract form within 30 days of a change in the conditions specified in the supervision contract form on file with the ~~Board.~~ Board, as set forth in Rule .2008 of this Section.

(c) The supervisee and supervisor shall determine jointly the nature and extent of notification to clients or patients of the supervisory process (~~e.g., such as~~ clinical information may be discussed with the supervisor or the means by which the supervisor may be ~~contacted, contacted~~) and which cases, issues, and techniques are ~~appropriate and~~ necessary for supervision. ~~Specific supervision shall not be mandated by the Board for each person evaluated or treated, or for every treatment, evaluative technique, or professional activity undertaken. Contract supervisors~~ Supervisors shall not be required to sign or co-sign reports, treatment plans, letters, or other clinical documents for which the supervisee shall be responsible. ~~responsible; neither shall it be necessary that such clinical~~ Clinical documents are not required to reflect the supervisory process. ~~Agencies shall not be precluded from requiring supervisor signatures or co-signatures.~~

Authority G.S. 90-270.5; 90-270.9.

**21 NCAC 54 .2005      ALTERNATE SUPERVISION REQUIREMENTS      DEFINITION OF FACE TO FACE SUPERVISION**

~~A licensed psychological associate may submit another licensed psychological associate be recognized as an appropriate contract supervisor. Approval by the Board shall be obtained by a licensee prior to receiving supervision under the provisions of this Rule. To be approved by the Board, the alternate supervision plan shall include the following:~~

- ~~(1) documentation that the plan shall provide for superior supervision;~~
- ~~(2) confirmation that the plan shall be reviewed, approved, and monitored by the plan has been reviewed, approved and monitored by a licensed psychologist permanent, who agrees to assume responsibility for the quality, suitability, and implementation of the plan throughout its duration;~~
- ~~(3) confirmation that the supervising psychological associate shall not engage in reciprocal supervisory arrangements with other licensed psychological associates; and~~
- ~~(4) documentation that the supervising psychological associate shall have practiced psychology on at least a half time basis (i.e., 20 hours per week) for a minimum of 10 years; and shall have had no disciplinary action sanction during his or her entire period of licensure in any jurisdiction.~~

(a) As used in these rules the term "face-to-face supervision" shall mean both in-person supervision, where the supervisor and supervisee meet in person at the same physical location, and electronic means of face-to-face interaction without meeting in person.

(b) The face-to-face supervision shall be live, interactive, and visual. Video or other technology may be used so long as it is real time and involves verbal and visual interaction for the entire session. The face-to-face supervision shall maintain the confidentiality of the communication as it relates to the identifying information regarding patients/clients.

(c) When a supervisor and supervisee are deciding whether to meet in person or through electronic medium, they shall consider factors such as:

- (1) whether reports or evaluations will be reviewed and whether that can be done through use of electronic medium;
- (2) whether the supervisory relationship is recently established; or
- (3) whether there are concerns that are better addressed in person.

Authority G.S. 90-270.2(f); 90-270.5; 90-270.9.

**21 NCAC 54 .2006      PSYCHOLOGICAL ASSOCIATE ACTIVITIES**

(a) The assessment of overall personality functioning by a psychological associate requires supervision ~~supervision~~. supervision, if practicing under Level 1 or Level 2 supervision, as set forth in Rule .2008(h)(1) or (h)(2) of this Section. The assessment of personality functioning involves any assessment or evaluative technique which leads to conclusions, inferences, and hypotheses regarding personality functioning. This includes:

- (1) all statements regarding personality attributes, features, traits, structure, dynamics, and pathology or assets;
- (2) the use of personality assessment techniques which include, but are not limited to, observation, interviewing ~~and, and~~ mental status examinations; ~~examinations—word association tests, diagnostic play therapy, and autobiographical techniques;~~ and
- (3) ~~the use of standardized personality techniques or tests. Examples of techniques or tests include, but are not limited to, the following: Rorschach, Thematic Apperception Test, sentence completion tests, the House Tree Person, Minnesota Multiphasic Personality Inventory, the California Personality Inventory, The Millon tests, the 16PF, and all other self-report inventories and questionnaires, as well as scales and check lists completed by others. The tests identified in this Rule as requiring supervision do not constitute an exhaustive list, only the most commonly utilized measures. the use of current assessment techniques that have adequate evidence of reliability and validity.~~

Not requiring supervision are screening techniques which lead to simple descriptors of persons which may be completed by a variety of professional and non-professional observers and are interpreted by other parties.

(b) The conduct administration of neuropsychological evaluations by psychological associates requires ~~supervision~~. supervision, if practicing under Level 1 or Level 2 supervision, as set forth in Rule .2008(h)(1) or (h)(2) of this Section. Not requiring supervision are neuropsychological screenings which lead to simple behavioral descriptions rather than clinical interpretations, or the administration of rating devices which may be completed by a variety of professional and non-professional observers and are subsequently interpreted by other parties.

(c) Psychotherapy, counseling, and any other interventions with a clinical population for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior provided by a psychological associate require ~~supervision~~. supervision, if practicing under Level 1 or Level 2 supervision, as set forth in Rule .2008(h)(1) or (h)(2) of this Section. Clinical populations include persons with discernible mental, behavioral, emotional, psychological, or psychiatric disorders as evidenced by an established ~~Axis I or Axis II diagnosis or V Code condition~~ diagnostic classification system in the then current ~~DSM~~ Diagnostic and Statistical Manual of Mental Disorders or International Classification of Diseases and all persons meeting the criteria for such diagnoses. Interventions other than psychotherapy and counseling that are encompassed by this definition include, but are not limited to, psychological assessment, psychoanalysis, behavior analysis/therapy, biofeedback, and hypnosis. Supervision is required if practicing under Level 1 or Level 2 supervision, as set forth in Rule .2008(h)(1) or (h)(2) of this Section, when the psychological associate is providing an intervention to persons within a clinical population, directly with the person(s) or in consultation with a third party, for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior. Supervision is required if practicing under Level 1 or Level 2 supervision, as set forth in Rule .2008(h)(1) or (h)(2) of this Section, for the design or clinical oversight of interventions for persons within a clinical population, such as biofeedback techniques and behavior intervention programs; however, supervision is not required for the actual implementation of such interventions that were designed for others to implement, which may or may not constitute ancillary services.

(d) The use, including authorization, of intrusive, punitive, or experimental procedures, techniques, or measures by a psychological associate requires ~~supervision~~. supervision, if practicing under Level 1 or Level 2 supervision, as set forth in Rule .2008(h)(1) or (h)(2) of this Section. These procedures, techniques, or measures include, but are not limited to, seclusion, physical restraint, the use of protective devices for behavioral control, isolation time-out, and any utilization of punishment techniques involving aversive stimulation. Also included in this definition are any other techniques which are physically intrusive, are restrictive of human rights or freedom of movement, place the client at risk for injury, or are experimental in nature (i.e., in which the efficacy and degree of risk have not previously been clinically established).

~~(e) Supervision is required for a psychological associate who provides clinical supervision to other service providers who are engaged in activities which would require supervision if directly provided by the psychological associate.~~

Authority G.S. 90-270.5(e); 90-270.9.

## **21 NCAC 54 .2007 APPLICANTS AND OTHER NONLICENSED INDIVIDUALS (READoption WITHOUT SUBSTANTIVE CHANGES)**

### **21 NCAC 54 .2008 PSYCHOLOGICAL ASSOCIATE**

(a) Except as provided in this Rule, a Psychological Associate practicing psychology in North Carolina shall receive supervision

for activities specified in G.S. 90-270.5(e) and ~~21 NCAC 54 .2006. Rule .2006 of this Section.~~

(b) A Psychological Associate whose professional practice is limited to those activities other than those specified in G.S. 90-270.5(e) and ~~21 NCAC 54 .2006. Rule .2006 of this Section~~ as requiring supervision shall not be required to receive supervision.

(c) A Psychological Associate who is a regular salaried employee of the State Department of Public Instruction or a local board of education, and whose professional activities are limited only to those for which he or she is employed by that agency, shall not be required to receive supervision. This exemption shall not apply to individuals who contract with the Department of Public Instruction or local boards of education for the delivery of psychological services which otherwise require supervision in the schools.

(d) A Psychological Associate who engages in the practice of psychology in a jurisdiction other than North Carolina shall not be required to receive supervision as set forth in this Rule for those services rendered in another jurisdiction so long as said services in another jurisdiction are rendered in a manner consistent with ~~the~~ that jurisdiction's legal requirements.

(e) A written, notarized supervision contract form shall be filed within 30 days of a change in the conditions specified in the supervision contract form on file with the Board and within 30 days after receiving written notification from the Board that the filing of a new form is necessary to provide for the protection of the public or the regulation of the practice of psychology. A supervision contract form shall document either that supervision is required and shall be received, or that supervision is not required. A separate supervision contract form shall be filed for each separate work setting. A work setting is considered as self-employment, employment under an umbrella agency, or employment at a stand-alone business entity. If receiving supervision from more than one supervisor to meet the minimum requirements, a separate supervision contract form shall be filed with each individual supervisor.

(f) A supervisor shall report to the Board that agreed upon supervision has occurred and shall file a final report upon termination of supervision. ~~If not receiving supervision, it shall be the responsibility of the Psychological Associate to report such to the Board.~~ A report shall be submitted to the Board by the following time periods:

- (1) within 30 days after receiving written notification from the Board that such is ~~due~~, due;
- (2) within 2 weeks of termination of ~~supervision~~, supervision; and
- (3) within 2 weeks of a change in the conditions specified in the supervision contract form on file with the Board.

If not receiving supervision, it shall be the responsibility of the Psychological Associate to report such to the Board.

(g) Additional supervision and reporting to the Board may be required in cases where previous evaluations or other information (e.g. reference letters, ethical complaints, etc.) suggests possible problems in the supervisee's competence or adherence to ethical standards. Additional documentation or an interview with the Board or its designated representative(s) may be required when questions arise regarding the supervisee's practice due to

information supplied or omitted on supervision contract forms and reports or when required forms are not filed with the Board.

(h) Supervision shall be provided in individual, ~~face-to-face, face-to-face supervision~~, as defined by Rule .2003 of this Section, sessions which shall last no longer than 2 hours or less than 30 minutes by an individual who shall be recognized as an appropriate supervisor as defined in Rule .2001 of this Section. ~~A Psychological Associate shall receive a minimum of one hour per month of individual supervision in any month during which he or she engages in activities requiring supervision.~~ The rates of supervision specified in this Paragraph shall be provided for each separate work setting in which the Psychological Associate

engages in the activities requiring supervision. A work setting is considered as self-employment, employment under an umbrella agency, or employment at a stand-alone business entity. Minimum hours of supervision required for each work setting shall not be split between more than two supervisors. The term "post-licensure" in this Paragraph shall refer to the period following issuance of a Psychological Associate license by the North Carolina Psychology Board. The term "supervised practice" in this Paragraph shall refer to activities requiring supervision as specified in G.S. 90-270.5(e) and ~~21 NCAC 54.2006, Rule .2006 of this Section.~~ Except as provided in Paragraph (g) of this Rule, minimum supervision requirements shall be as follows:

- (1) Level 1. For a Psychological Associate with less than 3 calendar years consisting of at least 4500 hours of post-licensure supervised practice, minimum supervision shall be provided as follows:

| No. of hours per month<br>engaging in activities<br>that require supervision | No. of hours of required<br>individual supervision<br>per month |
|--|---|
| 1 - 10   | 1   |
| 11 - 20  | 2   |
| 21 - 30  | 3   |
| 31 plus  | 4   |

- (2) Level 2. If a Psychological Associate does not meet the pass point set in Rule .1901(a)(1) of this Chapter, of a scaled score of 500, then after a minimum of 3 calendar years consisting of at least 4500 hours of post-licensure supervised practice a minimum of one hour per month individual supervision may be provided to a Psychological Associate who engages in activities requiring supervision. After a minimum of 3 calendar years consisting of at least 4500 hours of post licensure supervised practice, minimum supervision may be provided as follows:

| No. of hours per month<br>engaging in activities<br>that require supervision | No. of hours of required<br>individual supervision<br>per month |
|--|---|
| <del>1 - 20</del>  | <del>1</del>  |
| <del>21 plus</del>   | <del>2</del>  |

To be approved by the Board for this level of supervision, a Psychological Associate shall:

- (A) make application on an application form provided by the Board;
- (B) document that all performance ratings for the preceding 3 years and 4500 hours of post-licensure supervised practice have been average or above average;
- (C) have received at least one calendar year of supervision from the most recent supervisor; and
- (D) have the recommendation of the most recent supervisor for this level of supervision.

- (3) ~~Level 3. After a minimum of 5 calendar years consisting of at least 7500 hours of post-licensure supervised practice, a minimum of 1 hour per month individual supervision may be provided to a Psychological Associate who engages in activities requiring supervision. To be approved by the Board for this level of supervision, a Psychological Associate shall:~~

- (3) Level 3. After a minimum of 3 calendar years consisting of at least 4500 hours of post-licensure supervised practice, as set forth in Subparagraph (h)(1) of this Rule, or 5 calendar years of post licensure supervised experience, as set forth in Subparagraph (h)(2) of this Rule if a psychological associate does not meet the scale score of 500, no further supervision shall be required, provided that a Psychological Associate shall:

- (A) make application on an application form provided by the Board;
- (B) document that all performance ratings for the preceding 3 years and 4500 hours of post-licensure supervised practice have been average or above average for those applying under Subparagraph (h)(1) of this Rule; or 5 years of post-licensure supervised practice for those required to apply under Subparagraph (h)(2) of this Rule;

- (C) have received at least one calendar year of supervision from the most recent supervisor; and
- (D) have the recommendation of the most recent supervisor for independent practice.
- ~~(A) make application on an application form provided by the Board~~
- ~~(B) document that all performance ratings for the preceding 5 years and 7500 hours of post licensure supervised practice have been average or above average;~~
- ~~(C) have received at least one calendar year of supervision from the most recent supervisor; and~~
- ~~(D) have the recommendation of the most recent supervisor for this level of supervision.~~

(i) The frequency and scope of supervision may, at the discretion of the supervising psychologist, be modified provided that the minimum rate of supervision as defined in ~~Paragraph (h)~~ Subparagraph (h)(1) or (h)(2) of this Rule is provided. The supervising psychologist of record may review, approve, and monitor additional individual or group supervision to be provided to the supervisee by a ~~Licensed Psychological Associate, licensed psychological associate, Licensed Psychologist licensed psychologist~~ holding a permanent or provisional license, or a professional from a related discipline. Such supervision shall not substitute for the minimum requirements specified in ~~Paragraph (h)~~ Subparagraph (h)(1) or (h)(2) of this Rule.

(j) Contract and report forms shall be provided by the Board.

*Authority G.S. 90-270.4(c); 90-270.5(e); 90-270.9.*

## **21 NCAC 54 .2009 LICENSED PSYCHOLOGIST**

- (a) Except as provided in ~~21 NCAC 54 .1707, Rule .1707 of this Chapter~~, to be issued a permanent license at the Psychologist level, an applicant shall document a minimum of 2 years consisting of at least 3000 hours of supervised practice which shall meet the requirements specified in Paragraphs (i) and (j) of this Rule. A minimum of 1 calendar year consisting of at least 1500 hours of this supervised practice shall be accrued at the postdoctoral level.
- (b) A psychologist who shall meet all other requirements for a permanent license except the two years of supervised experience shall be issued a provisional license at the Psychologist level and shall comply with supervision requirements specified in this Rule.
- (c) If practicing psychology in North Carolina, a provisional licensee shall receive at least one hour per week of face-to-face individual supervision by an appropriate supervisor as defined in Rule .2001 of this Section until permanent status shall be approved by the Board.
- (d) A provisional licensee who is not practicing psychology shall not be required to receive supervision.
- (e) A provisional licensee who engages in the practice of psychology in a jurisdiction other than North Carolina shall not be required to receive supervision ~~specified in this Rule~~ for those services rendered in another jurisdiction so long as said services

in another jurisdiction shall be rendered in a manner consistent with ~~the~~ that jurisdiction's legal requirements.

(f) A written, notarized supervision contract form shall be filed within 30 days of a change in the conditions specified in the supervision contract form on file with the Board and within 30 days after receiving written notification from the Board that the filing of a new form is necessary to provide for the protection of the public or the regulation of the practice of psychology. A supervision contract form shall document either that supervision is required and shall be received, or that supervision is not required. A separate supervision contract form shall be filed for each separate work setting. A work setting is considered as self-employment, employment under an umbrella agency, or employment at a stand-alone business entity. If receiving supervision from more than one supervisor, a separate supervision contract form shall be filed with each individual supervisor.

(g) A supervisor shall report to the Board that agreed upon supervision has occurred and shall file a final report upon termination of supervision. If not receiving supervision, it shall be the responsibility of the provisional licensee to report such to the Board. A report shall be submitted to the Board within 30 days after receiving written notification from the Board that such is due, within 2 weeks of termination of supervision, and within 2 weeks of a change in the conditions specified in the supervision contract form on file with the Board.

(h) Additional supervision and reporting to the Board may be required in cases where previous evaluations or other information (e.g. reference letters, ethical complaints, etc.) suggests possible problems in the supervisee's competence or adherence to ethical standards. Additional documentation or an interview with the Board or its designated representative(s) may be required when questions arise regarding the supervisee's practice due to information supplied or omitted on supervision contract forms and reports or when required forms are not filed with the Board.

(i) One year of supervised experience shall meet all of the following criteria for a training program in psychology:

- (1) The training shall be a planned and directed program in the practice of psychology, in contrast to "on the job" training, and shall provide the trainee with a planned, programmed sequence of training experience.
- (2) The training site shall have a written statement or brochure which describes its training program and is made available to prospective trainees.
- (3) Trainees shall be designated as "interns," "fellows," or "residents," or shall hold other designation which clearly indicates training status.
- (4) The training shall be completed within a consecutive period of 24 months.
- (5) The training shall consist of at least 1500 hours of practice in psychology as defined by G.S. 90-270.2(8).
- (6) The training site shall have a minimum of two doctorally trained licensed, certified, or license eligible psychologists at the training site as supervisors who shall have ongoing contact with the trainee.

- (7) The training shall be under the direction of a licensed, certified, or license eligible doctorally trained psychologist who shall be on the staff of the training site, who shall approve and monitor the training, who shall be familiar with the training site's purposes and functions, who shall have ongoing contact with the trainee, and who shall agree to assume responsibility for the quality, suitability, and implementation of the training experience.
- (8) The training shall provide a minimum of two hours per week of individual face-to-face discussion of the trainee's practice, with the specific intent of overseeing the psychological services rendered by the trainee. Supervision may be provided in part by psychiatrists, social workers, or other related professionals qualified by the training site, but at least 50% of supervision shall be provided by licensed, certified, or license-eligible doctorally trained psychologists.
- (9) In addition to individual supervision, the training site shall provide a minimum of two hours per week of instruction which may be met by group supervision, assigned reading, seminars, and similarly constituted organized training experiences. Internships accredited by the American Psychological Association ~~and other internships which meet all of the specified criteria in this Paragraph~~ shall be deemed to meet the requirements in this Paragraph.
- (j) One year of supervised experience shall meet all of the following criteria:
  - (1) A minimum of one hour per week of face-to-face, individual supervision shall be provided.
  - (2) The experience shall consist of a minimum of 1 calendar year, shall include 1500 hours of practice, and shall be completed within a consecutive 4-year period.
  - (3) Supervision shall be provided for the practice of psychology as defined by G.S. 90-270.2(8).
  - (4) Supervision shall be provided by an individual who shall be recognized as an appropriate supervisor of licensees as defined in Rule .2001 of this Section.
- (k) Contract and report forms shall be provided by the Board.

*Authority G.S. 90-270.5(d); 90-270.9.*

## **SECTION .2100 - RENEWAL**

### **21 NCAC 54 .2101 LICENSE RENEWAL FORM**

- (a) The license renewal application form shall be ~~mailed sent~~ either by mail or electronically to each licensee in the fall of each even numbered year. It shall be a licensee's responsibility to renew ~~his/her~~ his or her license in a timely manner, and to notify the Board if a renewal application form is not received.
- (b) The form ~~may~~ shall require the licensee to supply information including, but not limited to, the following: name, license number,

current addresses; telephone number; area of specialty; principal setting of practice; if malpractice lawsuit has been filed against licensee; if licensee has been denied a professional license or permit, or privilege of taking an examination, or had a professional license or permit ever disciplined in any way or if aware of any pending charges against a professional license or permit; if licensee has been convicted of, or entered a plea of guilty or nolo contendere to any felony or any misdemeanor involving moral turpitude, misrepresentation or fraud in dealing with the public, or conduct otherwise relevant to fitness to practice psychology, or a misdemeanor charge reflecting the inability to practice psychology with due regard to the health and safety of clients or patients; whether or not the licensee received any formal continuing education during the past year; and report on all supervision contract forms on file with the Board.

(c) Failure of a postal service or an internet provider to deliver the renewal application properly, or failure of a licensee to submit all required information on the appropriate form by any established statutory deadline, shall not excuse the late fee or prevent license suspension.

*Authority G.S. 90-270.9; 90-270.14.*

### **21 NCAC 54 .2103 REINSTATEMENT**

(a) The information required for each applicant requesting reinstatement of licensure within 30 days after a license has been suspended due to non-renewal shall consist of:

- (1) completed ~~renewal~~ reinstatement application ~~form~~; form. The form shall include the following information:
  - (A) applicant's legal name;
  - (B) mailing address and telephone number;
  - (C) business name, mailing address and telephone number;
  - (D) Social Security number;
  - (E) e-mail address;
  - (F) date and place of birth;
  - (G) licensure or applicant for licensure by another psychology board;
  - (H) if taken, the score on the Examination for Professional Practice in Psychology;
  - (I) whether previously applied for a license to practice psychology in North Carolina;
  - (J) if denied a professional license or permit, or privilege of taking an examination, or had a professional license or permit ever disciplined by any licensing authority in North Carolina or elsewhere, or aware of any pending charges against a professional license or permit which is held;
  - (K) if ever withdrawn an application for licensure, or an application to take a professional licensing examination, in North Carolina or elsewhere;



- (L) if ever been convicted of, or entered a plea of guilty or nolo contendere to any felony or misdemeanor other than a minor traffic violation;
- (M) other fields of work for which licensed or certified; or made application for licensure or certification;
- (N) if hold a diploma from the American Board of Professional Psychology;
- (O) whether doctoral program was APA accredited at the time of graduation;
- (P) names of graduate programs attended and dates degrees awarded;
- (Q) names and mailing addresses of three professional references, other than supervisors;
- (R) list all work experience to cover the complete time frame, and including, any graduate internship, practicum, or other supervised training experience that serves as the basis for current application for licensure; brief describe for reapplying for licensure in North Carolina;
- (S) any disability which may require some special accommodation in taking licensing examinations;
- (T) if applying for Health Services Provider Certification; and
- (U) employee misclassification certification.

- (2) documentation of having completed a minimum of ~~48~~ 24 continuing education hours as specified in Rule .2104 of this Section during the two years preceding the date of application for reinstatement of licensure;
- (3) completed supervision report form, if applicable; and
- (4) payment of the renewal and reinstatement fees.

The information listed in this Paragraph shall be filed in the Board office within 30 days after a license has been suspended due to non-renewal.

(b) The information required for each applicant requesting reinstatement of licensure after a license has been suspended for more than 30 days due to non-renewal or after a license has been voluntarily relinquished with the Board's consent shall consist of:

- (1) typed or legibly printed, ~~notarized~~ signed or digitally signed application form and supervision contract form;
- (2) signed consent form, completed Fingerprint Record Card, and other such form(s) or information as required by the North Carolina Department of Justice to perform a criminal history record check;
- (3) payment of fee required by the North Carolina Department of Justice to perform a criminal history record check;
- (4) documentation of having completed a minimum of ~~48~~ 24 continuing education hours

- as specified in Rule .2104 of this Section during the two years preceding the date of application for reinstatement of licensure;
- (5) completed information forms from present and past supervisors;
- (6) three completed reference forms from professionals who are familiar with the applicant's current work, one of which shall be from a doctoral level psychologist;
- (7) written verification and report on the status of any occupational licensure, including dates of licensure and any disciplinary action which is pending or has been taken, sent directly to the Board or to the Board's authorized agent from any other regulatory agency in North Carolina and any other jurisdiction in which the applicant has applied for a license, is currently licensed, or previously was licensed, if applicable;
- (8) official graduate college transcripts, not on file in the Board's office, sent directly to the Board or to the Board's authorized agent by the training institution(s); and
- (9) payment of the renewal and reinstatement fees within 30 days after receiving notification from the Board that reinstatement of licensure has been approved.

(c) An application shall contain all requested materials as set forth in Paragraph (b) of this Rule to be complete. An incomplete application shall be active for three months from the date of application. At the end of such time, if still incomplete, the application shall be void, and the applicant shall be deemed to have discontinued the application process. If the individual chooses to pursue licensure at a later date, the individual shall ~~totally~~ reapply.

(d) To be considered to have made application for reinstatement of licensure pursuant to G.S. 90-270.5(a), the information specified in Subparagraphs (b)(1) through (b)(4) of this Rule shall be filed in the Board office within 30 days of offering to practice or undertaking the practice of psychology in North Carolina.

(e) ~~Reexamination may be required for reinstatement.~~ The Board may require applicants for reinstatement to take the national examination, state examination, state renewal examination and/or other examination in effect at the time of application for reinstatement.

Authority G.S. 90-270.9; 90-270.14(a)(2); 90-270.15(f),(h); 90-270.22(a).

#### **21 NCAC 54 .2104 CONTINUING EDUCATION**

(a) The purpose of continuing education is to provide for the continuing professional education of all psychologists licensed by the North Carolina Psychology Board consistent with the purpose of the Board ~~which is~~ to protect the public from the practice of psychology by unqualified persons and from unprofessional conduct by persons licensed to practice psychology.

(b) This Rule applies to all individuals licensed by the Board who renew their licenses and compliance ~~Compliance~~ with this Rule ~~shall be is~~ a condition for license renewal. A license shall be

suspended automatically by operation of law in accordance with G.S. 90-270.15(f) if a licensee fails to meet continuing education requirements specified in this Rule. This Rule shall apply to all individuals licensed by the North Carolina Psychology Board who choose to renew their licenses in North Carolina. No exceptions to the continuing education requirements specified in this Rule shall be granted. Licensees who would otherwise not be exempt from licensure, required to be licensed e.g., because they are not practicing psychology in North Carolina, may relinquish their licenses if they do not wish to comply with the requirements specified in this Rule.

~~(e) A continuing education hour is defined as one hour of instructional or contact time.~~

~~(d) Category A requirements shall be met through attendance at formally organized courses, seminars, workshops, symposiums, and postdoctoral institutes; or through completion of on line or correspondence courses. Programs shall relate to topics listed in Paragraph (g) of this Rule; be identified as offering continuing education for psychologists; and be sponsored or co-sponsored by the North Carolina Psychology Board, by the American Psychological Association, by American Psychological Association approved sponsors, or by North Carolina Area Health Education Centers. Contact hours shall be specified by the sponsor.~~

~~(e) Category B requirements shall be met through attendance at colloquia, presentations of invited speakers, grand rounds, and in-house seminars; attendance at programs offered at meetings of professional or scientific organizations which are not approved for Category A credit; participation in formally organized study groups or journal clubs; and self study (e.g., reading articles or books for professional growth or in preparation for publishing, teaching, or making a presentation). One continuing education hour shall be credited for each hour of participation in Category B activities.~~

~~(f) A licensee shall complete a minimum of 18 continuing education hours in each biennial renewal period which begins on the first day of October in each even numbered year. Continuing education hours shall not carry over from one renewal period to the next. At least nine continuing education hours shall be in Category A activities which shall include a minimum of three continuing education hours in the area of ethical and legal issues in the professional practice of psychology.~~

~~(g) Topics for Category A and Category B requirements shall fall within the following areas:~~

- ~~(1) ethical and legal issues in the professional practice of psychology, and~~
- ~~(2) the maintenance and upgrading of professional skills and competencies within the psychologist's scope of practice. This includes, but is not limited to, training in empirically supported treatments, the application of research to practice, and training in best practice standards and guidelines.~~

~~(h) Continuing education hours shall not be allowed for the following activities:~~

- ~~(1) business meetings or presentations, professional committee meetings, and meetings or presentations concerned with the management of a professional practice;~~

- ~~(2) membership, office in, or participation on boards and committees of professional organizations;~~
- ~~(3) research;~~
- ~~(4) teaching, presentations, and publication, except as allowed as self study in preparation for these activities as provided under Paragraph (e) of this Rule; and~~
- ~~(5) personal psychotherapy or personal growth experience.~~

~~(i) An individual licensed on or before October 1, 2002, shall attest on the license renewal application for the 2004-2006 biennial renewal period, and on each subsequent biennial renewal application, to having met the mandatory continuing education requirements specified in this Rule during the two years preceding the October 1st renewal date. An individual licensed after October 1, 2002, shall attest on the second license renewal application following licensure, and on each subsequent biennial renewal application, to having met the mandatory continuing education requirements specified in this Rule during the two years preceding the October 1st renewal date.~~

~~(j) An applicant for reinstatement of licensure shall document that he or she has completed a minimum of 18 continuing education hours as specified in this Rule within the two years preceding the date of application for reinstatement of licensure and shall attest on each subsequent biennial renewal application to having met the mandatory continuing education requirements specified in this Rule.~~

~~(k) For Category A, a licensee shall maintain certificates from Category A programs and written documentation of the following for a minimum of seven years:~~

- ~~(1) date of program;~~
- ~~(2) number of contact hours;~~
- ~~(3) name of sponsor of program;~~
- ~~(4) title of program; and~~
- ~~(5) location of program.~~

~~(l) For Category B, a licensee shall maintain applicable written documentation of the following for Category B activities consistent with this Rule for a minimum of seven years:~~

- ~~(1) date of program or activity;~~
- ~~(2) number of instructional or contact hours as defined in Paragraphs (d) and (e) of this Rule;~~
- ~~(3) description of activity;~~
- ~~(4) name of presenter, facilitator, or leader;~~
- ~~(5) name of sponsor;~~
- ~~(6) location;~~
- ~~(7) full citation of article; and~~
- ~~(8) summary of content.~~

~~The nature of the Category B activity determines the applicable documentation. For example, name of presenter, facilitator, or leader; name of sponsor; and location are not required when a licensee documents reading a journal article.~~

~~(m) A licensee shall provide certificates, documentation, and a signed attestation form designed by the Board within 30 days after receiving written notification from the Board that proof of completion of continuing education hours is required. The Board may randomly verify the documentation of required continuing education hours for a percentage of licensees and may do so during the investigation of any complaints. A licensee shall not~~

~~submit documentation of continuing education obtained unless directed to do so by the Board. The Board shall not serve as a depository for continuing education materials prior to its directing that documentation must be submitted.~~

(c) Definitions.

- (1) Continuing education hour – one hour of instructional or contact time.
- (2) Biennial renewal period – the period of time from the first day of October in each even numbered year, continuing for the following two years and sixty days, which is until the last day in November in the next even numbered year.
- (3) Category A program sponsor –
  - (A) North Carolina Psychology Board;
  - (B) American Psychological Association (APA);
  - (C) American Psychological Association approved sponsors;
  - (D) National Association of School Psychologists (NASP);
  - (E) National Association of School Psychologists approved sponsors;
  - (F) North Carolina Area Health Education Centers (NCAHEC); or
  - (G) North Carolina Psychological Association (NCPA).
- (4) Category B program sponsor – any program sponsor not listed in Subparagraph (3) of this Paragraph.

(d) During each biennial renewal period, a licensee must complete a minimum of 24 continuing education hours, a minimum of 15 of which must be completed under a Category A program sponsor as defined in Subparagraph (c)(3) of this Rule. Included in the 15 hours under a Category A program sponsor, a minimum of 3 continuing education hours in the area of ethics in the professional practice of psychology must be completed. To be credited as fulfillment of this requirement, the word "ethics" or a derivative of the word "ethics" must be in the title of the program, and the program must include such content. After completing a minimum of 15 hours of Category A continuing education, the remaining hours may be completed in either Category A or Category B.

(e) Except as specified in Paragraphs (g) and (h) of this Rule, the 24 continuing education hours, whether Category A or B, must meet all of the following requirements:

- (1) The continuing education hours must be obtained through:
  - (A) in-person attendance at programs;
  - (B) presentations at programs; or
  - (C) completion of on-line or correspondence courses.
- (2) The program sponsor shall award a certificate of completion which documents the following information:
  - (A) name of sponsor and any cosponsor of program;
  - (B) number of contact hours credited explicitly for psychologists;

- (C) title of program;
- (D) date of program; and
- (E) in the case of an APA or NASP approved sponsor, a statement that the entity is APA or NASP approved to provide the program as continuing education to psychologists.

- (3) All continuing education hours, whether Category A or B, must be in the maintenance and enrichment of professional skills and competencies within the licensee's scope of practice in psychology, including, but not limited to:

- (A) training in empirically supported assessment and/or treatment;
- (B) the application of research to the practice of psychology;
- (C) legal issues in psychology;
- (D) ethics in the professional practice of psychology;
- (E) training in how to properly supervise in accordance with Board rules regarding supervision requirements, as described in Rule .2001(c) of this Chapter; and
- (F) training in best practice standards and guidelines.

(f) To renew a licensee, a licensee shall submit the following to document that he or she has met the continuing education requirements specified in this Rule:

- (1) a signed attestation form created by the Board; and
- (2) except as specified in Paragraphs (g) and (h) of this Rule, copies of certificates of completion that include the information specified in Subparagraph (e)(2) of this Rule.

(g) A maximum of three continuing education hours may be credited in each biennial renewal period for any licensee who has received Board-required supervision, except when specified otherwise under a Consent Order or Final Decision executed by the Board. These three hours must be documented by the supervisor and will be credited toward the maximum nine hours allowed under Category B program sponsors.

(h) A maximum of nine continuing education hours may be credited in each biennial renewal period for graduate course work completed on a pass/fail or graded basis in a doctoral psychology program that is approved by the American Psychological Association. These hours must be documented on an official transcript sent to the Board by the institution of higher education at which the applicant completed the courses and will be credited toward the maximum nine hours allowed under Category B program sponsors.

(i) A maximum of three continuing education hours may be credited in each biennial renewal period for completion in each renewal cycle of the Board developed ethics renewal examination described in Rule .1901(a)(3) of this Chapter.

(j) Continuing education hours credited for license renewal in one biennium renewal period shall not be credited for license renewal in another biennium renewal period.

(k) An individual licensed on or before October 1, 2020, shall attest on the license renewal application for the 2020-2022 biennial renewal period, and on each subsequent biennial renewal application, to having met the mandatory continuing education requirements specified in this Rule. An individual licensed after October 1, 2020, shall attest on the second license renewal application following licensure, and on each subsequent biennial renewal application, to having met the mandatory continuing education requirements specified in this Rule.

(l) An applicant for reinstatement of licensure must document that he or she has completed a minimum of 24 continuing education hours as specified in this Rule within the two years preceding the date of application for reinstatement of licensure and must attest on each subsequent biennial renewal application to having met the mandatory continuing education requirements specified in this Rule.

*Authority G.S. 90-270.9; 90-270.14(a)(2).*

## **SECTION .2200 - PROFESSIONAL CORPORATION**

### **21 NCAC 54 .2202 CERTIFICATE OF REGISTRATION**

The information required for an applicant to obtain a certificate of registration for a professional corporation or professional limited liability company organized to render professional psychological services shall consist of:

- (1) typed, or legibly printed, notarized signed or digitally signed application form; form. The form shall include the following information:
  - (A) name of corporation;
  - (B) purpose for which corporation is organized;
  - (C) mailing address;
  - (D) email address;
  - (E) telephone number;
  - (F) name, address, and license number (if applicable) of incorporator(s);
  - (G) name and license number of stockholder(s);
  - (H) name and occupation of members of board of directors;
  - (I) name and occupation of officers;
  - (J) name and license number of psychologists to be employed by the corporation; and
  - (K) name and duties of persons other than psychologists employed, or to be employed, by the corporation.
- (2) registration fee; a completed Articles of Incorporation for a professional corporation or the Articles of Organization for a professional limited liability company to be reviewed and approved by the Board, Board Chair or the Chair's designee; and
- (3) following submission of the Board-approved Articles of Incorporation or Articles of Organization to the Secretary of State by the applicant, the applicant must submit to the

Board a final certified copy by from the Secretary of State of the Articles of Incorporation or Articles of Organization. Organization issued by the Secretary of State. The certificate of registration shall remain effective until January 1 following the date of such registration.

*Authority G.S. 55B-10; 57C-2-01(c); 90-270.9.*

### **21 NCAC 54 .2203 RENEWAL OF CERTIFICATE OF REGISTRATION (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

## **SECTION .2300 - ADMINISTRATIVE HEARING PROCEDURES**

### **21 NCAC 54 .2301 RIGHT TO HEARING**

*Authority G.S. 90-270.9; 150B-3(b); 150B-38.*

### **21 NCAC 54 .2302 REQUEST FOR HEARING**

*Authority G.S. 90-270.9; 150B-38.*

### **21 NCAC 54 .2303 GRANTING OR DENYING HEARING REQUESTS**

*Authority G.S. 90-270.9; 150B-38.*

### **21 NCAC 54 .2304 NOTICE OF HEARING**

In addition to the items specified in G.S. 150B-38(b) to be included in the notice, notices of administrative hearings of the North Carolina Psychology Board; Board of Examiners of Practicing Psychologists;

- (1) shall give the name, position, address, and telephone number of a member, employee, or agent of the Board to contact for further information or discussion;
- (2) ~~may give notice of the date and place for a prehearing conference, if any;~~
- (3)(2) shall inform the party or parties, other than the Board, of the right to file a written response to the allegations in the notice of hearing no later than ten days prior to any scheduled hearing date or within such other time as may be set out in the notice; and
- (4)(3) may include any other information deemed relevant to informing the party or parties as to the procedure of the hearing.

*Authority G.S. 90-270.9; 150B-38.*

### **21 NCAC 54 .2305 WHO SHALL HEAR CONTESTED CASES (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

**21 NCAC 54 .2308 DISQUALIFICATION OF BOARD MEMBER (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**21 NCAC 54 .2309 FAILURE TO APPEAR (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**21 NCAC 54 .2311 SUBPOENAS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**21 NCAC 54 .2314 PRESIDING OFFICER (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .2400 - RULEMAKING PROCEDURES**

**21 NCAC 54 .2401 PETITION FOR RULEMAKING HEARINGS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**21 NCAC 54 .2402 DISPOSITION OF PETITION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .2600 - DECLARATORY RULINGS**

**21 NCAC 54 .2601 REQUEST FOR DECLARATORY RULING (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .2700 - HEALTH SERVICES PROVIDER CERTIFICATION**

**21 NCAC 54 .2701 HEALTH SERVICES ACTIVITIES**

(a) Health services in psychology include services provided directly to clients/patients or groups of clients/patients. Such services include the following:

- (1) the diagnosis, evaluation, treatment, remediation, and prevention of:
  - (A) mental, emotional, and behavioral disorder;
  - (B) substance abuse and dependency; and
  - (C) psychological aspects of physical illness, accident, injury, and disability.
- (2) psychotherapy, counseling, psychoeducational, and neuropsychological services related to services described in Subparagraph (a)(1) of this Rule;
- (3) psychological assessment and report writing, including scoring of test protocols;
- (4) documentation of services provided to clients/patients (e.g., progress or process notes, clinical entries in records);
- (5) collateral contacts by a psychologist with family members, caretakers, and other individuals for the purpose of benefiting a client/patient of that psychologist; and
- (6) consultation with other professionals in service to the psychologist's clients/patients.

(b) Health services in psychology do not include the following:

- (1) clinical supervision of other professionals who provide health services to clients/patients;
- (2) psychoeducational instruction to individuals who are not identified clients/patients of the psychologist providing such instruction;
- (3) career counseling, to include assessment of interests and aptitudes;
- (4) vocational and educational guidance;
- (5) the teaching of psychology;
- (6) the conduct of psychological research and the provision of psychological services or consultations to organizations or institutions, except when such activities involve the delivery of direct health services to individuals or groups of individuals who are themselves the intended beneficiaries of such services; or
- (7) administrative tasks associated with the delivery of health services, (e.g., billing and insurance communications).

*Authority G.S. 90-270.2(4); 90-270.2(8); 90-270.9.*

**21 NCAC 54 .2703 DISPLAY OF CERTIFICATE**

A health services provider certificate shall be displayed in close proximity to a licensee's licensure ~~certificate~~ certificate, ~~in his/her principal place of employment and in a place that is visible to the licensee's served clientele.~~ or be available for view upon request by the licensee's patients/clients, at any time that licensee is practicing psychology.

*Authority G.S. 90-270.9; 90-270.20.*

**21 NCAC 54 .2704 HSP-P REQUIREMENTS**

(a) To be certified as a health services provider psychologist (HSP-P), a licensed psychologist holding permanent North Carolina licensure shall be qualified by education as defined in Paragraph (b) of this Rule and shall have completed two years of supervised experience, of which at least one year shall be post-doctoral. These two years of experience shall meet the criteria specified in Paragraphs (c) and (d) of this Rule, or in Paragraph (e) of this Rule. An applicant shall submit a completed, notarized application form ~~and~~ and, if requested by the Board, provide documentation of meeting health services provider requirements. The application form shall include the following information: applicant's name; mailing address; email address; telephone number; license number; and health services provider certification level applying for.

(b) An applicant shall demonstrate that ~~he/she~~ he or she is qualified by education to provide health services by meeting one of the following criteria:

- (1) is currently approved for listing, or is currently listed, in the National Register of Health Service Providers in Psychology;
- (2) is a diplomat in good standing of the American Board of Professional Psychology in a health services specialty area;
- (3) is a graduate from a doctoral program which was accredited at the time of the applicant's graduation by the American Psychological

- Association or the Canadian Psychological Association in Clinical Psychology, Counseling Psychology, School Psychology, or Combined Professional-Scientific Psychology; or
- (4) has an academic foundation in the provision of health services as defined in Rule .2701(a) of this Section which meets the following requirements:
- (A) The applicant's doctoral program, or formal postdoctoral program of re-specialization, in psychology shall be an organized training program which has established a clear intent, through the structure of the program and in institutional publications, to train individuals to provide health services in psychology as defined in G.S. 90-270.2(4) and Rule .2701(a) of this Section.
  - (B) Within the applicant's doctoral training program, or formal postdoctoral program of respecialization, in health services in psychology, course work shall have been completed in the areas of assessment, diagnosis, intervention, and psychopathology. The applicant shall further establish that he or she has completed relevant course work that has provided training in diagnosis, evaluation, treatment, remediation, or prevention of one or more of the following areas: (i) mental, emotional, and behavioral disorder, disability, and illness; (ii) substance abuse; (iii) habit and conduct disorder; or (iv) psychological aspects of physical illness, accident, injury, and disability.
  - (C) Pursuant to final Board approval, an applicant shall be considered to have been trained in the provision of health services in psychology if the applicant establishes that requirements set forth in Parts (b)(4)(A) and (b)(4)(B) of this Rule have been met through a doctoral program, or formal postdoctoral program of re-specialization, in any one of the following areas of specialization in psychology: applied behavior analysis in psychology, applied developmental psychology, clinical psychology, counseling psychology, rehabilitation psychology, or school psychology.
  - (D) An applicant who holds a doctoral degree in psychology, who applies for licensure as a Licensed Psychologist, and who holds a master's or specialist degree in psychology that provides training in the provision of health services shall not be eligible for HSP-P certification if the applicant's doctoral program, or formal postdoctoral re-specialization program, in psychology does not also provide training in the provision of health services as set forth in Parts (b)(4)(A) and (b)(4)(B) of this Rule. If the applicant has a doctoral degree in an area of psychology that does not provide training in the provision of health services, that applicant shall not be eligible for HSP-P certification even if the applicant establishes that course work in the areas listed in Part (b)(4)(B) was completed or if the applicant has completed an applied training experience (i.e., practicum, internship, residency, postdoctoral fellowship, etc.) in the provision of health services without having completed a planned and directed doctoral or formal postdoctoral training program in health services in psychology.
  - (E) An applicant who has completed a doctoral program that establishes in institutional publications an intent to train individuals for careers in administration, research, teaching, academia, and other areas not involving training in the provision of health services in psychology shall not be considered to have been provided an academic foundation in the provision of health services and shall not be approved for HSP-P certification.
  - (F) Only that course work taken at an institution of higher education as defined in G.S. 90-270.2(5) shall be considered by the Board to establish that an applicant has an academic foundation in the provision of health services.
- (c) Except as provided in Paragraph (e) of this Rule, an applicant shall demonstrate one year of supervised experience which meets the following requirements for an organized health services training program:
- (1) The training shall be a planned and directed program in the provision of health services, in contrast to "on the job" training, and shall provide the trainee with a planned, programmed sequence of training experience.
  - (2) The training site shall have a written statement or brochure which describes its training program and is made available to prospective trainees.

- (3) Trainees shall be designated as "interns," fellows," or "residents," or hold other designation which clearly indicates training status.
  - (4) The training shall be completed within 24 months.
  - (5) The training shall consist of at least 1500 hours of practice.
  - (6) At least 25% of the training shall be spent in the provision of direct health services, as defined in Rule .2701(a) of this Section, to patients or clients seeking assessment or treatment.
  - (7) Up to 25% of the training may be comprised of research activities.
  - (8) There shall be a minimum of two doctorally trained licensed, certified, or license eligible psychologists at the training site as supervisors who have ongoing contact with the trainee.
  - (9) The training shall be under the direction of a licensed, certified, or license eligible doctorally trained psychologist who is on the staff of the training site, who approves and monitors the training, who is familiar with the training site's purposes and functions, who has ongoing contact with the trainee, and who agrees to assume responsibility for the quality, suitability, and implementation of the training experience.
  - (10) The training shall provide a minimum of two hours per week of individual face-to-face discussion of the trainee's practice, with the specific intent of overseeing the health services rendered by the trainee. Supervision may be provided in part by psychiatrists, social workers, or other mental health professionals qualified by the training site, but at least 50 percent of supervision shall be provided by licensed, certified, or license-eligible doctorally trained psychologists.
  - (11) In additional to individual supervision, the training site shall provide a minimum of two hours per week of instruction which may be met by group supervision, assigned reading, seminars, and similarly constituted organized training experiences. This specified year of supervised experience may be obtained at a predoctoral level, provided that an additional year of supervised experience as defined in Paragraph (d) of this Rule is obtained at a post-doctoral level. Internships accepted for listing in the National Register of Health Service Providers in Psychology and internships accredited by the American Psychological Association in Clinical Psychology, Counseling Psychology, or School Psychology shall be deemed to meet the requirements in this Paragraph.
- (d) An applicant shall demonstrate one year of supervised experience which meets the following requirements:
- (1) The experience shall consist of a minimum of one calendar year and include 1500 hours of supervised experience.
  - (2) The experience shall be completed within a consecutive four-year period.
  - (3) The supervision shall be for the direct provision of health services in psychology, as defined in Rule .2701(a) of this Section, by the applicant to individuals or groups of clients/patients.
  - (4) At least one hour per week of formal, face-to-face, individual supervision shall have been provided, except that individual supervision provided up until January 1, 1996, may have been provided in two, two-hour sessions per month.
  - (5) The supervisor shall have been an appropriately licensed or certified psychologist, whose license or certificate was in good standing, in the state where the practice occurred.
  - (6) The supervisor, at the time of supervision, shall not have been in a dual relationship with the supervisee, ~~e.g.,~~ such as spouse, other close relative, close personal friend, or therapist. This specified year of supervised experience may be obtained at a predoctoral level, provided that an additional year of supervised experience as defined in Paragraph (c) of this Rule is obtained at a post-doctoral level.
- (e) An applicant who holds a provisional license as a Licensed Psychologist in North Carolina on the effective date of this Rule shall not be required to have had one year of supervised experience which meets the requirements of an organized health services training program as specified in Paragraph (c) of this Rule, but shall have completed two years of supervised experience, of which at least one year shall be post-doctoral, as defined in Paragraph (d) of this Rule.
- (f) An applicant who documents that ~~he/she~~ he or she meets any one of the following criteria shall be deemed to meet all requirements of this Rule for certification as a health services provider psychologist (HSP-P):
- (1) is currently approved for listing, or is currently listed, in the National Register of Health Service Providers in Psychology;
  - (2) is a diplomate in good standing of the American Board of Professional Psychology in Clinical Psychology, Counseling Psychology, or School Psychology;
  - (3) is a graduate from a doctoral program which was accredited at the time of the applicant's graduation by the American Psychological Association in Clinical Psychology, Counseling Psychology, School Psychology, or Combined Professional-Scientific Psychology and which included an internship accredited by the American Psychological Association, and who completes a postdoctoral year of supervised experience as defined in either Paragraph (c) or (d) of this Rule;

- (4) is a graduate from a doctoral program which was fully accredited at the time of the applicant's graduation by the American Psychological Association in School Psychology and which included an internship meeting the guidelines of the Council of Directors of School Psychology Programs as documented by the program chair, and who completes a postdoctoral year of supervised experience as defined in either Paragraph (c) or (d) of this Rule;
- (5) is a graduate who received a doctoral degree prior to 1979 from a program which included course work which demonstrates an academic foundation in the provision of health services as defined in Rule .2701(a) of this Section, and which included the equivalent of a one year supervised internship in an American Psychological Association accredited program providing health services, in a Veterans Administration setting providing health services, or at a site providing health services which was specifically acceptable to the applicant's doctoral training program, and who completes a postdoctoral year of supervised experience as defined in either Paragraph (c) or (d) of this Rule; or
- (6) is approved for licensure under senior psychologist requirements specified in 21 NCAC 54 .1707 and demonstrates that at least 25 percent of ~~his/her~~ his or her qualifying practice has been in the provision of direct health services, as defined in Rule .2701(a) of this Section.

(g) An applicant applying under Subparagraph (f)(1) of this Rule, and who has not yet been approved for listing in the National Register of Health Service Providers in Psychology, shall be permitted to file an affidavit verifying that ~~he/she~~ he or she qualifies for listing in the Register. Upon receipt of this affidavit, the Board may issue a health services provider certificate, conditioned upon receipt of a letter from the Register within 60 days of receipt of the affidavit which confirms approval for, or listing in, the Register. An extension of the 60 days may be granted upon showing that additional time is needed for application review by the National Register of Health Service Providers. (h) An applicant for health services provider certification who knowingly provides false or fraudulent information to the Board with respect to ~~his/her~~ his or her application, or who fails to provide the notification from the National Register of Health Service Providers in Psychology where required, shall be subject to disciplinary action by the Board, including revocation of licensure and the health services provider certificate.

*Authority G.S. 90-270.9; 90-270.15(a)(3); 90-270.15(a)(22); 90-270.20(b).*

#### **21 NCAC 54 .2705 HSP-PP REQUIREMENTS**

- (a) To be certified as a health services provider psychologist (HSP-PP), a licensed psychologist holding provisional North Carolina licensure shall be qualified by education. An applicant shall submit a completed, notarized application form ~~and~~ and, if requested by the Board, provide documentation of meeting health services provider requirements. The application form shall include the following information: applicant's name; mailing address; email address; telephone number; license number; and health services provider certification level applying for.
- (b) An applicant shall demonstrate that ~~he/she~~ he or she is qualified by education to provide health services by meeting one of the criteria defined in Rule .2704(b) of this Section.

*Authority G.S. 90-270.9; 90-270.20(d).*

#### **21 NCAC 54 .2706 HSP-PA REQUIREMENTS**

- (a) To be certified as a health services provider psychological associate (HSP-PA), a North Carolina licensed psychological associate shall be qualified by education. An applicant shall submit a completed, notarized application form ~~and~~ and, if requested by the Board, provide documentation of meeting health services provider requirements. The application form shall include the following information: applicant's name; mailing address; email address; telephone number; license number; and health services provider certification level applying for.
- (b) An applicant shall demonstrate that ~~he/she~~ he or she holds a master's, specialist, or doctoral degree which provides an academic foundation in the provision of health services as defined in Rule .2701(a) of this Section and which meets the following requirements:

- (1) The master's, specialist, or doctoral program in psychology shall be an organized training program which has established a clear intent, through the structure of the program and in institutional publications, to train individuals to provide health services in psychology as defined in G.S. 90-270.2(4) and Rule .2701(a) of this Section.
- (2) Within the applicant's training program in health services in psychology, course work shall have been completed in the areas of assessment, diagnosis, intervention, and psychopathology. The applicant shall further establish that he or she has completed relevant course work that has provided training in diagnosis, evaluation, treatment, remediation, or prevention of one or more of the following areas:
  - (A) mental, emotional, and behavioral disorder, disability, and illness;
  - (B) substance abuse;
  - (C) habit and conduct disorder; or
  - (D) psychological aspects of physical illness, accident, injury, and disability.
- (3) Pursuant to final Board approval, an applicant shall be considered to have been trained in the provision of health services in psychology if the applicant establishes that requirements set forth



- in Subparagraphs (b)(1) and (b)(2) of this Rule have been met through a master's, specialist, or doctoral degree program in psychology in any one of the following areas of specialization in psychology: applied behavior analysis in psychology, applied developmental psychology, clinical psychology, counseling psychology, rehabilitation psychology, school psychology, health psychology, or substance abuse treatment psychology.
- (4) If the applicant is unable to establish that he or she has a master's, specialist, or doctoral degree from a program in psychology that provides training in the provision of health services, the applicant shall not be eligible for HSP-PA certification. This shall apply even if the applicant establishes that course work in the areas listed in Subparagraph (b)(2) of this Rule was completed or if the applicant has completed an applied training experience (i.e., practicum, internship, residency, postdoctoral fellowship, etc.) in the provision of health services without having completed a planned and directed training program in health services in psychology.
  - (5) An applicant who has completed a program in psychology that establishes in institutional publications an intent to train individuals for careers in administration, research, teaching, academia, and other areas not involving training in the provision of health services in psychology shall not be considered to have been provided an academic foundation in the provision of health services and shall not be approved for HSP-PA certification.
  - (6) Only course work taken at an institution of higher education as defined in G.S. 90-270.2(5) shall be considered by the Board to establish that an applicant has an academic foundation in the provision of health services.
  - (7) Applicants for HSP-PA who received their degrees during or after 1997 shall document that their degree program included an internship, externship, practicum, or supervised field experience at a site providing health services. This supervised training experience shall meet all of the following criteria:
    - (A) It shall be a planned and directed program of training in health services, in contrast to on-the-job training, and shall provide the trainee with a planned and directed sequence of training integrated with the educational program in which the student is enrolled. This supervised training experience shall be planned by the educational program faculty and training site staff rather than by the student.
    - (B) The supervised training experience shall have a written description detailing the program of training, or a written agreement, developed prior to the time of the training, between the student's educational program and the training site. Such an agreement shall be approved by the student's educational program prior to the beginning of the supervised training experience.
    - (C) The supervised training experience site shall have a designated and appropriately licensed or certified psychologist or psychological associate responsible for the integrity and quality of the supervised training experience.
    - (D) A student enrolled in a supervised training experience shall be designated as any of the following: an "intern," "extern," or "practicum student," or shall hold a title which indicates training status for the practice of psychology and provision of health services.
    - (E) The supervised training experience shall be a minimum of 12 weeks consisting of at least 500 hours of supervised training. At least 400 hours of the training shall be in the provision of health services as defined by G.S. 90-270.2(4) and Rule .2701(a) of this Section.
    - (F) The supervised training experience shall be completed within a period of 12 consecutive months at not more than two training sites.
    - (G) Except as provided in Part (b)(7)(H) of this Rule, regularly scheduled individual face-to-face supervision with the specific intent of overseeing the provision of health services shall be provided by a North Carolina licensed or certified psychologist or psychological associate or by a psychologist who is exempt from licensure, pursuant to G.S. 90-270.4(b), at a rate of not less than one hour per week during at least 12 separate weeks of the supervised training experience. The supervisor shall establish and maintain a level of supervisory contact consistent with professional standards and shall be accessible to the student.
    - (H) If completing a supervised training experience outside of North Carolina, the student shall be provided regularly

scheduled individual face-to-face supervision with the specific intent of overseeing the provision of health services by a licensed or certified psychologist or psychological associate or by an individual holding a master's, specialist, or doctoral degree in psychology, at a rate of not less than one hour per week during at least 12 separate weeks of the supervised training experience. The supervisor shall establish and maintain a level of supervisory contact consistent with professional standards and shall be accessible to the student. Proof of the supervisor's license or degree program, as applicable, may be required by the Board to establish the supervisor's training in psychology.

(c) An applicant who is approved for licensure as a Psychological Associate under senior psychologist requirements specified in 21 NCAC 54 .1707 and demonstrates that at least 25 percent of ~~his/her~~ his or her qualifying practice has been in the provision of direct health services, as defined in Rule .2701(a) of this Section, shall be deemed to meet all requirements of this Rule for certification as a health services provider psychological associate (HSP-PA).

*Authority G.S. 90-270.9; 90-270.13(c); 90-270.20(c).*

#### **SECTION .2800 - ANCILLARY SERVICES**

**21 NCAC 54 .2801 SCOPE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**21 NCAC 54 .2802 TITLES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**21 NCAC 54 .2803 EMPLOYMENT AND SUPERVISION OF UNLICENSED INDIVIDUALS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**21 NCAC 54 .2804 QUALIFICATIONS AND TRAINING (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**21 NCAC 54 .2805 SERVICES APPROPRIATE FOR ANCILLARY SERVICES PERSONNEL (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**21 NCAC 54 .2806 SERVICES NOT APPROPRIATE FOR UNLICENSED INDIVIDUALS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**Note from the Codifier:** The rules published in this Section of the NC Register are emergency rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code. The agency must subsequently publish a proposed temporary rule on the OAH website ([www.ncoah.com/rules](http://www.ncoah.com/rules)) and submit that adopted temporary rule to the Rules Review Commission within 60 days from publication of the emergency rule or the emergency rule will expire on the 60<sup>th</sup> day from publication. This section of the Register may also include, from time to time, a listing of emergency rules that have expired. See G.S. 150B-21.1A and 26 NCAC 02C .0600 for adoption and filing requirements.

**TITLE 16 – DEPARTMENT OF PUBLIC INSTRUCTION**

**Rule-making Agency:** State Board of Education

**Rule Citation:** 16 NCAC 06A .0104; 06B .0109-.0114; 06C .0316-.0333, .0701; 06D .0107, .0211, .0212, .0307-.0313; 06E .0106, .0107, .0204-.0206; 06G .0314-.0316, .0503-.0524; 06H .0113-.0117; and 06K .0101-.0105

**Effective Date:** August 20, 2019

**Findings Reviewed and Approved by the Codifier:** August 12, 2019

**Reason for Action:** On July 22, 2019, HB 362 (SL 2019-154)-An Act to Adopt a Fifteen-Point Scale in the Determination of School Performance Grades, To Require the State Board of Education to Adopt Emergency Rules in Preparation for Permanent Rule Making and To Direct the State Board of Education to Study the Reporting Methods used for School Accountability Purposes on the North Carolina Annual Report Cards became law. Section 27.(b) of SL 2019-154 states that, "The General Assembly finds that the North Carolina Supreme

Court, in *North Carolina State Board of Education v. State of North Carolina and the North Carolina Rules Review Commission*, No. 110PA16-2 (June 8, 2018), affirmed the authority of the General Assembly to delegate authority to the Rules Review Commission to review and approve the administrative rules that are proposed by the State Board of Education for codification. To ensure that administration of the free public schools shall continue without interruption, the existing policies of the State Board of Education subject to rule making as provided in Chapter 150B of the General Statutes shall be deemed interim rules so long as they do not conflict with any provisions of the General Statutes."

Section 27.(b)(1) of SL 2019-154 states that, "The State Board of Education shall adopt all interim rules as emergency rules and submit those rules to the Codifier of Rules no later than August 9, 2019." Accordingly, in open session of its August 8, 2019 meeting, the State Board of Education adopted as "emergency rules" those interim rules in its existing policy manual. Presently, it is the Board's intention to adopt these emergency rules as permanent rules by May 30, 2020, in a manner consistent with SL 2019-154 and the Administrative Procedure Act. The Board expects to submit a notice for publication of text to adopt the emergency rules as permanent rule by December 6, 2019.

| Citation for Proposed Rule | Title of Proposed Rule   | Existing SBE Interim Code* |
|----------------------------|--|----------------------------|
| 16 NCAC 06A .0104          | Waivers for school calendar start and end dates  | CALN 000                   |
| 16 NCAC 06B .0109          | Contract Transportation of Exceptional Children  | TRAN-000                   |
| 16 NCAC 06B .0110          | Establishment of School Bus Routes   | TRAN-002                   |
| 16 NCAC 06B .0111          | School Bus Passengers  | TRAN-006                   |
| 16 NCAC 06B .0112          | Purchase of School Bus Equipment   | TRAN-008                   |
| 16 NCAC 06B .0113          | Activity Bus Drivers   | TRAN-010                   |
| 16 NCAC 06B .0114          | School Bus and Activity Bus Inspections  | TRAN-011                   |
| 16 NCAC 06C .0333          | Clinical Practice in Education Preparation Programs (EPPs)   | EVAL-024                   |
| 16 NCAC 06C .0316          | General Licensure Requirements   | LICN 001                   |
| 16 NCAC 06C .0317          | Routes to Licensure  | LICN 002                   |
| 16 NCAC 06C .0318          | Licensing Testing Requirements   | LICN 003                   |
| 16 NCAC 06C .0319          | Licensure Renewal Requirements   | LICN 005                   |
| 16 NCAC 06C .0320          | Experience/Degree Credit for Salary Purposes   | LICN 006                   |
| 16 NCAC 06C .0321          | License Suspension/Revocation  | LICN 007                   |
| 16 NCAC 06C .0322          | Fees   | LICN 008                   |
| 16 NCAC 06C .0323          | Procedure for Seeking Exception from Licensure Requirements  | LICN 021                   |
| 16 NCAC 06C .0324          | Conversion of Initial Professional License to Continuing Professional License                                      | LICN 022                   |
| 16 NCAC 06C .0325          | Educator Preparation Program (EPP) Recognition and Approval  | TCED 004                   |
| 16 NCAC 06C .0326          | Sanctions for Educator Preparation Programs (EPPs)   | TCED 008                   |
| 16 NCAC 06C .0327          | Minimum Admissions Requirements and Exceptions for Educator Preparation Program (EPP) Leading to Initial Licensure | TCED 009                   |

**EMERGENCY RULES**

|                   |  |          |
|-------------------|--|----------|
| 16 NCAC 06C .0328 | Reports of Alleged Violations Regarding Educator Preparation Programs (EPPs)   | TCED 012 |
| 16 NCAC 06C .0329 | Educator Preparation Programs (EPP) Accountability Requirements and Risk Factors   | TCED 013 |
| 16 NCAC 06C .0330 | Teacher Assistants and Internships   | TCED 014 |
| 16 NCAC 06C .0331 | School Administrator Preparation Programs  | TCED 015 |
| 16 NCAC 06C .0332 | Beginning Teacher Support Programs   | TCED 016 |
| 16 NCAC 06C .0701 | Model Teacher Contracts for Teachers   | BENF-009 |
| 16 NCAC 06D .0107 | State Graduation Requirements  | GRAD 004 |
| 16 NCAC 06D .0211 | Textbook Evaluation Criteria and Invitation to Submit  | TEXT 002 |
| 16 NCAC 06D .0212 | Textbook Publishers Registry   | TEXT 006 |
| 16 NCAC 06D .0307 | Test Administration in Public Schools  | TEST-001 |
| 16 NCAC 06D .0308 | Role of the Testing Coordinator  | TEST-002 |
| 16 NCAC 06D .0309 | Requirements of End-of-Course Assessments  | TEST-003 |
| 16 NCAC 06D .0310 | Appropriate Use of State Tests   | TEST-004 |
| 16 NCAC 06D .0311 | Testing Code of Ethics   | TEST-010 |
| 16 NCAC 06D .0312 | English Learners: Identification, Participation in the Statewide Testing Program, Eligibility for Testing Accommodations and Exit Criteria | TEST-011 |
| 16 NCAC 06D .0313 | Use of State-Designated Assessments for the NC Teacher Evaluation Process  | TEST-016 |
| 16 NCAC 06E .0107 | School Violence Acts Defined & Annual Report of these Crimes   | SSCH-000 |
| 16 NCAC 06E .0106 | Definition of Student Chronic Absenteeism Rate   | ATND-004 |
| 16 NCAC 06E .0204 | Interscholastic Athletics  | ATHL-001 |
| 16 NCAC 06E .0205 | Concussion Safety Requirements for Interscholastic Competition   | ATHL-003 |
| 16 NCAC 06E .0206 | Athletic Trainers  | ATHL 000 |
| 16 NCAC 06G .0314 | Alternative Schools' Accountability Models   | ACCT-038 |
| 16 NCAC 06G .0315 | Accountability Annual Performance Standards  | ACCT-021 |
| 16 NCAC 06G .0316 | Purpose and Composition of SBE's Compliance Commission for Accountability  | ADVS-000 |
| 16 NCAC 06G .0503 | Charter School Accountability Requirements   | CHTR-001 |
| 16 NCAC 06G .0504 | Charter Schools Student Admissions   | CHTR-003 |
| 16 NCAC 06G .0505 | Charter Schools Financial Noncompliance – Impact of Financial Noncompliance  | CHTR-006 |
| 16 NCAC 06G .0506 | Charter Schools Governance Noncompliance   | CHTR-006 |
| 16 NCAC 06G .0507 | Charter School Renewal Process   | CHTR-007 |
| 16 NCAC 06G .0508 | Charter School Application and Review Process  | CHTR-012 |
| 16 NCAC 06G .0509 | Planning Year for New Preliminary Charter Schools  | CHTR-013 |
| 16 NCAC 06G .0510 | Charter Amendments for Existing Public Charter Schools – Approval Process  | CHTR-014 |
| 16 NCAC 06G .0511 | Charter Amendments for Existing Public Charter Schools – Required Documentation  | CHTR-014 |
| 16 NCAC 06G .0512 | Fast Track Replication of High Quality Charter Schools – Purpose and Definitions   | CHTR-016 |
| 16 NCAC 06G .0513 | Fast Track Replication of High Quality Charter Schools - Eligibility   | CHTR-016 |
| 16 NCAC 06G .0514 | Fast Track Replication of High Quality Charter Schools – General Requirements  | CHTR-016 |
| 16 NCAC 06G .0515 | Fast Track Replication of High Quality Charter Schools - Accountability  | CHTR-016 |
| 16 NCAC 06G .0516 | Virtual Charter Schools Attendance and Membership – Applicability  | CHTR-018 |
| 16 NCAC 06G .0517 | Alternative Charter School Designation Policy – Purpose and Applicability  | CHTR-020 |
| 16 NCAC 06G .0518 | Alternative Charter School Designation Policy - Eligibility  | CHTR-020 |
| 16 NCAC 06G .0519 | Alternative Charter School Designation Policy - Application  | CHTR-020 |
| 16 NCAC 06G .0520 | Alternative Charter School Designation Policy – Application Approval   | CHTR-020 |
| 16 NCAC 06G .0521 | Alternative Charter School Designation Policy – Review and Renewal of Designation  | CHTR-020 |
| 16 NCAC 06G .0522 | Alternative Charter School Designation Policy – Termination of Designation   | CHTR-020 |
| 16 NCAC 06G .0523 | Management Organizations and Support Organizations   | CHTR-021 |

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**EMERGENCY RULES**

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|                   |   |          |
|-------------------|---|----------|
| 16 NCAC 06G .0524 | Charter Schools Process for Assumption of Inadequately Performing Charter Schools | CHTR-017 |
| 16 NCAC 06H .0113 | Nutrition Standards for Elementary Schools  | CHNU-002 |
| 16 NCAC 06H .0114 | Dispute Resolution Process for Homeless Students – Definitions                    | SBOP-020 |
| 16 NCAC 06H .0115 | Dispute Resolution Process for Homeless Students – LEA Dispute Resolution Process | SBOP-020 |
| 16 NCAC 06H .0116 | Dispute Resolution Process for Homeless Students – State Appeal Process           | SBOP-020 |
| 16 NCAC 06H .0117 | Operations of Federal Programs  | FEDL-000 |
| 16 NCAC 06K .0101 | School Security   | ESDB 001 |
| 16 NCAC 06K .0102 | Due Process Manual  | ESDB 002 |
| 16 NCAC 06K .0103 | SCOS  | ESDB 010 |
| 16 NCAC 06K .0104 | Placement procedures  | ESDB 014 |
| 16 NCAC 06K .0105 | Weapons Prohibited on School Property   | ESDB 021 |

*\*Provided for Reference Purposes Only*

Full text of the Emergency Rules are posted on the OAH website: <https://files.nc.gov/ncoah/documents/Rules/16-NCAC-06-Emergency-Rules.pdf>

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**APPROVED RULES**

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*This Section includes a listing of rules approved by the Rules Review Commission followed by the full text of those rules. The rules that have been approved by the RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register are identified by an \* in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

Rules approved by the Rules Review Commission at its meeting on July 18, 2019 Meeting.

**REGISTER CITATION TO THE  
NOTICE OF TEXT****ADMINISTRATION, DEPARTMENT OF**

|                             |                   |           |
|-----------------------------|-------------------|-----------|
| <u>Definitions</u>          | 01 NCAC 06F .0101 | 33:19 NCR |
| <u>Application</u>          | 01 NCAC 06F .0102 | 33:19 NCR |
| <u>Procedures</u>           | 01 NCAC 06F .0103 | 33:19 NCR |
| <u>Terms and Conditions</u> | 01 NCAC 06F .0104 | 33:19 NCR |
| <u>Termination</u>          | 01 NCAC 06F .0105 | 33:19 NCR |
| <u>Function</u>             | 01 NCAC 09 .0501  | 33:20 NCR |
| <u>Applicant Review</u>     | 01 NCAC 09 .0502  | 33:20 NCR |

**HHS - HEALTH BENEFITS, DIVISION OF**

|  |                     |           |
|--|---------------------|-----------|
| <u>Disability</u>                      | 10A NCAC 23E .0105* | 33:13 NCR |
| <u>What Resources are Counted</u>      | 10A NCAC 23E .0202* | 33:13 NCR |
| <u>Time Limits for Corrections</u>     | 10A NCAC 23G .0203* | 33:13 NCR |
| <u>Procedure for Review of Records</u> | 10A NCAC 23H .0109* | 33:13 NCR |

**CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

|   |                    |           |
|---|--------------------|-----------|
| <u>Rule-Making and Administrative Hearing Procedures</u>            | 12 NCAC 09A .0107* | 33:13 NCR |
| <u>Administrative Hearing Procedures</u>                            | 12 NCAC 09A .0207* | 33:13 NCR |
| <u>Certification of Instructors</u>                                 | 12 NCAC 09B .0301* | 33:13 NCR |
| <u>Terms and Conditions of General Instructor Certification</u>     | 12 NCAC 09B .0303* | 33:13 NCR |
| <u>Terms and Conditions of Specialized Instructor Certification</u> | 12 NCAC 09B .0305* | 33:18 NCR |
| <u>Terms and Conditions of Specialized Instructor Certification</u> | 12 NCAC 09B .0305* | 33:18 NCR |
| <u>Suspension: Revocation: Denial/School Dir. Certification</u>     | 12 NCAC 09B .0503* | 33:13 NCR |
| <u>Certification of Qualified Assistant</u>                         | 12 NCAC 09B .0504* | 33:18 NCR |
| <u>Terms and Conditions of Qualified Assistant</u>                  | 12 NCAC 09B .0505* | 33:18 NCR |
| <u>Agency Retention of Records of Certification</u>                 | 12 NCAC 09C .0307  | 33:13 NCR |
| <u>Minimum Training Specifications: Annual In-Service Training</u>  | 12 NCAC 09E .0105* | 33:13 NCR |
| <u>Instructor Responsibilities</u>                                  | 12 NCAC 09F .0105* | 33:13 NCR |
| <u>Retention of Records of Certification</u>                        | 12 NCAC 09G .0306* | 33:13 NCR |
| <u>Certification of Instructors</u>                                 | 12 NCAC 09G .0307* | 33:13 NCR |
| <u>Terms and Conditions of Specialized Instructor Certification</u> | 12 NCAC 09G .0311* | 33:18 NCR |
| <u>Suspension: Revocation: Denial/School Dir. Certification</u>     | 12 NCAC 09G .0407* | 33:13 NCR |
| <u>Certification of Qualified Assistant</u>                         | 12 NCAC 09G .0417* | 33:18 NCR |
| <u>Terms and Conditions of Qualified Assistant Certification</u>    | 12 NCAC 09G .0418* | 33:18 NCR |

**SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION**

|  |                    |           |
|--|--------------------|-----------|
| <u>Documentation of Educational Requirements</u>             | 12 NCAC 10B .0302* | 33:17 NCR |
| <u>Basic Law Enforcement Certificate</u>                     | 12 NCAC 10B .1003  | 33:17 NCR |
| <u>Basic Detention Officer Professional Certificate</u>      | 12 NCAC 10B .1203  | 33:17 NCR |
| <u>Basic Reserve Deputy Sheriff Professional Certificate</u> | 12 NCAC 10B .1403  | 33:17 NCR |

|   |                    |           |
|---|--------------------|-----------|
| <u>Basic Telecommunicator Certificate</u> | 12 NCAC 10B .1603  | 33:17 NCR |
| <u>Minimum Training Requirements</u>      | 12 NCAC 10B .2005* | 33:17 NCR |

**TRANSPORTATION, DEPARTMENT OF**

|                             |                     |           |
|-----------------------------|---------------------|-----------|
| <u>Fees</u>                 | 19A NCAC 02E .0221* | 33:18 NCR |
| <u>Location Of TODS</u>     | 19A NCAC 02E .1103* | 33:18 NCR |
| <u>Composition of Signs</u> | 19A NCAC 02E .1105* | 33:18 NCR |
| <u>Fees</u>                 | 19A NCAC 02E .1106* | 33:18 NCR |

**DIETETICS/NUTRITION, BOARD OF**

|  |                   |           |
|--|-------------------|-----------|
| <u>Applications</u>                    | 21 NCAC 17 .0104* | 33:20 NCR |
| <u>Examination for Licensure</u>       | 21 NCAC 17 .0105  | 33:20 NCR |
| <u>Provisional License</u>             | 21 NCAC 17 .0107* | 33:20 NCR |
| <u>Issuance and Renewal of License</u> | 21 NCAC 17 .0109* | 33:20 NCR |

**TITLE 01 - DEPARTMENT OF ADMINISTRATION**

**01 NCAC 06F .0101 DEFINITIONS**

For the purposes of this Chapter, the following definitions apply:

- (1) "Agency" means the body to which State owned or leased property is allocated.
- (2) "DIT" means the NC Department of Information Technology.
- (3) "WISP" means Wireless Internet Service Provider.

*History Note: Authority G.S. 146-29.1; 146-29.2; 146-30; S.L. 2018-5, s. 37.1(a)-(i); Temporary Adoption Eff. January 28, 2019; Eff. August 1, 2019.*

**01 NCAC 06F .0102 APPLICATION**

Upon referral from the DIT, an Agency requesting the construction and placement of broadband equipment on state property shall submit to the Division of State Property a completed PO-2, Disposition of Real Property form, as set forth in 01 NCAC 06B .0300, and BB-2, WISP Application form, that shall include the following information:

- (1) description of the state property;
- (2) information pertaining to the lessee; and
- (3) equipment to be used and scope of work.

*History Note: Authority G.S. 146-29.1; 146-29.2; 146-30; S.L. 2018-5, s. 37.1(a)-(i); Temporary Adoption Eff. January 28, 2019; Eff. August 1, 2019.*

**01 NCAC 06F .0103 PROCEDURES**

- (a) The Division of State Property shall evaluate the information provided on the application and determine fair market value of the lease pursuant to G.S. 146-29.1.
- (b) The Division of State Property shall generate the lease, license, or easement and provide it to the Agency for review and distribution to the broadband provider.

(c) Prior to the construction or placement of broadband equipment, the broadband provider and the Division of State Property shall execute duplicate original agreements.

(d) The Agency shall ensure all equipment is installed in accordance with the terms set out in the lease, license or easement.

*History Note: Authority G.S. 146-29.1; 146-29.2; 146-30; S.L. 2018-5, s. 37.1(a)-(i); Eff. August 1, 2019.*

**01 NCAC 06F .0104 TERMS AND CONDITIONS**

The following terms and conditions shall apply to the location and installation of equipment by a broadband provider on state owned or leased property:

- (1) All lease and license agreements shall be a five year term with two optional five year renewal periods.
- (2) All lease and license agreements shall include an access agreement and a non-exclusive utility easement.
- (3) The fair market value of the state-owned or leased property is subject to an annual rate adjustment as set forth in the lease.
- (4) Rent shall be paid annually on the anniversary of the executed lease.
- (5) An Agency may require an escrow fund as part of the broadband provider's lease or license agreement.
- (6) Site specific protocols as set out in the lease and license agreement for construction and maintenance procedures shall be adhered to by the Applicant during installation and during any maintenance.
- (7) Upgrades or changes to equipment shall be reviewed by the Division of State Property for compliance with the existing lease prior to any changes to equipment.
- (8) The Agency shall not supply space in any existing equipment buildings, nor electricity.

*History Note:* Authority G.S. 146-29.1; 146-29.2; 146-30; S.L. 2018-5, s. 37.1(a)-(i);  
Eff. August 1, 2019.

#### **01 NCAC 06F .0105 TERMINATION**

Upon termination of the agreement, at the Agency's request, the broadband provider shall remove equipment and cabling from the tower, ice-bridge, and within fenced property. The Agency shall then inspect the property to ensure compliance with this Paragraph. Upon a finding by the Agency that all equipment and cabling is removed, and the property has been returned to pre-leased conditions, the escrow funds shall be returned to the broadband provider within 60 days.

*History Note:* Authority G.S. 146-29.1; 146-29.2; 146-30; S.L. 2018-5, s. 37.1(a)-(i);  
Eff. August 1, 2019.

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#### **01 NCAC 09 .0501 FUNCTION**

#### **01 NCAC 09 .0502 APPLICANT REVIEW**

*History Note:* Authority G.S. 113A; 143-341; Federal Executive Order 12372;  
Eff. December 1, 1983;  
Repealed Eff. August 1, 2019.

### **TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES**

#### **10A NCAC 23E .0105 DISABILITY**

(a) As set out in the Medicaid State Plan, individuals eligible for Medicaid in December 1973 as disabled individuals and who meet conditions required by 42 CFR 435.133 shall be permanently and totally disabled based on a physical or mental impairment that precludes him or her from engaging in substantial gainful activity, as defined at 20 CFR 416.910, which is incorporated by reference with subsequent amendments and editions and available free of charge at <https://www.ecfr.gov/>, and such impairment can be expected to result in death, or has lasted or can be expected to last 12 months or longer.

(b) Any client who has applied for Medicaid since January 1, 1974 on the basis of disability shall be found disabled under the definition of disability and procedures established for evaluation of vocational and medical factors under the supplemental security income program.

(c) A social history shall be completed by the caseworker and submitted to the Division of Vocational Rehabilitation Services, Disability Determination Services Section with the request for disability determination. The social history shall provide information to identify and contact the claimant; contact information of anyone assisting the claimant in providing the social history; nature and onset of the impairment with the date it became disabling; date claimant stopped work or if still working, provide name of employer with contact information, how many hours worked and earnings; claimant's description of impairment; work history and educational background; contact information for

all medical sources during the last 12 months with condition treated, dates seen, and whether treatment is still ongoing; Vocational Rehabilitation office, counselor's contact information, and last seen date; in cases where mental impairment is alleged or there is evidence of drug or alcohol abuse or homelessness, provide name, address, and phone number of a third party contact; signature, title, and phone number of caseworker.

(d) The Disability Determination Services Section shall determine disability for all individuals, except for those receiving social security or supplemental security income on the basis of a disability.

(e) Social Security Administration (SSA) decisions made for social security disability or supplemental security income shall be binding for persons applying for Medicaid.

(f) Disability determination shall be verified from the client's award letter, SDX, BENDEX, Disability Determination Services Section approval, Administrative Law Judge decision, or other documentary evidence. SDX and BENDEX are defined in 10A NCAC 23A .0102.

(g) Disability for purposes of Medicaid eligibility shall cease when the client is determined by the Social Security Administration or the Disability Determination Services Section to be capable of engaging in substantial gainful activity. The client may appeal the termination of Medicaid, pursuant to G.S. 108A-70.9A.

*History Note:* Authority G.S. 108A-54; 108A-54.1B; 20 C.F.R. 404.1505; 42 C.F.R. 435.540; 42 C.F.R. 435.541; *Alexander v. Flaherty Consent Order* filed February 14, 1992; Eff. September 1, 1984;  
Amended Eff. April 1, 1993; August 1, 1990;  
Transferred from 10A NCAC 21B .0305 Eff. May 1, 2012;  
Readopted Eff. August 1, 2019.

#### **10A NCAC 23E .0202 WHAT RESOURCES ARE COUNTED**

(a) North Carolina has contracted with the Social Security Administration under Section 1634 of the Social Security Act to provide Medicaid to all SSI recipients. Except as specified in Paragraphs (j) and (k) of this Rule, the resources that are counted for Medicaid eligibility for individuals under any aged, blind, and disabled coverage group shall be determined based on standards and methodologies in Title XVI of the Social Security Act, which is incorporated by reference including all subsequent amendments and editions. This CFR may be accessed at <http://uscode.house.gov/> at no cost. Applicants for and recipients of Medicaid shall use their own resources to meet their needs for living costs and medical care to the extent that such resources can be made available.

(b) The value of resources currently available to any member of a budget unit, as defined in 10A NCAC 23A .0102, shall be considered in determining financial eligibility. A resource shall be considered available when it is actually available and when the budget unit member has a legal interest in the resource and he or she, or someone acting in his or her behalf, can take any necessary action to make it available.

(c) Resources shall be excluded in determining financial eligibility when the budget unit member with a legal interest in the resources is declared incompetent, unless:



- (1) A guardian of the estate, a general guardian, or an interim guardian has been appointed in accordance with the law and is able to act on behalf of his or her ward in North Carolina and in any state where such resources are located; or
- (2) A durable power of attorney, valid in North Carolina and in any state where such resource is located, has been granted to a person who is authorized and able to exercise such power.

(d) When there is a guardian, an interim guardian, or a person holding a valid, durable power of attorney for a budget unit member, but such person is unable, fails, or refuses to act within application processing time standards to make the resources available to meet the needs of the budget unit member, a referral shall be made to the services unit of the county department of social services for a determination of whether the guardian or attorney in fact is acting in the best interests of the member and if not, the county department of social services shall contact the clerk of court for intervention. The resources shall be excluded in determining financial eligibility pending action by the clerk of court.

(e) When a Medicaid application is filed on behalf of an individual who:

- (1) is alleged to be mentally incompetent;
- (2) has or may have a legal interest in a resource that affects the individual's eligibility; and
- (3) does not have a representative with legal authority to use or dispose of the individual's resources

the individual's representative or family member shall be instructed by the county department of social services to file within 30 calendar days a judicial proceeding under G.S. 35A to declare the individual incompetent and appoint a guardian. If the representative or family member either fails to file such a proceeding within 30 calendar days or fails to obtain a ruling on the filed proceeding within the deadlines set by the Clerk of Court in the county where the proceeding will be heard or causes it to be dismissed, a referral shall be made to the protective services unit of the county department of social services for guardianship services. If an allegation of incompetence is supported by competent evidence as defined in Paragraph (h) of this Rule, and the incompetence has lasted, or is expected to last, at least 30 consecutive days or until the individual's death, the resources shall be excluded beginning with the date that the evidence shows that he or she became incompetent, except as provided in Paragraphs (f) or (g) of this Rule.

(f) The budget unit member's resources shall be counted in determining his or her eligibility for Medicaid beginning the first day of the month following the month a guardian of the estate, general guardian, or interim guardian is appointed, provided that after the appointment, property that cannot be disposed of or used except by order of the court shall continue to be excluded until completion of the applicable procedures for disposition specified in G.S. 1 or G.S. 35A.

(g) When the court rules that the budget unit member is competent or no ruling is made because of the death or recovery from incompetence of the member, his or her resources shall be counted except for periods of time for which it can be established

by competent evidence as defined in Paragraph (h) of this Rule, that the member was in fact incompetent for at least 30 consecutive days, or until his or her death. Any showing of incompetence is subject to rebuttal by competent evidence as defined in Paragraph (h) of this Rule.

(h) For purposes of this Rule, "competent evidence" is defined as the written statement or testimony at a competency hearing of a physician, psychologist, nurse, or social worker with knowledge of the physical and mental condition of the individual, that contains information on the individual's condition, the basis of that information, the beginning date of incompetence, the reason the individual is incompetent, and, if no longer incompetent, when the individual recovered competence.

(i) If the value of countable resources of the budget unit exceeds the reserve allowance for the unit as set out in the Medicaid State Plan, the case shall be ineligible unless one of the following is met:

- (1) For Family and Children's medically needy cases and aged, blind, or disabled cases protected by grandfathered provisions, and medically needy cases not protected by grandfathered provision, eligibility shall begin on the day countable resources are reduced to allowable limits or excess income is spent down, whichever occurs later;
- (2) For categorically needy aged, blind, or disabled cases not protected by grandfathered provisions, eligibility shall begin no earlier than the month countable resources are reduced to allowable limits as of 11:59 pm on the last day of the previous month.

(j) Resources counted in the determination of financial eligibility for categorically needy aged, blind, and disabled cases, and Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, Qualifying Individual and Qualified Disabled Working Individual cases shall be based on resource standards and methodologies in Title XVI of the Social Security Act except for the following methodologies:

- (1) The value of personal effects and household goods shall be not counted.
- (2) The value of tenancy in common interest in real property shall be not counted.
- (3) The value of life estate interest in real property shall be not counted.
- (4) The value of burial plots shall be not counted.
- (5) The cash value of life insurance when the total face value of all cash value bearing life insurance policies does not exceed ten thousand dollars (\$10,000.00) shall be not counted.

(k) Resources counted in the determination of financial eligibility for medically needy aged, blind, and disabled cases shall be based on resource standards and methodologies in Title XVI of the Social Security Act except for the following methodologies:

- (1) The value of personal effects and household goods shall be not counted.
- (2) The value of tenancy in common interest in real property shall be not counted.
- (3) The value of life estate interest in real property shall not be counted.

- (4) Individuals with resources in excess of the resource limit at 11:59 pm on the last day of the previous month, the first moment of the month may become eligible during the current month at the point that resources are reduced to the allowable limit.
- (5) The value of burial plots shall be not counted.
- (6) The cash value of life insurance when the total face value of all cash value bearing life insurance policies does not exceed ten thousand dollars (\$10,000.00) shall be not counted.
- (l) Resources counted in the determination of financial eligibility for Family and Children's medically needy cases are:
  - (1) Cash on hand;
  - (2) The balance of savings accounts, including savings of a student saving his or her earnings for school expenses;
  - (3) The balance of checking accounts, less the current monthly income, deposited to meet the budget unit's monthly needs when reserve was verified by the county department of social services or lump sum income from self-employment deposited to pay annual expenses;
  - (4) The cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500.00);
  - (5) Stocks, bonds, mutual fund shares, certificates of deposit, and other liquid assets;
  - (6) Assets held in patient accounts in long term care facilities; and
  - (7) Equity in non-income producing personal property limited to:
    - (A) Mobile home not used as home;
    - (B) Boats, boat trailers, and boat motors;
    - (C) Campers;
    - (D) Farm and business equipment; and
    - (E) Equity in motor vehicles in excess of one vehicle per adult if not income-producing.
- (m) Real property shall be excluded from countable resources for Family and Children's medically needy cases.
- (n) One motor vehicle per adult shall be excluded for Family and Children's medically needy cases.
- (o) For Family and Children's medically needy cases, income-producing vehicles and personal property shall be excluded from countable resources.
- (p) For Family and Children's medically needy cases, the value of non-excluded motor vehicles is the Current Market Value as determined by the assessed county tax value, less encumbrances. If the client disagrees with the assigned value, he or she has the right to rebut the value by producing independent evidence of value.
- (q) There is no resource test for Family and Children's categorically needy cases pursuant to 42 C.F.R. 435.603.

*History Note:* Authority G.S. 108A-54; 108A-54.1B; 108A-55; 42 U.S.C. 703; 42 U.S.C. 704; 42 U.S.C. 1396; 42 C.F.R.

435.121; 42 C.F.R. 435.210; 42 C.F.R. 435.603; 42 C.F.R. 435.840; 42 C.F.R. 435.843; 42 C.F.R. 435.845; 45 C.F.R. 233.20;  
 Eff. September 1, 1984;  
 Temporary Amendment Eff. September 1, 1985, for a period of 92 days to expire on December 1, 1985;  
 Amended Eff. January 1, 1995; November 1, 1994; September 1, 1993; March 1, 1993;  
 Temporary Amendment Eff. September 13, 1999;  
 Temporary Amendment Expired June 27, 2000;  
 Temporary Amendment Eff. September 12, 2000;  
 Amended Eff. March 19, 2001;  
 Temporary Amendment Eff. April 16, 2001;  
 Amended Eff. August 1, 2002;  
 Temporary Amendment Eff. March 1, 2003;  
 Amended Eff. August 1, 2004;  
 Transferred from 10A NCAC 21B .0310 Eff. May 1, 2012;  
 Readopted Eff. August 1, 2019.

### **10A NCAC 23G .0203 TIME LIMITS FOR CORRECTIONS**

- (a) The county department of social services and Division shall make corrections required by Rule .0202 of this Section within 30 days after discovery of the need for action unless good cause exists to extend the time limit.
- (b) For the purposes of this Rule, "good cause" is limited to:
  - (1) The need of the county department of social services to obtain verification, as defined at 10A NCAC 23A .0102, of other conditions of eligibility before authorizing eligibility;
  - (2) The county department of social services is unable to locate the applicant or recipient; or
  - (3) The county department of social services disagrees with a decision requiring corrective action and requests administrative review by the Division. In the case of disagreement under Rule .0202(a)(2) of this Section, administrative review by the Division shall be limited to decisions issued pursuant to G.S. 108A-79(j).
- (c) To receive State and federal financial participation in any benefits authorized retroactively by corrective actions, the effective date of the correction must correspond with the date assistance would have been effective but may be no earlier than the following dates:
  - (1) Retroactive to the date ordered by the appeal or court decision if all eligibility conditions are met, including any legal retroactive coverage period associated with the adverse action;
  - (2) Retroactive to the date that all requirements of eligibility are met but no earlier than the 12<sup>th</sup> month immediately preceding the month the change is reported or the administrative error was discovered; or
  - (3) Retroactive to the date required for corrective action due to errors cited from monitoring under application processing standards in 10A NCAC 23C .0202.

(d) If the change is adverse to the recipient, it shall be effective the first calendar month following expiration of the 10 business day advance notice period, as defined in 10A NCAC 23A .0102.

*History Note: Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 431.246; 42 C.F.R. 431.250; 42 C.F.R. 435.903; Eff. June 1, 1990; Temporary Amendment Eff. March 1, 2003; Amended Eff. August 1, 2004; Transferred from 10A NCAC 21A .0603 Eff. May 1, 2012; Readopted Eff. August 1, 2019.*

**10A NCAC 23H .0109 PROCEDURE FOR REVIEW OF RECORDS**

(a) The director or his or her delegated representative shall be present when the client reviews the record. The director or his or her delegated representative shall document in the client record the review of the record by the client.

(b) A client may contest the accuracy, completeness, or relevancy of the information in his or her record. If the Division or county department of social services determines correction is required by federal statute or regulation to support receipt of State or federal participation, the correction of the contested information shall be accomplished by inserting it in the record when the director or his or her delegated representative concurs that such correction is justified. When the director or his or her delegated representative does not concur, the client shall be allowed to enter a statement in the record. Deletion of the contested information is not permitted. If a delegated representative decides not to correct contested information, the decision not to correct shall be reviewed by the supervisor of the person making the initial decision. All corrections and statements shall be made a permanent part of the record and shall be disclosed to any recipient of the disputed information.

(c) Upon written request from the client, his or her personal representative, including an attorney, may have access to review or obtain without charge, a copy of the information in his or her record. The client may permit the personal representative to have access to his or her entire record or may restrict access to certain portions of the record. Rules .0107 and .0108 of this Section shall apply.

*History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-80; Eff. September 1, 1984; Transferred from 10A NCAC 21A .0409 Eff. May 1, 2012; Readopted Eff. August 1, 2019.*

**TITLE 12 - DEPARTMENT OF JUSTICE**

**12 NCAC 09A .0107 PROCEDURES FOR PETITIONS FOR RULE-MAKING**

(a) Petitions for Rule-Making shall be submitted to the Commission and shall contain:

- (1) petitioner's name, address, and telephone number;
- (2) a draft of the proposed rule or rule change for adoptions or amendments; and

- (3) the reason for its proposal.
- (b) Petitioners may also submit the following in the petition:
- (1) the effect of the proposal on existing rules or decisions;
  - (2) data supporting the proposal;
  - (3) practices likely to be affected by the proposal; and
  - (4) a list or description of persons likely to be affected by the proposed rule.

*History Note: Authority G.S. 150B-20; Eff. January 1, 1981; Amended Eff. April 1, 2009; November 1, 1993; July 1, 1988; April 1, 1984; Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge Donald W. Overby declared Paragraph (d) of this rule void as applied in Curtis Canty v. NC Criminal Justice Education and Training Standards Commission (14 DOJ 01202); Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019; Amended Eff. August 1, 2019.*

**12 NCAC 09A .0207 ADMINISTRATIVE HEARING PROCEDURES**

(a) Administrative hearings in contested cases conducted by the Commission or an Administrative Law Judge as authorized in G.S. 150B-40(e) shall be governed by:

- (1) procedures set out in Article 3A of G.S. 150B;
- (2) the Rules of Civil Procedure as contained in G.S. 1A-1;
- (3) the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes.

(b) The rules establishing procedures for contested cases adopted by the Office of Administrative Hearings as contained in 26 NCAC 03 are hereby incorporated by reference, including subsequent amendments and editions, for contested cases for which this agency has authority to adopt rules pursuant to G.S. 150B-38(h).

(c) If the case is conducted under G.S. 150B-40(b), the presiding officer shall have the powers and duties of the Chief Administrative Law Judge or the presiding Administrative Law Judge in 26 NCAC 03.

(d) Pursuant to G.S. 17C-11(b), an applicant for certification, or a certified officer shall have 30 days from the date of receipt of a notice of proposed action by the Commission to request a contested case hearing.

*History Note: Authority G.S. 17C-6; 17C-11(b); 150B-38(h); 150B-40; Eff. August 1, 2019.*

**12 NCAC 09B .0301 CERTIFICATION OF INSTRUCTORS**

(a) A person participating in a Commission-certified criminal justice training course or program as an instructor, teacher, professor, lecturer, or other participant making presentations to

the class shall first be certified by the Commission as an instructor.

(b) The Commission shall certify instructors under the following categories: General Instructor Certification, Specialized Instructor Certification, or Professional Lecturer Certification as outlined in Rules .0302, .0304 and .0306 of this Section. Instructor certification shall be granted on the basis of documented qualifications of experience, education, and training in accordance with the requirements of this Section and as stated on the applicant's Request for Instructor Certification Form.

(c) In addition to all other requirements of this Section, each instructor certified by the Commission to teach in a Commission-certified course shall remain competent in his or her specialized areas. Such competence shall include remaining current in the instructor's area of expertise, which shall be demonstrated by attending and completing all updated instructor training courses required by the Commission.

(d) If a person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of the rules in this Subchapter, the Commission shall take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual; and
- (5) revoking the individual's certification.

(e) The Commission shall deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification;
- (2) has failed to remain competent in the person's areas of expertise;
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans outlined in the "Instructor Training Manual" as found in Rule .0209 of this Subchapter;
- (4) has failed to follow specific guidelines outlined in the "Basic Law Enforcement Training Course Management Guide" as found in Rule .0205 of this Subchapter;
- (5) has demonstrated unprofessional personal conduct in the delivery of Commission-mandated training. For the purposes of this Subparagraph, unprofessional personal conduct means an act that is: job-related conduct that constitutes a violation of State or federal law; conviction or commission of a criminal offense, as set out in 12 NCAC 09A .0204; the willful violation of Rules of this Chapter; conduct that is detrimental to instruction in the Commission's mandated courses; the abuse of a client or student whom the instructor is teaching or supervising or falsification of an instructor application or in other employment

documentation. For purposes of this Chapter, conduct is "detrimental to instruction" if the conduct is demeaning or disruptive to the learning environment, thus impeding the students' ability to learn;

- (6) has demonstrated instructional incompetence;
- (7) has knowingly and willfully obtained or attempted to obtain instructor certification by deceit, fraud, or misrepresentation;
- (8) has failed to meet or involve moral turpitude as defined in: *In re Willis*, 288 N.C. 1, 215 S.E.2d 771, appeal dismissed 423 U.S. 976 (1975); *State v. Harris*, 216 N.C. 746, 6 S.E.2d 854 (1940); *In re Legg*, 325 N.C. 658, 386 S.E. 2d 174 (1989); *In re Applicants for License*, 143 N.C. 1, 55 S.E. 635 (1906); *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924); *State v. Benbow*, 309 N.C. 538, 308 S.E.2d 647 (1983); and later court decisions that cite these cases as authority, and as required to discharge the duties of a criminal justice instructor;
- (9) has failed to deliver training in a manner consistent with the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program as found in 12 NCAC 09H .0102;
- (10) has knowingly and willfully aided or attempted to aid any person in obtaining qualification or certification under the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program by deceit, fraud, or misrepresentation;
- (11) has committed or been convicted of an offense which could result in the denial, suspension, or revocation of an officer's law enforcement certification, pursuant to 12 NCAC 09G .0504; or
- (12) has knowingly made a material misrepresentation of any information required for certification or accreditation.

(f) When a person certified as a law enforcement officer by the North Carolina Criminal Justice Education and Training Standards Commission (Commission), the North Carolina Sheriffs Education and Training Standards Commission (Sheriffs' Commission), the North Carolina Department of Insurance, Office of State Fire Marshal, Fire Rescue Commission (Fire Commission), Office of Emergency Medical Services North Carolina Company/Campus Police Program; or a North Carolina, out of state or federal approving, certifying or licensing agency; has been denied certification or had his or her certification suspended or revoked by their respective Commission, or agency the State or local law enforcement officer shall report the suspension or revocation to the Criminal Justice Standards within . five days. He or she shall also have his or her General Instructor Certification (if applicable) automatically suspended or revoked for the same time period as his or her respective Commission certification.

- (1) This suspension or revocation of the General Instructor certification shall also include

suspension or revocation to any Commission recognized Specialized or additional instructor certification, as outlined in 12 NCAC 09B .0304.

- (2) If the term of suspension or revocation exceeds the expiration date of the instructor's initial certification expiration date, he or she shall forfeit their certifications as a General Instructor and Specialized Instructor and shall be required to obtain certification pursuant to the requirements of Rule .0302 of this Section before any instruction may be delivered in any Commission-approved or mandated training, including the completion of a subsequent General Instructor's training course in its entirety.
- (3) If the term of suspension or revocation does not exceed the expiration date of the instructor's initial certification expiration date, the instructor shall be reinstated as a General Instructor only upon reinstatement of his or her law enforcement officer certification by the Commission. The terms of renewal for the existing General Instructor and Specialized Instructor certifications shall remain subject to all renewal requirements pursuant to 12 NCAC 09B .0303(d) by the next immediate expiration date.

*History Note: Authority G.S. 17C-6; Eff. January 1, 1981;*

*Amended Eff. December 1, 2018; October 1, 2017; October 1, 2009; August 1, 2004; April 1, 1999; July 1, 1991; January 1, 1985;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019;*

*Amended Eff. August 1, 2019.*

## **12 NCAC 09B .0303 TERMS AND CONDITIONS OF GENERAL INSTRUCTOR CERTIFICATION**

(a) An applicant meeting the requirements for certification as a general instructor shall, for the first 12 months of certification, be in a probationary status. The General Instructor Certification, Probationary Status, shall automatically expire 12 months from the date of issuance.

(b) The probationary instructor shall be eligible for general instructor status if the instructor, through application at the end of the probationary period, submits to the Commission a favorable recommendation from a School Director or In-Service Training Coordinator accompanied by a certification on a Commission Instructor Evaluation Form F-16 that the instructor taught a minimum of eight hours of Commission-accredited basic training course, Commission-recognized in-service training course, or training course pursuant to 12 NCAC 10B .0601, 10B .1302, or 10B .2005 during the probationary period. The instructor shall achieve a minimum of 64 points on all instruction evaluations submitted to the Commission. The Commission Instructor Evaluation Form F-16 is located on the agency's website:

<http://www.ncdoj.gov/getdoc/c2eba6aa-12bc-4303-bf4b-5fa0431ef5a1/F-16-6-11.aspx>.

(c) Probationary Instructors for just cause, may be granted an extension of the one-year period to teach the eight hour minimum requirement. The Director may grant such extensions on a one-time basis only not to exceed 12 months. For purposes of this Rule, "just cause" includes an accident, illness, emergency, or course cancellation that precluded the instructor from fulfilling the teaching requirement.

(d) The term of certification as a general instructor is indefinite, provided the instructor completes during each calendar year a minimum of one hour of instructor refresher training provided by North Carolina Justice Academy. The Standards Division shall post on its website on January 1 of the current year the list of instructors who have met this requirement during the previous calendar year.

(e) If the instructor fails to meet the instructor refresher training specified in Paragraph (c) of this Rule, he or she shall deliver eight hours of evaluated instruction in a Commission-accredited basic training, Commission-recognized in-service training course, or training course pursuant to 12 NCAC 10B .0601, .1302, or .2005, and complete the instructor refresher training specified in Paragraph (d) of this Rule within 60 days from the last day of the previous calendar year.

(f) If an instructor fails to meet the requirements of Paragraph (d) or (e) of this Rule, the certification period for the instructor shall cease, and the instructor shall be required to complete the requirements of Rule 09B .0302 of this Section in order to obtain probationary instructor status.

(g) The use of guest participants in a delivery of the Basic Law Enforcement Training Course is permissible. However, such guest participants shall be supervised on-site by a Commission-certified instructor and must be authorized by the School Director. A guest participant shall only be used to complement the primary certified instructor of the block of instruction and shall not replace the primary instructor.

(h) "Commission-recognized in-service training" shall mean training meeting the following requirements:

- (1) training is taught by an instructor certified by the Commission;
- (2) training utilizes a lesson plan in the Instructional Systems Design format; and
- (3) completion of training shall be demonstrated by a passing score on a written test as follows:
  - (A) a written test comprised of at least five questions per credit shall be developed by the agency or the North Carolina Justice Academy for each in-service training topic requiring testing. Written courses that are more than four credits in length are required to have a written test comprising of a minimum of 20 questions. The Firearms Training and Qualifications in-service course is exempt from this written test requirement;
  - (B) a student shall pass each test by achieving at least 70 percent correct answers; and

- (C) a student who completes a topic of in-service training in a traditional classroom setting or online and fails the end of topic exam shall be given one attempt to re-test. If the student fails the exam a second time, the student shall complete the in-service training topic in a traditional classroom setting before taking the exam a third time.
- (D) Topics delivered pursuant to 12 NCAC 09E .0104(1) and 12 NCAC 09E .0105(a)(1) shall not require written testing.

*History Note: Authority G.S. 17C-6;*

*Eff. January 1, 1981;*

*Amended Eff. January 1, 2017; December 1, 2007; November 1, 2007; August 1, 2006; January 1, 2006; August 1, 2000; July 1, 1991; October 1, 1985; January 1, 1985; January 1, 1983;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019;*

*Amended Eff. August 1, 2019.*

**12 NCAC 09B .0305 TERMS AND CONDITIONS OF  
SPECIALIZED INSTRUCTOR CERTIFICATION  
(EFFECTIVE UNTIL DECEMBER 31, 2019)**

(a) An applicant meeting the requirements for Specialized Instructor Certification as set forth in Rule .0304 of this Section shall be issued a certification to expire three years from the date of issuance. The applicant shall apply for certification as a Specialized Instructor within 60 days after the date the applicant achieved a passing score on the state comprehensive exam for the respective Specialized Instructor training course.

(b) Where certification for both General Probationary Instructor as set forth in Rule .0303 of this Section and Specialized Instructor Certification are issued on the same date, the instructor is required to instruct, within three years after certification, a minimum of 12 hours in each of the topics for which Specialized Instructor Certification was granted, and that instruction was provided in a Commission-accredited basic training, Specialized Instructor Training, Commission-recognized in-service training course, or training course delivered pursuant to 12 NCAC 10B .0601, .1302, or .2005. The instructor may satisfy the teaching requirement for the General Probationary Instructor certification by teaching any specialized topic for which certification has been issued.

(c) When Specialized Instructor Certification is issued during an existing period of General Probationary Instructor Certification, the specialized instructor may satisfy the teaching requirement for the General Probationary Certification by teaching the specialized subject for which certification has been issued.

(d) The term of certification as a specialized instructor shall not exceed three years. An application for renewal shall contain, in addition to the requirements listed in Rule .0304 of this Section, documentary evidence that the applicant has remained active in the instructional process during the previous three-year period. Such documentary evidence shall include the following:

- (1) proof that the applicant has, within the three-year period preceding application for renewal,

instructed at least 12 hours in each of the topics for which Specialized Instructor Certification was granted, and that instruction was provided in a Commission-accredited basic training, Specialized Instructor Training, Commission-recognized in-service training course, or training course delivered pursuant to 12 NCAC 10B .0601, .1302, or .2005. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators and written certification from a School Director or In-Service Training Coordinator;

- (2) proof that the applicant has, within the three-year period preceding application for renewal, attended and completed all instructor updates that have been issued by the Commission. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators, or copies of certificates of completion issued by the institution which provided the instructor updates; and

(A) a favorable written recommendation from a School Director or In-Service Training Coordinator completed on a Commission Renewal of Instructor and Professional Lecturer Certification Form (Form F-12A) stating the instructor taught at least 12 hours in each of the topics for which Specialized Instructor Certification was granted. The teaching shall have been provided in a Commission-accredited basic training, Specialized Instructor Training course, pursuant to Rule 12 NCAC 09C .0401, Commission-recognized in-service training course, or training course delivered pursuant to 12 NCAC 09F .0101, 12 NCAC 09H, 12 NCAC 10B .0601, .1302, or .2005;

(B) a favorable written evaluation by a School Director, In-Service Training Coordinator, or another Specialized Instructor certified in the same specialized subject, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-accredited basic training, Specialized Instructor Training, Commission-recognized in-service training course, or in-service training course delivered pursuant to 12 NCAC 10B .0601, .1302, or .2005 during the three-year period of Specialized Instructor Certification. Such evaluation shall be certified on a Criminal Justice Instructor Evaluation

Form F-16, located on the agency's website:

<http://www.ncdoj.gov/getdoc/c2eba6a-a-12bc-4303-bf4b-5fa0431ef5a1/F-16-6-11.aspx>;

- (C) proof that the applicant has met the requirement set forth in Rule .0303(d) of this Section;
- (D) proof that the individual applying for renewal as a Specialized Firearms Instructor has achieved a minimum score of 92 on the day and night Basic Law Enforcement Training firearms qualification courses, administered by a certified Specialized Firearms Instructor, within the three-year period preceding the application for renewal; and
- (E) proof that the individual applying for renewal as a Specialized Physical Fitness Instructor has passed the Basic Law Enforcement Training Police Officer Physical Abilities Test, administered by a certified Specialized Physical Fitness Instructor, within the three-year period preceding the application for renewal.

(e) Certification as a Specialized Instructor in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topic areas as outlined in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) of this Section shall remain in effect for 36 months from the date of issuance. During the 36 month term all non-Commission certificates required in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) for Specialized Instructor certification in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topical areas shall be maintained.

(f) The use of guest participants in a delivery of the "Basic Law Enforcement Training Course" shall be permissible. However, such guest participants are subject to the on-site supervision of a Commission-certified instructor and shall be authorized by the School Director. A guest participant shall be used only to complement the primary certified instructor of the block of instruction and shall not replace the primary instructor.

*History Note: Authority G.S. 17C-6;*

*Eff. January 1, 1981;*

*Amended Eff. January 1, 2017; February 1, 2016; August 1, 2015; May 1, 2014; June 1, 2012; November 1, 2007; January 1, 2006; December 1, 2004; August 1, 2004; August 1, 2000; July 1, 1991; July 1, 1989; December 1, 1987; February 1, 1987;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019;*

*Amended Eff. August 1, 2019.*

## **12 NCAC 09B .0305 TERMS AND CONDITIONS OF SPECIALIZED INSTRUCTOR CERTIFICATION (EFFECTIVE JANUARY 1, 2020)**

(a) An applicant meeting the requirements for Specialized Instructor Certification as set forth in Rule .0304 of this Section shall be issued a certification to expire three years from the date of issuance. The applicant shall apply for certification as a Specialized Instructor within 60 days after the date the applicant achieved a passing score on the state comprehensive exam for the respective Specialized Instructor training course.

(b) Where certification for both General Probationary Instructor as set forth in Rule .0303 of this Section and Specialized Instructor Certification are issued on the same date, the instructor is required to instruct, within three years after certification, a minimum of 12 hours in each of the topics for which Specialized Instructor Certification was granted, and that instruction was provided in a Commission-accredited basic training, Specialized Instructor Training, Commission-recognized in-service training course, or training course delivered pursuant to 12 NCAC 10B .0601, .1302, or .2005. The instructor may satisfy the teaching requirement for the General Probationary Instructor certification by teaching any specialized topic for which certification has been issued.

(c) When Specialized Instructor Certification is issued during an existing period of General Probationary Instructor Certification, the specialized instructor may satisfy the teaching requirement for the General Probationary Certification by teaching the specialized subject for which certification has been issued.

(d) The term of certification as a specialized instructor shall not exceed three years. An application for renewal shall contain, in addition to the requirements listed in Rule .0304 of this Section, documentary evidence that the applicant has remained active in the instructional process during the previous three-year period. Such documentary evidence shall include the following:

- (1) proof that the applicant has, within the three-year period preceding application for renewal, instructed at least 12 hours in each of the topics for which Specialized Instructor Certification was granted, and that instruction was provided in a Commission-accredited basic training, Specialized Instructor Training, Commission-recognized in-service training course, or training course delivered pursuant to 12 NCAC 10B .0601, .1302, or .2005. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators and written certification from a School Director or In-Service Training Coordinator;
- (2) proof that the applicant has, within the three-year period preceding application for renewal, attended and completed all instructor updates that have been issued by the Commission. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators, or copies of certificates of completion issued by the institution which provided the instructor updates; and

- (A) a favorable written recommendation from a School Director or In-Service Training Coordinator completed on a Commission Renewal of Instructor and Professional Lecturer Certification Form (Form F-12A) stating the instructor taught at least 12 hours in each of the topics for which Specialized Instructor Certification was granted. The teaching shall have been provided in a Commission-accredited basic training, Specialized Instructor Training course, pursuant to Rule 12 NCAC 09C .0401, Commission-recognized in-service training course, or training course delivered pursuant to 12 NCAC 09F .0101, 12 NCAC 09H, 12 NCAC 10B .0601, .1302, or .2005;
- (B) a favorable written evaluation by a School Director, Qualified Assistant, In-Service Training Coordinator, or another Specialized Instructor certified in the same specialized subject, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-accredited basic training, Specialized Instructor Training, Commission-recognized in-service training course, or in-service training course delivered pursuant to 12 NCAC 10B .0601, .1302, or .2005 during the three-year period of Specialized Instructor Certification. Such evaluation shall be certified on a Criminal Justice Instructor Evaluation Form F-16, located on the agency's website:  
<http://www.ncdoj.gov/getdoc/c2eba6a-a-12bc-4303-bf4b-5fa0431ef5a1/F-16-6-11.aspx>;
- (C) proof that the applicant has met the requirement set forth in Rule .0303(d) of this Section;
- (D) proof that the individual applying for renewal as a Specialized Firearms Instructor has achieved a minimum score of 92 on the day and night Basic Law Enforcement Training firearms qualification courses, administered by a certified Specialized Firearms Instructor, within the three-year period preceding the application for renewal; and
- (E) proof that the individual applying for renewal as a Specialized Physical Fitness Instructor has passed the Basic Law Enforcement Training Police Officer Physical Abilities Test, administered by a certified Specialized Physical Fitness Instructor, within the three-year period preceding the application for renewal.
- (e) Certification as a Specialized Instructor in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topic areas as outlined in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) of this Section shall remain in effect for 36 months from the date of issuance. During the 36 month term all non-Commission certificates required in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) for Specialized Instructor certification in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topical areas shall be maintained.
- (f) The use of guest participants in a delivery of the "Basic Law Enforcement Training Course" shall be permissible. However, such guest participants are subject to the on-site supervision of a Commission-certified instructor and shall be authorized by the School Director. A guest participant shall be used only to complement the primary certified instructor of the block of instruction and shall not replace the primary instructor.

*History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. January 1, 2017; February 1, 2016; August 1, 2015; May 1, 2014; June 1, 2012; November 1, 2007; January 1, 2006; December 1, 2004; August 1, 2004; August 1, 2000; July 1, 1991; July 1, 1989; December 1, 1987; February 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019; Amended Eff. January 1, 2020; August 1, 2019.*

**12 NCAC 09B .0503 SUSPENSION: REVOCATION: DENIAL/SCHOOL DIR. CERTIFICATION**

- (a) The Commission may deny, suspend, or revoke certification of a school director when the Commission finds that the person has failed to meet or continuously maintain any of the requirements for qualification or through performance fails to comply with the rules of this Chapter.
- (b) Prior to the Commission's action denying, suspending, or revoking a school director's certification, the Standards Division may notify the person that a deficiency appears to exist and may attempt, in an advisory capacity, to assist the person in correcting the deficiency.
- (c) The Commission shall deny, suspend, or revoke the certification of a School Director when they have found the person has engaged in any conduct outlined in 12 NCAC 09B .0301(e) and (f).

*History Note: Authority G.S. 17C-6; Eff. January 1, 1985; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019; Amended Eff. August 1, 2019.*

**12 NCAC 09B .0504 CERTIFICATION OF QUALIFIED ASSISTANT**

- (a) If the accredited institution or agency assigns additional responsibilities to the certified School Director during the



planning, development, and implementation of an accredited basic recruit training course, a qualified assistant shall be designated to assist the School Director in the administration of the course. To be eligible to serve as a Qualified Assistant, an applicant shall:

- (1) be selected by the School Director;
- (2) have four years of experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system;
- (3) be certified as a General Instructor, pursuant to 12 NCAC 09B .0302, if certified as a Qualified Assistant for a Instructor Training Course;
- (4) if serving as a Qualified Assistant for an Instructor Training Course, must complete an Instructor Orientation Course as offered by the North Carolina Justice Academy;
- (5) have completed an orientation course conducted by Standards Division staff; and
- (6) participate in the annual training conducted by Commission staff.

(b) Any person designated by a School Director as a Qualified Assistant in the delivery or presentation of a Commission-mandated training course shall have on file confirmation from the Commission acknowledging designation as Qualified Assistant prior to acting in an official capacity as a Qualified Assistant.

(c) The School Director shall submit to the Criminal Justice Standards Division the Qualified Assistant Application form. The Qualified Assistant Application Form is located on the agency's website at no cost <http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx>. Applicants shall provide the following information on the Qualified Assistant Application Form:

- (1) accredited school name and contact information;
- (2) applicant's name and contact information;
- (3) applicant's instructor certification number; and
- (4) School Director name and signature.

(d) The School Director shall ensure that the person selected meets the requirements set forth in Paragraphs (a) and (b) of this Rule.

(e) When directed by the School Director, the Qualified Assistant shall assist in the planning, developing, coordinating, and delivering of Commission-mandated training courses as outlined in 12 NCAC 09B .0202.

*History Note: Authority G.S. 17C-6;  
Eff. January 1, 2020.*

#### **12 NCAC 09B .0505 TERMS AND CONDITIONS OF QUALIFIED ASSISTANT CERTIFICATION**

(a) The term of certification as a Qualified Assistant is three years from the date the Commission issues the certification, unless earlier terminated by action of the Commission. The application for renewal shall include documentation meeting the requirements of Rule .0504(a) and (b) of this Section.

(b) The Commission may deny, suspend, or revoke certification as a Qualified Assistant when the Commission finds that the

person failed to meet or maintain any of the requirements for qualification or failed to comply with the Rules of this Chapter.

(c) Prior to the Commission's action denying, suspending, or revoking a Qualified Assistant's certification, the Standards Division may notify the person that a deficiency appears to exist and may attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(d) The Commission shall deny, suspend, or revoke the certification of a Qualified Assistant when it have found the person has engaged in any conduct outlined in Rule .0301(e) or (f) of this Subchapter.

*History Note: Authority G.S. 17C-6;  
Eff. January 1, 2020.*

#### **12 NCAC 09C .0307 AGENCY RETENTION OF RECORDS OF CERTIFICATION**

(a) Each criminal justice agency shall place information with respect to employment, education, retention, and training of its criminal justice officers in the criminal justice officer's personnel file as listed in Subparagraphs (a)(1) and (a)(2) of this Rule. The files shall be available for examination in five days by representatives of the Commission for verifying compliance with these Rules.

- (1) Criminal Justice Officer with probationary certification:
  - (A) the officer's Personal History Statement;
  - (B) the officer's Medical History Statement and Medical Examination Report;
  - (C) documentation of the officer's drug screening results;
  - (D) the Commission's Mandated Background Investigation Form as completed by the agency's investigator;
  - (E) a written summary of the officer's Qualifications Appraisal Interview;
  - (F) documentation of the officer's degrees obtained;
  - (G) documentation of all criminal justice training completed by the officer;
  - (H) the results of the officer's fingerprint record check;
  - (I) a written summary of the officer's psychological examination results;
  - (J) for the law enforcement officer, documentation on a commission-approved form as set forth in 12 NCAC 09E .0103(3) and .0110(5) that the officer has completed the minimum in-service training as required;
  - (K) certified copy of proof of age, citizenship, and educational requirements required in 12 NCAC 09B .0101;

- (L) copy of Report of Appointment/Application for Certification Form F-5A;
  - (M) oath of office;
  - (N) copy of firearms qualification; and
  - (O) once separated, a copy of the Affidavit of Separation.
- (2) Criminal Justice Officer with general certification:
- (A) the officer's Medical History Statement and Medical Examination Report;
  - (B) documentation of the officer's drug screening results;
  - (C) documentation of the officer's degrees obtained;
  - (D) documentation of all criminal justice training completed by the officer;
  - (E) the results of the officer's fingerprint record check;
  - (F) for the law enforcement officer, documentation on a commission-approved form as set forth in 12 NCAC 09E .0103(3) and .0110(5) that the officer has completed the minimum in-service training as required;
  - (G) certified copy of proof of age, citizenship, and educational requirements required in 12 NCAC 09B .0101;
  - (H) a copy of the Report of Appointment/Application for Certification Form F-5A;
  - (I) oath of office;
  - (J) copy of firearms qualification; and
  - (K) once separated, a copy of the Affidavit of Separation.

(b) These records shall be maintained in compliance with the North Carolina Department of Natural and Cultural Retention and Disposition Schedule established pursuant to G.S. 121 and G.S. 132.

*History Note: Authority G.S. 17C-2; 17C-6; Eff. January 1, 1981; Amended Eff. August 1, 1998; January 1, 1995; July 1, 1990; July 1, 1989; June 1, 1986; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019; Amended Eff. August 1, 2019.*

**12 NCAC 09E .0105 MINIMUM TRAINING SPECIFICATIONS: ANNUAL IN-SERVICE TRAINING (EFFECTIVE JANUARY 1, 2020)**

(a) The following topics, specifications, and hours shall be included in each law enforcement officer's annual in-service training courses. For the purposes of this Subchapter, a credit shall be equal to one hour of traditional classroom instruction. All sworn law enforcement officers shall complete a minimum of 24

in-service training credits. The following topics, totaling 18 credits, shall be specifically required:

- (1) 2020 Firearms Training and Qualification (4 credits);
- (2) 2020 Legal Update (4 credits);
- (3) 2020 Long-Term Effects of Childhood Adversity (2 credits);
- (4) 2020 The Signs Within: Suicide Prevention Education and Awareness (2 credits);
- (5) 2020 Career Survival: Training and Standards Issues (2 credits);
- (6) 2020 Communication Strategies When Encountering Persons Who are Deaf or Hard of Hearing (2 credits);
- (7) 2020 Armed/Unarmed Security/Company Police: Understanding Their Roles and Authority (2 credits);
- (8) Topics of Choice (12 credits);
  - (A) Hazardous Materials (2 credits);
  - (B) Bloodborne Pathogens (2 credits);
  - (C) Situational Awareness/Subject Control (4 credits); and
  - (D) Law enforcement Threat Assessment (4 credits).

(b) All sworn law enforcement officers shall complete a minimum of 6 in-service credits, in topics identified by their respective agency heads. The agency head may choose any topic, provided the lesson plan is written in Instructional Systems Design format and is taught by an instructor who is certified by the Commission. Topics delivered pursuant to Rule .0104(1) of this Section and National Certification Programs administered by the International Association of Directors of Law Enforcement Standards and Training (IADLEST) completed during the mandated in-service year, shall satisfy in part or in whole the topic requirements set forth by the agency head. To satisfy this requirement these topics shall not be required to be written in Instructional Systems Design format or delivered by an instructor certified by the Commission.

(c) The "Specialized Firearms Instructor Training Manual" published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the:

Criminal Justice Standards Division  
North Carolina Department of Justice  
1700 Tryon Park Drive  
Raleigh, North Carolina 27610

and may be obtained at the cost of printing and postage from the Academy at the following address:

North Carolina Justice Academy  
Post Office Drawer 99  
Salemberg, North Carolina 28385

(d) The "In-Service Lesson Plans" published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the:

Criminal Justice Standards Division  
North Carolina Department of Justice  
1700 Tryon Park Drive

Raleigh, North Carolina 27610  
and may be obtained at the cost of printing and postage from the Academy at the following address:

North Carolina Justice Academy  
Post Office Drawer 99  
Salemberg, North Carolina 28385

(e) Lesson plans are designed to be delivered in hourly increments. A student who completes an online in-service training topic shall receive the number of credits that correspond to the number of hours of traditional classroom training, regardless of the amount of time the student spends completing the course.

(f) Completion of training shall be demonstrated by passing a written test for each in-service training topic, as follows:

- (1) A written test comprised of at least five questions per credit shall be developed by the agency or the North Carolina Justice Academy for each in-service training topic requiring testing. The Firearms Training and Qualifications in-service course and topics delivered pursuant to Rule .0104(1) of this Section shall be exempt from this written test requirement;
- (2) A student shall pass each test by achieving at least 70 percent correct answers; and
- (3) A student who completes a topic of in-service training in a traditional classroom setting or online and fails the end of topic exam shall be given one attempt to re-test. If the student fails the exam a second time, the student shall complete the in-service training topic in a traditional classroom setting before taking the exam a third time.

*History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989;*

*Amended Eff. January 1, 2005; November 1, 1998;*

*Temporary Amendment Eff. January 1, 2005;*

*Amended Eff. January 1, 2019; January 1, 2018; January 1, 2017; July 1, 2016; January 1, 2016; January 1, 2015; February 1, 2014; June 1, 2012; February 1, 2011; January 1, 2010; April 1, 2009; April 1, 2008; February 1, 2007; January 1, 2006;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019;*

*Amended Eff. January 1, 2020.*

## **12 NCAC 09F .0105 INSTRUCTOR RESPONSIBILITIES**

In delivering the "Concealed Carry Handgun Training" course the instructor shall:

- (1) have a valid Concealed Carry Handgun instructor certification issued by the Criminal Justice Standards Division;
- (2) file a copy of the proposed firearms course description, outline, and proof of instructor certification along with a written request to conduct the "Concealed Carry Handgun Training" course for approval by the Commission prior to delivery of any instruction required by G.S. 14-415.12;

- (3) file a copy of all modifications;
- (4) be issued by Commission staff a quantity of certificates as requested by the instructor for course participants which shall bear the instructor's name, the instructor's assigned number, be sequentially numbered, and bear the raised seal of the Commission;
- (5) if a Concealed Carry Handgun Instructor relinquishes his or her certification and wants to transfer his or her assigned participants' certificates, to another Concealed Carry Handgun instructor a written request shall be submitted to the Criminal Justice Standards Division Director for approval. The written request shall include the following:
  - (a) instructor name and identification number;
  - (b) name of business;
  - (c) phone number and email address;
  - (d) recipient instructor name and identification number;
  - (e) business name;
  - (f) phone number, email address; and
  - (g) list of the assigned certificate numbers for participants to be transferred;
- (6) affix the student's name to one certificate and issue that certificate to the student who successfully completes the "Concealed Carry Handgun Training" course;
- (7) conduct the training consistent with the guidelines established in Rule .0102 of this Section;
- (8) administer a written examination to the student on the legal issues block of instruction to demonstrate that the student is knowledgeable in the laws of this State governing the carrying of a concealed handgun and the use of deadly force; and
- (9) administer a proficiency examination that demonstrates the student is competent in the firing and safe handling of a handgun. Such examination shall include the following:
  - (a) The student fires 30 rounds of ammunition at a bulls-eye or silhouette target from three, five and seven yard distances;
  - (b) At each yard distance the student shall fire ten rounds; and
  - (c) 21 of the 30 rounds fired by the student hit the target.

*History Note: Authority G.S. 14-415.12; 14-415.13;*

*Temporary Adoption Eff. November 1, 1995;*

*Eff. May 1, 1996;*

*Amended Eff. April 1, 2018; May 1, 2004;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019;*

*Amended Eff. August 1, 2019.*

**12 NCAC 09G .0306 RETENTION OF RECORDS OF CERTIFICATION**

(a) The North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall place in the officer's certification file the official notification from the Commission of either Probationary or General Certification for each correctional officer, probation/parole officer employed or appointed by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice. The certification file shall also contain:

- (1) the officer's Report of Appointment/Application for Certification, including the Department of Public Safety Personnel Action Form;
- (2) the officer's Medical History Statement and Medical Examination Report;
- (3) documentation of the officer's drug screening results;
- (4) documentation of the officer's educational achievements;
- (5) documentation of all corrections training completed by the officer;
- (6) documentation of the officer's psychological examination results;
- (7) documentation and verification of the officer's age;
- (8) documentation and verification of the officer's citizenship;
- (9) documentation of any prior criminal record; and
- (10) miscellaneous documents including letters, investigative reports, and subsequent charges and convictions;
- (11) oath of office; and
- (12) if separated, a copy of the Report of Separation or Department of Public Safety Action Form.

(b) All files and documents relating to an officer's certification shall be available for examination and utilization at any reasonable time by representatives of the Commission for the purpose of verifying compliance with the Rules in this Subchapter. These records shall be maintained in compliance with the North Carolina Department of Natural and Cultural Resources Records Retention and Disposition Schedule established pursuant to G.S. 121 and G.S. 132.

*History Note: Authority G.S. 17C-2; 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. January 1, 2015; August 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019; Amended Eff. August 1, 2019.*

**12 NCAC 09G .0307 CERTIFICATION OF INSTRUCTORS**

(a) A person participating in a Commission-accredited corrections training course or program as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor.

(b) The Commission shall certify instructors under the following categories: General Instructor Certification or Specialized Instructor Certification or Professional Lecturer Certification as outlined in Rules .0308, .0310, and .0311 of this Section. Instructor certification shall be granted on the basis of documented qualifications of experience, education, and training in accord with the requirements of this Section and as stated on the applicant's Request for Instructor Certification Form.

(c) In addition to all other requirements of this Section, each instructor certified by the Commission to teach in a Commission-certified course shall remain competent in his/her specific or specialty areas. Such competence includes remaining current in the instructor's area of expertise, which may be demonstrated by attending and completing any instructor all updated instructor training courses required by the Commission.

(d) If a person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of the Rules in this Subchapter, the Commission shall take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual; or
- (5) revoking the individual's certification.

(e) The Commission shall deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification;
- (2) has failed to remain currently knowledgeable in the person's areas of expertise by failing to attend trainings as required by the rules in this Chapter.
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans outlined in the "Basic Instructor Training Manual" as found in 12 NCAC 09G .0414;
- (4) has failed to follow specific guidelines outlined in the basic corrections officers' training manual set out in Rules .0411 through .0416 of this Subchapter;
- (5) has demonstrated unprofessional personal conduct in the delivery of commission-mandated training. For the purposes of this Subparagraph, unprofessional personal conduct means an act that is: job-related conduct which constitutes a violation of State or federal law; conviction or commission of a criminal offense, as set out in 12 NCAC 09G .0504; the willful violation of Rules of this Chapter; conduct that is detrimental to instruction in the Commission's mandated courses; the abuse of a client or student whom the instructor is teaching or supervising; falsification of an instructor

- application or in other employment documentation;
- (6) has demonstrated instructional incompetence;
- (7) has knowingly and willfully obtained, or attempted to obtain instructor certification by deceit, fraud, or misrepresentation;
- (8) has failed to meet or maintain good moral character as defined in: *In re Willis*, 288 N.C. 1, 215 S.E.2d 771, appeal dismissed 423 U.S. 976 (1975); *State v. Harris*, 216 N.C. 746, 6 S.E.2d 854 (1940); *In re Legg*, 325 N.C. 658, 386 S.E. 2d 174 (1989); *In re Applicants for License*, 143 N.C. 1, 55 S.E. 635 (1906); *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924); *State v. Benbow*, 309 N.C. 538, 308 S.E.2d 647 (1983); and later court decisions that cite these cases as authority, and as required to discharge the duties of a criminal justice instructor;
- (9) has committed or been convicted of an offense which could result in the denial, suspension, or revocation of an officers certification pursuant to Rules .0204 or .0504 of this Subchapter;
- (10) has knowingly made a material misrepresentation of any information required for certification or accreditation.

(f) When a person certified as an officer by the North Carolina Criminal Justice Education and Training Standards Commission (Commission), the North Carolina Sheriffs Education and Training Standards Commission (Sheriffs' Commission), the North Carolina Department of Insurance, Office of State Fire Marshal, Fire Rescue Commission (Fire Commission), Office of Emergency Medical Services and the North Carolina Company/Campus Police Program; or a similar North Carolina, out of state or federal approving, certifying or licensing agency; has been denied certification or had his or her certification suspended or revoked by their respective Commission or agency the officer shall report the suspension or revocation to the Criminal Justice Standards within five days. They shall also have their General Instructor certification (if applicable) automatically suspended or revoked for the same time period as their respective Commission certification.

- (1) This suspension or revocation of the General Instructor certification shall also include suspension or revocation to any Commission recognized Specialized or additional instructor certification, as outlined in Rule .0310 of this Section.
- (2) If the term of suspension or revocation exceeds the expiration date of the instructor's initial certification expiration date, they shall forfeit their certifications as a General Instructor and Specialized Instructor and shall be required to obtain certification pursuant to the requirements of Rule .0304 of this Section before any instruction may be delivered in any Commission-approved or mandated training, including the completion of a subsequent General Instructor's training course in its entirety.

- (3) If the term of suspension or revocation does not exceed the expiration date of the instructor's initial certification expiration date, the instructor shall be reinstated as a General Instructor only upon reinstatement of his or her law enforcement officer certification by the Commission. The terms of renewal for the existing General Instructor and Specialized Instructor certifications shall remain subject to all renewal requirements pursuant to Rule .0309(c) of this Section by the next expiration date.

*History Note: Authority G.S. 17C-6; 17C-10;*

*Temporary Adoption Eff. January 1, 2001;*

*Eff. August 1, 2002;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019;*

*Amended Eff. August 1, 2019.*

### **12 NCAC 09G .0311 TERMS AND CONDITIONS OF SPECIALIZED INSTRUCTOR CERTIFICATION (EFFECTIVE JANUARY 1, 2020)**

(a) An applicant meeting the requirements for Specialized Instructor Certification shall be issued a certification to expire three years from the date of issuance. The applicant shall apply for certification as a specialized instructor within 60 days from the date of completion of a specialized instructor course.

(b) Where certifications for both General Probationary Instructor and Specialized Instructor are issued on the same date, the instructor shall be required to instruct within three years after certification, a minimum of 12 hours in each of the topics for which Specialized Instructor Certification was granted in a Commission-accredited basic training, Specialized Instructor Training, Commission-recognized in-service training course, or training course delivered pursuant to 12 NCAC 10B .0601, .1302, or .2005. The instructor may satisfy the teaching requirement for the General Probationary Instructor certification by teaching any specialized topic for which certification has been issued.

(c) When Specialized Instructor Certification is issued during an existing period of General Probationary Instructor Certification the specialized instructor may satisfy the teaching requirement for the General Probationary Certification by teaching the specialized subject for which certification has been issued.

(d) The term of certification as a specialized instructor shall not exceed three years. An application for renewal shall contain, in addition to the requirements listed in Rule .0310 of this Section, documentary evidence that the applicant has remained active in the instructional process during the previous three-year period. Such documentary evidence shall include the following:

- (1) proof that the applicant has, within the three-year period preceding application for renewal, instructed at least 12 hours in each of the topics for which Specialized Instructor Certification was granted, and that instruction was provided in a Commission-accredited basic training, Specialized Instructor Training, or Commission-recognized in-service training course. Acceptable documentary evidence shall

include official Commission records submitted by School Directors or In-Service Training Coordinators, and written certification from a School Director or In-Service Training Coordinator;

- (2) proof that the applicant has, within the three-year period preceding application for renewal, attended and completed all instructor updates that have been issued by the Commission. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators, or copies of certificates of completion issued by the institution which provided the instructor updates; and

(A) a favorable written recommendation from a School Director or In-Service Training Coordinator completed on a Commission Renewal of Instructor and Professional Lecturer Certification Form stating the instructor taught at least 12 hours in each of the topics for which Specialized Instructor Certification was granted. The teaching shall have been provided in a Commission-accredited basic training, Specialized Instructor Training course, pursuant to Rule .0310 of this Section, or Commission-recognized in-service training course;

(B) a favorable written evaluation by a School Director, Qualified Assistant, In-Service Training Coordinator, or another instructor certified in the same specialized subject, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-accredited basic training, Specialized Instructor Training, or Commission-recognized in-service training course, during the three-year period of Specialized Instructor Certification. Such evaluation shall be certified on a Criminal Justice Instructor Evaluation Form F-16, located on the agency's website: <http://www.ncdoj.gov/getdoc/c2eba6a-a-12bc-4303-bf4b-5fa0431ef5a1/F-16-6-11.aspx>.

(C) has met the requirement set forth in Rule .0309(c) of this Section.

(e) The use of guest participants in a delivery of a Commission-mandated training course pursuant to this Section shall be permissible. However, such guest participants are subject to the on-site supervision of a Commission-certified instructor and shall be authorized by the School Director. A guest participant shall be used only to complement the primary certified instructor of the block of instruction and shall not replace the primary instructor.

*History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. January 1, 2017; May 1, 2014; June 1, 2012; January 1, 2006; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019; Amended Eff. January 1, 2020.*

**12 NCAC 09G .0407 SUSPENSION: REVOCATION: DENIAL/SCHOOL DIRECTOR CERTIFICATION**

(a) The Commission may deny, suspend, or revoke certification of a School Director when the Commission finds that the person has failed to meet or maintain any of the requirements for qualification or through performance fails to comply with the rules of this Chapter.

(b) Prior to the Commission's action denying, suspending, or revoking a School Director's certification, the Standards Division may notify the person that a deficiency appears to exist and may attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(c) The Commission shall deny, suspend or revoke the certification of a School Director when they have found the person has engaged in any conduct outlined in 12 NCAC 09B .0301(e) and (f).

*History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Temporary Adoption Expired December 20, 2001; Temporary Adoption Eff. April 15, 2003; Eff. April 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019; Amended Eff. August 1, 2019.*

**12 NCAC 09G .0417 CERTIFICATION OF QUALIFIED ASSISTANT**

(a) If the accredited institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of an accredited basic recruit training course, a qualified assistant shall be designated to assist the School Director in the administration of the course. To be eligible to serve as a Qualified Assistant, an applicant shall:

- (1) be selected by the School Director;
- (2) have four years of experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system;
- (3) be certified as a General Instructor, pursuant to Rule .0308 of this Subchapter, if certified as a Qualified Assistant for an Instructor Training Course;
- (4) if serving as a Qualified Assistant for an Instructor Training Course, must complete an Instructor Training Orientation Course as offered by the North Carolina Justice Academy;
- (5) have completed an orientation course conducted by Standards Division staff; and

- (6) participate in the annual training conducted by Commission staff.
- (b) Any person designated by a School Director as a Qualified Assistant or who performs the duties of, a Qualified Assistant in the delivery or presentation of a Commission-mandated training course shall have on file confirmation from the Commission acknowledging designation as Qualified Assistant prior to acting in an official capacity as a Qualified Assistant.
- (c) The School Director shall submit to the Criminal Justice Standards Division the Qualified Assistant Application Form F-10(QA). The Qualified Assistant Application Form F-10(QA) is located on the agency's website at no cost <http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx>. Applicants shall provide the following information on the Qualified Assistant Application Form:
- (1) accredited school name and contact information;
  - (2) applicant's name and contact information;
  - (3) applicant's instructor certification number; and
  - (4) School Director name and signature.
- (d) The School Director shall ensure that the person selected meets the requirements set forth in Paragraphs (a) and (b) of this Rule.
- (e) When directed by the School Director, the Qualified Assistant shall assist in the planning, developing, coordinating, and delivering of Commission-mandated training courses as outlined in Rule .0408 of this Section.

*History Note:* Authority G.S. 17C-6;  
Eff. January 1, 2020.

**12 NCAC 09G .0418 TERMS AND CONDITIONS OF QUALIFIED ASSISTANT CERTIFICATION**

- (a) The term of certification as a Qualified Assistant is three years from the date the Commission issues the certification, unless earlier terminated by action of the Commission. The application for renewal shall include documentation meeting the requirements of Rule .0417(a) and (b) of this Section.
- (b) The Commission may deny, suspend, or revoke certification as a Qualified Assistant when the Commission finds that the person failed to meet or maintain any of the requirements for qualification or failed to comply with the rules of this Chapter.
- (c) Prior to the Commission's action denying, suspending, or revoking a Qualified Assistant's certification, the Standards Division may notify the person that a deficiency appears to exist and may attempt, in an advisory capacity, to assist the person in correcting the deficiency.
- (d) The Commission shall deny, suspend, or revoke the certification of a Qualified Assistant when it have found the person has engaged in any conduct outlined in Rule .0307 of this Subchapter.

*History Note:* Authority G.S. 17C-6;  
Eff. January 1, 2020.

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**12 NCAC 10B .0302 DOCUMENTATION OF EDUCATIONAL REQUIREMENT**

- (a) Each applicant for Justice Officer certification shall furnish documentary evidence of high school, college or university graduation to the employing agency. Documentary evidence of high school graduation consists of diplomas or transcripts from public schools or private schools which meet standards adopted by either the North Carolina Department of Public Instruction, the Division of Non-Public Instruction, or a comparable out of state agency. Documentary evidence of college or university graduation consists of diplomas or transcripts from colleges or universities accredited as such by the Department of Education of the state in which the institution is located, an accredited body recognized by either the U.S. Department of Education or Council for Higher Education Accreditation, or the state university of the state in which the institution is located.
- (b) High School Diplomas earned through home school programs must be accompanied by a true and accurate or certified transcript and must meet the requirements of Part 3 of Article 39 of Chapter 115C of the North Carolina General Statutes, or a comparable out-of-state statute.
- (c) Diplomas earned from High Schools outside of the United States must be translated into English and be accompanied by an authentic transcript. Transcripts shall be evaluated to ensure they are scholastically comparable to United States curriculum requirements.
- (d) High School diplomas earned through on-line or correspondence courses shall be evaluated on a case by case basis.
- (e) Documentary evidence of having earned a High School Equivalency (HSE) Diploma shall be satisfied by a certified copy of a high school equivalency credential recognized by the U.S. Department of Education or the Department of Education in the issuing state.
- (f) Documentary evidence of the attainment of satisfactory scores on any military high school equivalency examination is acceptable as evidence of high school graduation if verified by a true copy of the veteran's DD214.

*History Note:* Authority G.S. 17E-4;  
Eff. January 1, 1989;  
Amended Eff. January 1, 2019; January 1, 2008; August 1, 2000;  
January 1, 1992; January 1, 1990;  
Readopted Eff. August 1, 2019.

**12 NCAC 10B .1003 BASIC LAW ENFORCEMENT CERTIFICATE**

*History Note:* Authority G.S. 17E-4;  
Eff. January 1, 1989;  
Amended Eff. January 1, 1994; January 1, 1992; January 1, 1991;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;  
Repealed Eff. August 1, 2019.

**12 NCAC 10B .1203 BASIC DETENTION OFFICER PROFESSIONAL CERTIFICATE**

*History Note:* Authority G.S. 17E-4;  
Eff. January 1, 1990;

*Amended Eff. January 1, 1996; January 1, 1991;  
Pursuant to G.S. 150B-21.3A, rule is necessary without  
substantive public interest Eff. March 6, 2018;  
Repealed Eff. August 1, 2019.*

**12 NCAC 10B .1403 BASIC RESERVE DEPUTY  
SHERIFF PROFESSIONAL CERTIFICATE**

*History Note: Authority G.S. 17E;  
Eff. August 1, 2000;  
Amended Eff. April 1, 2001;  
Pursuant to G.S. 150B-21.3A, rule is necessary without  
substantive public interest Eff. March 6, 2018;  
Repealed Eff. August 1, 2019.*

**12 NCAC 10B .1603 BASIC TELECOMMUNICATOR  
CERTIFICATE**

*History Note: Authority G.S. 17E-4;  
Eff. April 1, 2001;  
Pursuant to G.S. 150B-21.3A, rule is necessary without  
substantive public interest Eff. March 6, 2018;  
Repealed Eff. August 1, 2019.*

**12 NCAC 10B .2005 MINIMUM TRAINING  
REQUIREMENTS**

(a) A Sheriff or Department Head may use a lesson plan developed by the North Carolina Justice Academy or a lesson plan for any of the topic areas developed by another entity such as a different law enforcement agency or training provider. The Sheriff or Department Head may also use a lesson plan developed by a certified instructor, provided that the instructor develops the lesson plan in accordance with the Instructional Systems Development model as taught in Criminal Justice Instructor Training and as described in 12 NCAC 09B .0209. Lesson plans shall be designed to be delivered in hourly increments. A student who completes the training shall receive the number of credits that correspond to the number of hours assigned to the course, regardless of the amount of time the student spends completing the course, where each hour of instruction shall be worth one credit (e.g., "Legal Update" is designed to be delivered in four hours and will yield four credits). With the exception of Firearms Training and Requalification, successful completion of training shall be demonstrated by passing tests as developed by the delivering agency or as written by the North Carolina Justice Academy. A written test comprised of at least five questions per hour of training shall be developed by the delivering agency, or the agency may use the written test developed by the North Carolina Justice Academy, for each in-service training topic. A student shall pass each test by achieving 70 percent correct answers. Firearms Training and Requalification shall be demonstrated qualification with a firearm as set out in Section .2100 of this Subchapter.

(b) The in-service training for topic areas of the Sheriff's or Department Head's choosing required by this Rule shall either:

- (1) meet the requirements of Paragraph (a) of this Rule; or
- (2) be delivered pursuant to National Certification Programs administered by the International

Association of Directors of Law Enforcement Standards and Training (IADLEST) completed during the mandated in-service year to satisfy these topics in part or in whole. It is not required that this IADLEST training be written in the Instructional Systems Design (ISD) format or delivered by a Commission certified instructor.

(c) The 2018 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topic areas:

- (1) Legal Update;
- (2) Strategies to Improve Law Enforcement Interactions and Relationships with Minority Youth;
- (3) Equality in Policing;
- (4) Communications Skills With Persons In Crisis – De-escalation Techniques;
- (5) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (6) Any topic areas of the Sheriff's choosing.

(d) The 2018 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Recognizing Warning Signs and Strategies Associated with Mental Illness;
- (2) Equality in Detention Practices;
- (3) Communications Skills With Persons In Crisis – De-escalation Techniques;
- (4) Career Survival; and
- (5) Any topic areas of the Sheriff's or Department Head's choosing.

(e) The 2018 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Communications Center Trainer;
- (2) Equality in Policing;
- (3) Communications Skills With Persons In Crisis – De-escalation Techniques; and
- (4) Any topic areas of the Sheriff's or Department Head's choosing.

(f) The 2019 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topic areas:

- (1) Legal Update;
- (2) Juvenile Law Update;
- (3) Individual Wellness: Coping with Stress and PTSD;
- (4) Best Practices for Officers During Community Dissent;
- (5) Law Enforcement Intelligence Update: Gangs and Divisive Groups;
- (6) Domestic Violence: Law and Procedure Update;
- (7) Opioid Awareness and Response;
- (8) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (9) Any topic areas of the Sheriff's choosing.



(g) The 2019 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Detention Officer Legal Update;
- (2) Detention Intelligence Update: Gangs and Divisive Groups;
- (3) Individual Wellness: Coping with Stress and PTSD;
- (4) Inmate Suicide Prevention;
- (5) Opioid Awareness and Response; and
- (6) Any topic areas of the Sheriff's or Department Head's choosing.

(h) The 2019 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Individual Wellness: Coping with Stress and PTSD;
- (2) Civil Liability for Telecommunicators;
- (3) Human Fatigue in Shift Work; Strategies for Improving Performance;
- (4) Handling Difficult Callers; and
- (5) Any topic areas of the Sheriff's or Department Head's choosing.

*History Note: Authority G.S. 17E-4; 17E-7; Eff. January 1, 2007; Amended Eff. January 1, 2018; January 1, 2017; January 1, 2016; January 1, 2015; February 1, 2014; January 1, 2013; February 1, 2012; January 1, 2011; January 1, 2010; January 1, 2009; January 1, 2008; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018; Amended Eff. August 1, 2019; January 1, 2019.*

*History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f); Eff. April 1, 1982; Amended Eff. July 1, 2000; August 1, 1998; April 1, 1994; October 1, 1993; December 1, 1992; September 1, 1990; Temporary Amendment Eff. October 13, 2003; Amended Eff. February 1, 2004; Readopted Eff. August 1, 2019.*

#### **19A NCAC 02E .1103 LOCATION OF TODS**

The Department shall administer the erection and maintenance of official signs giving specific information of interest to the traveling public in accordance with this Rule.

- (1) The Department shall only erect panels at at-grade intersections. An at-grade intersection is an intersection that is controlled by stop signs or traffic signals. A TODS Trailblazer shall be installed if further direction is needed to guide the tourist from the intersection to the attraction.
- (2) Panel placement shall be determined by the Department according to the natural terrain and shall not block scenic vistas.
- (3) A separate sign panel shall be provided on the intersection approach for each eligible attraction in accordance with G.S. 136-140.16. Panels shall be allowed in each direction only when lateral spacing is available.
- (4) TODS panels shall be located at least 200 feet in advance of the main intersection. Signs shall be spaced at least 200 feet apart and at least 200 feet from other traffic control devices. TODS panels shall not be located more than one-half (0.5) mile from the center of the main intersection and shall not be placed in the signing sequence for any other prior intersections.
- (5) Warning, regulatory, guide, or other official highway signs shall take precedence over TODS.

*History Note: Authority G.S. 136-89.56; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; Temporary Adoption Eff. January 1, 2003; Eff. August 1, 2004; Readopted Eff. August 1, 2019.*

#### **19A NCAC 02E .1105 COMPOSITION OF SIGNS**

- (a) No TODS panel shall be displayed in a manner that would mislead or misinform the traveling public.
- (b) No message shall interfere with, imitate, or resemble any official warning or regulatory traffic sign, signal, or similar device.
- (c) Each TODS panel shall include only information related to that attraction.
- (d) TODS panel and trailblazer designs shall be in conformance with the standards as specified in the MUTCD, as defined in G.S.

### **TITLE 19A - DEPARTMENT OF TRANSPORTATION**

#### **19A NCAC 02E .0221 LOGO PROGRAM FEES**

(a) All logo signs, to which individual Logo Signing Program business panels are attached, shall be constructed, owned, and maintained by the Department. The participating logo business shall pay an annual fee as set forth in this Rule.

(b) The annual fee for participation in the Logo program shall be three hundred dollars (\$300.00) for each mainline, ramp, and trailblazer panel. Every participating business shall have a contract that automatically renews annually.

(c) The participating logo business shall provide a new or renovated business panel when necessary due to damages caused by acts of vandalism, accidents, or natural causes including natural deterioration. If the Department replaces a business panel on a logo sign or removes or masks a business panel because of seasonal operation, there shall be no additional charge to the business.

(d) The fee shall be paid by check or money order and shall be due in advance of the period of service covered by the fee. Failure to pay a fee when due shall be grounds for removal of the business panels and termination of the contract.

136-130, and approved by the Department, prior to fabrication and shipment.

*History Note: Authority G.S. 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; Temporary Adoption Eff. January 1, 2003; Eff. August 1, 2004; Readopted Eff. August 1, 2019.*

#### **19A NCAC 02E .1106 TODS PROGRAM FEES**

- (a) The annual fee for each TODS panel or TODS Trailblazer shall be two hundred dollars (\$200.00).
- (b) All participating businesses shall pay the annual fee prior to installation of the TODS panel(s).
- (c) The annual fee shall be paid by check or money order and due in advance of the period of service requested. Failure to pay a fee when due shall be grounds for removal of the TODS panel.

*History Note: Authority G.S. 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; Temporary Adoption Eff. January 1, 2003; Eff. August 1, 2004; Readopted Eff. August 1, 2019.*

### **TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

#### **CHAPTER 17 – BOARD OF DIETETICS, NUTRITION**

#### **21 NCAC 17 .0104 APPLICATIONS**

- (a) Each applicant for initial licensure shall file a completed application with the Board. Application forms are available at [www.ncbdn.org](http://www.ncbdn.org).
- (b) A complete application shall be:
  - (1) typed;
  - (2) signed by the applicant affirming that the information on the application is true and releasing to the Board information pertaining to the application;
  - (3) accompanied by the application, issuance, and criminal history record check fees; and
  - (4) accompanied by evidence, statements, or documents demonstrating the applicant meets the applicable requirements specified in G.S. 90-357.5, and the applicant is not in violation of G.S. 90-363.
- (c) Applicants shall submit a completed application to the North Carolina Board of Dietetics/Nutrition via its website at [www.ncbdn.org](http://www.ncbdn.org).
- (d) The Board shall not review an application until the applicant pays the application fee. The fee may be paid online via credit card, or by check mailed to: North Carolina Board of Dietetics/Nutrition, 140 Preston Executive Drive, Suite 205-C, Cary, NC 27513.
- (e) Examination information for each of the examinations the Board recognizes may be found on the following websites:
  - (1) Information regarding the Registered Dietitian Nutritionist examination offered by the

Commission on Dietetic Registration may be found at: <https://www.cdrnet.org/program-director/student-instructions>.

- (2) Information regarding the Certified Nutrition Specialist examination offered by the Board for Certification of Nutrition Specialists may be found at: [www.nutritionspecialists.org/CNSEExam](http://www.nutritionspecialists.org/CNSEExam).
- (3) Information regarding the Diplomate of the American Clinical Board of Nutrition examination offered by the American Clinical Board of Nutrition may be found at: <https://www.acbn.org/handbook.pdf>.

(f) Before cancelling an application, the Executive Director shall send notice to an applicant who does not complete the application that lists the additional materials required. An incomplete application shall be valid for a period of six months from the date the application is filed with the Board. After six months, if an application has not been completed by the applicant and ready for Board review, the application shall be considered cancelled due to failure to complete. Complete applications that the Board determines require additional evidence under Paragraph (m) of this Rule shall be eligible for consideration for the timeline set forth in that Paragraph.

(g) Applicants providing evidence of current registration as a Registered Dietitian Nutritionist by the CDR in G.S. 90-357.5(a)(2) shall submit a photocopy of the applicant's registration identification card, or a copy of a CDR Credential Verification certificate certifying that the applicant is a Registered Dietitian Nutritionist.

(h) Applicants providing evidence of completing academic requirements in G.S. 90-357.5(a)(1) shall either:

- (1) Submit transcripts and a verification statement that includes the original signature of the Program Director of a college or university where the course of study was accredited by the ACEND as meeting the competency requirements of the most current edition of the Accreditation Standards for Nutrition and Dietetic Didactic Programs; or
- (2) Submit documentation, including official transcripts, demonstrating the course of study met the competency requirements of the most current edition of the ACEND Accreditation Standards for Nutrition and Dietetic Didactic Programs.

(i) Applicants providing evidence of completing academic requirements in G.S. 90-357.5(c) shall submit documentation, including official transcripts, demonstrating completion of the requirements stated in G.S. 90-357.5(c)(1).

(j) Applicants providing evidence of completing a supervised practice experience in G.S. 90-357.5(a)(1)(b) shall either:

- (1) Submit a verification statement that includes the original signature of the Program Director of a documented, supervised practice experience that has been accredited by the ACEND as meeting the competency requirements of the most current edition of the

- (2) Submit documentation demonstrating at least 1000 hours of documented, supervised practice experience, meeting the competency requirements of the most current edition of the Accreditation Standards for Nutrition and Dietetics Internship Programs issued by ACEND. The scope of activities may include alternate supervised experiential learning such as simulation, case studies, and role playing, but must also include at least 750 hours in a professional work setting. The 1000 hours must be concurrent with or following completion of the academic requirements for licensure and need not be a paid experience. The following shall be necessary to determine and verify supervised practice experience:
- (A) The supervisor shall have access to all relevant patient/client records kept during the supervised practice experience. The supervisor shall review performance by periodic observation, either in real-time, or by some recording of the nutrition service.
  - (B) If there shall be more than one supervisor or facility for different parts of the supervised practice experience, information and verification of each part is required.
  - (C) The applicant shall provide to the Board for each supervisor/facility:
    - (i) the name and address of the facility providing the supervised practice experience;
    - (ii) the name, address, phone, and title of the supervisor who supervised the supervised practice experience;
    - (iii) a summary of nutrition services performed, along with dates and hours spent performing them;
    - (iv) evidence that the supervisor met the requirements stated in G.S. 90-357.5(a)(1)(b) at the time of supervision; and
    - (v) an attestation that the supervisor is not related to, married to, or domestic partners with the supervisee.
  - (D) Each supervisor shall review the evidence provided by the applicant and verify that the information is true, including:
    - (i) that the applicant participated in nutrition services under his or her supervision, stating the total number of hours;
    - (ii) providing a summary of the nutrition services provided under his or her supervision; and
    - (iii) providing an evaluation of the applicant for the Board to be able to assess the applicant's performance in completion of the competencies required by ACEND.
- (k) Applicants providing evidence of completing a supervised practice experience in G.S. 90-357.5(c)(2) shall submit documentation demonstrating at least 1000 hours of documented, supervised practice experience, meeting the requirements as stated in G.S. 90-357.5(c)(2). The scope of activities may include alternate supervised experiential learning such as simulation, case studies, and role playing, but must also include at least 750 hours in a professional work setting. The 1000 hours must be concurrent with or following completion of the academic requirements for licensure and need not be a paid experience. The following shall be necessary to determine and verify the supervised practice experience:
- (1) The supervisor shall have access to all relevant patient/client records kept during the supervised practice experience. The supervisor shall review performance by periodic observation, either in real-time or by some recording of the nutrition service.
  - (2) If there shall be more than one supervisor or facility for different parts of the supervised practice experience, information and verification of each part is required.
  - (3) The applicant shall provide to the Board for each supervisor/facility:
    - (A) the name and address of the facility providing the supervised practice experience;
    - (B) the name, address, phone, and title of the supervisor who supervised the supervised practice experience;
    - (C) a summary of nutrition services performed, along with dates, and hours spent performing them;
    - (D) evidence that the supervisor met the requirements as stated in G.S. 90-357.5(c)(2) at the time of supervision; and
    - (E) an attestation that the supervisor is not related to, married to, or domestic partners with the supervisee.
  - (4) Each supervisor shall review the evidence provided by the applicant and verify that the information is true, including:

- (A) that the applicant participated in nutrition services under his or her supervision, stating the total number of hours;
- (B) providing a summary of the nutrition services provided under his or her supervision; and
- (C) providing an evaluation of the applicant for the Board to be able to assess the applicant's performance in the areas of nutrition assessment; nutrition intervention, education, counseling, or management; and nutrition monitoring or evaluation.

(I) Applicants who have obtained their education outside of the United States and its territories shall:

- (1) Have their academic degree(s) evaluated by a Board-approved foreign credential evaluating service as equivalent to a baccalaureate or higher degree conferred by a U.S. college or university accredited by the regional accrediting agencies recognized by the Council on Higher Education Accreditation and the U.S. Department of Education; and
- (2) All documents submitted in a language other than English shall be accompanied by a certified translation thereof in English from a Board-approved translation service.
- (3) The following foreign credential evaluating and translation services are Board-approved:
  - (A) Academic and Professional International Evaluation, Inc., which may be found at: [www.apie.org](http://www.apie.org);
  - (B) Academic Credentials Evaluation Institute, Inc., which may be found at: <https://www.acei-global.org/>;
  - (C) American Education Research Corporation, Inc., which may be found at: <http://www.aerc-eval.com/>;
  - (D) Association of International Credential Evaluators, Inc., which may be found at: [www.aice-eval.org](http://www.aice-eval.org);
  - (E) Bruscan Educational Information Services, which may be found at: <http://www.bruscan.com/>;
  - (F) Center for Educational Documentation, Inc., which may be found at: <http://www.cedevaluations.com/>;
  - (G) Education Credential Evaluators, Inc., which may be found at: [www.ece.org](http://www.ece.org);
  - (H) Educational Perspectives, which may be found at: <https://www.edperspective.org/>;
  - (I) Foundation for International Services, Inc., which may be found at: <https://www.fis-web.com/>;

- (J) International Education Research Foundation, which may be found at: [www.ierf.org](http://www.ierf.org);
- (K) Josef Silny & Associates, which may be found at: <http://www.jsilny.org/>;
- (L) SpanTran: The Evaluation Company, which may be found at: <https://www.spantran.com/>; or
- (M) World Education Services, Inc., which may be found at: <https://www.wes.org/>.

(m) If the Board determines that the application does not demonstrate satisfaction of the requirements specified in G.S. 90-357.5, the Board shall notify the applicant in writing. The notification shall include what is required to demonstrate the applicant meets the statutory requirements, and the applicant shall be:

- (1) offered the ability to place the application on hold for a time period of up to one year from the date of the letter providing the Board's determination, so long as such a request is made in writing within 30 days of the date of the letter. During this hold time, the applicant may provide other evidence demonstrating the applicant satisfied the requirements the Board determined were not met;
- (2) offered the opportunity to appear for an interview before the Board. At any time during that interview, the applicant may stop the interview, and request to have all or any part of requested information provided in writing; and
- (3) offered the ability to withdraw the application so long as such a request is made in writing within 30 days of the date of the letter. The applicant will be allowed to apply for licensure at a later time.

(n) If an applicant who received the notice specified in Paragraph (m) of this Rule does not provide a written response to the Board within 30 days of the date of the notification requesting that he or she be granted an interview or his or her application be placed on hold or withdrawn, the Board shall issue the applicant an official rejection as provided in G.S. 90-358.

(o) A rejected applicant shall have 60 days from the date of official rejection to request an administrative hearing.

*History Note:* Authority G.S. 90-356; 90-357.5; 90-357.6; 90-358;

*Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13, 1992;*

*Eff. June 1, 1992;*

*Recodified from 21 NCAC 17 .0004 Eff. February 1, 1995;*

*Amended Eff. December 1, 2011; July 18, 2002; March 1, 1996;*

*Readopted Eff. August 1, 2019.*

## **21 NCAC 17 .0105 EXAMINATION FOR LICENSURE**

The Board shall recognize the passing scores set by the testing agencies for the exams in G.S. 90-359 as "successful completion."

*History Note:* Authority G.S. 90-356; 90-359;  
*Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13, 1992;*  
*Eff. June 1, 1992;*  
*Recodified from 21 NCAC 17 .0005 Eff. February 1, 1995;*  
*Amended Eff. July 18, 2002;*  
*Readopted Eff. August 1, 2019.*

**21 NCAC 17 .0107 PROVISIONAL LICENSE**

(a) Applicants for a provisional license under G.S. 90-357.5(a) shall provide evidence of completing the educational and supervised practice experience requirements by submitting the information required by Rule 21 NCAC 17 .0104(h) and (j), and providing evidence of making application to take the Registered Dietitian Nutritionist examination. Applicants granted provisional licensure under G.S. 90-357.5(a) shall be given the credential "PLDN."

(b) Applicants for a provisional license under G.S. 90-357.5(c) shall provide evidence of completing the educational and supervised practice experience requirements by submitting the information required by Rule 21 NCAC 17.0104(i) and (k), and providing evidence of making application to take the Certified Nutrition Specialist examination or the Diplomate of the American Clinical Board of Nutrition examination. Applicants granted a provisional license under G.S. 90-357.5(c) shall be given the credential "PLN."

(c) Applications for a provisional license are available at [www.ncbdn.org](http://www.ncbdn.org).

(d) A provisional license shall be issued for a period of 12 months upon the applicant completing the following:

- (1) payment of application, issuance, and criminal history record check fees;
- (2) submission of a completed, approved application as provided by the Board; and
- (3) provision of evidence of being under the supervision of North Carolina licensed dietitian(s)/nutritionist(s) or licensed nutritionist(s).

(e) Following the successful completion, as defined in 21 NCAC 17 .0105, of one of the licensing examinations, the provisionally licensed dietitian/nutritionist or provisionally licensed nutritionist shall submit a completed application for licensure pursuant to G.S. 90-357.5, payment of fees, and evidence of passing one of the examinations referenced in G.S. 90-359. If the provisionally licensed dietitian/nutritionist or provisionally licensed nutritionist successfully completes one of the licensing examinations and submits an application for licensure pursuant to G.S. 90-357.5 within 12 months of the date that the provisional license became effective, the provisionally licensed dietitian/nutritionist or provisionally licensed nutritionist shall only be required to pay the balance of the issuance fee.

(f) If the provisionally licensed dietitian/nutritionist or provisionally licensed nutritionist does not successfully complete the licensing examination and apply for a license pursuant to G.S. 90-357.5 within 12 months of the date that the provisional license became effective, the provisionally licensed dietitian/nutritionist or provisionally licensed nutritionist must reapply and pay all applicable fees in order to obtain licensure under G.S. 90-357.5.

*History Note:* Authority G.S. 90-356; 90-357.5; 90-361;  
*Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13, 1992;*  
*Eff. June 1, 1992;*  
*Recodified from 21 NCAC 17 .0007 Eff. February 1, 1995;*  
*Amended Eff. December 1, 2011; July 18, 2002; March 1, 1996;*  
*February 1, 1995;*  
*Readopted Eff. August 1, 2019.*

**21 NCAC 17 .0109 ISSUANCE AND RENEWAL OF LICENSE**

(a) An applicant shall be issued a license based on compliance with requirements stated in G.S. 90-357.5 and the rules in this Chapter.

(b) A licensee shall notify the Board of any change in the licensee's personal or professional mailing address within 30 days of that change.

(c) Licenses shall expire on March 31 of every year. A license for an LDN or LN shall be issued for a period of one year beginning April 1 and ending March 31. If an LDN or LN license is initially granted, reinstated, or reactivated between January 1 and March 31, the license shall be granted from the time of issuance through March 31 of the following year.

(d) At least 30 days prior to the expiration date of the license, the Board shall send the licensee written notice via USPS or electronic mail of the amount of renewal fee due, and instructions on how the licensee may renew online at [www.ncbdn.org](http://www.ncbdn.org). Each applicant for renewal shall file a completed application with the Board.

(e) A licensee's renewal application must be submitted online prior to the expiration date. The licensee's renewal fee must also be received or postmarked prior to the expiration date in order to avoid the late renewal fee. If the fee is mailed, it must be sent to the mailing address provided in 21 NCAC 17 .0104(d). The licensee shall be responsible for filing any change of email or physical address where renewal notices are to be sent. Failure to receive renewal notice due to the licensee's failure to file change of addresses with the Board shall not be justification for late renewal.

(f) Renewal applications shall require licensees attest that the information on the application is true and complete. The applicant shall provide a written explanation and all available court documents evidencing the circumstances of any pending charge or conviction, not previously made known to the Board, if requested by the Board. The Board shall use these documents when determining if a license should be renewed under G.S. 90-363.

(g) Applicants for renewal of licenses shall provide documentation of having met continuing education requirements by submitting:

- (1) Verification of current certification as a Registered Dietitian Nutritionist by the CDR, and verification of compliance with CDR's continuing education requirements. The continuing education standards required to maintain certification are contained in the "Professional Development Portfolio Guide," which is hereby incorporated by reference including subsequent amendments and editions

- of reference material. Copies of this standard may be obtained at no charge from CDR's website at: <https://www.cdrnet.org/pdp/professional-development-portfolio-guide>;
- (2) A summary of continuing education on the form provided by the Board documenting completion of 75 hours of continuing education for a five year period. The continuing education hours must meet the standards contained in the "Professional Development Portfolio Guide." Documentary evidence for continuing education activities shall include the following for each activity:
- (A) the name of provider/sponsor;
  - (B) the name of accrediting organization;
  - (C) the title of the activity;
  - (D) the date attended;
  - (E) the continuing education hours earned; and
  - (F) a record of attendance or participation;
- (3) Verification of current certification as a Certified Nutrition Specialist by the BCNS, and verification of compliance with BCNS's continuing education requirements. The continuing education standards required to maintain certification are listed on the Board for Certification of Nutrition Specialists' website, which is hereby incorporated by reference including subsequent amendments or editions of reference material. Copies of this standard may be obtained at no charge from the BCNS's website at: <https://nutritionspecialists.org/cns-tools/recertification>; or
- (4) Verification of current certification as a Diplomate, American Clinical Board of Nutrition by the ACBN, and verification of compliance with ACBN's continuing education requirements. The continuing education standards required to maintain certification are listed on the American Clinical Board of Nutrition's website, which is hereby incorporated by reference including subsequent amendments or editions of reference material. Copies of this standard may be obtained at no charge from the ACBN's website at: <https://www.acbn.org/policiesprocedures.pdf>.
- (h) The Board shall furnish a renewal license to each licensee who meets all renewal requirements by the expiration date.
- (i) The Board shall renew a license upon the payment of a late fee within 60 days of the expiration date. If the license has been expired for 60 days or less, the license may be renewed by submitting the online license renewal form, the renewal and late fee, and verification of current certification as a Registered Dietitian Nutritionist, Certified Nutrition Specialist, Diplomate, American Clinical Board of Nutrition, or, if following the requirements of Subparagraph (g)(2) of this Rule, continuing education documentation to the Board, postmarked on or before the end of the 60-day grace period.

*History Note: Authority G.S. 90-356; 90-362; 90-363; Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13, 1992; Eff. June 1, 1992; Recodified from 21 NCAC 17 .0009 Eff. February 1, 1995; Amended Eff. December 1, 2011; July 18, 2002; February 1, 1995; Readopted Eff. August 1, 2019.*

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## **RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission September 19, 2019 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

### **RULES REVIEW COMMISSION MEMBERS**

#### **Appointed by Senate**

Jeff Hyde (1<sup>st</sup> Vice Chair)  
Robert A. Bryan, Jr.  
Margaret Currin  
Brian P. LiVecchi

#### **Appointed by House**

Garth Dunklin (Chair)  
Andrew P. Atkins  
Anna Baird Choi  
Paul Powell  
Jeanette Doran (2<sup>nd</sup> Vice Chair)

### **COMMISSION COUNSEL**

Amber Cronk May (919) 431-3074  
Amanda Reeder (919) 431-3079  
Ashley Snyder (919) 431-3081

### **RULES REVIEW COMMISSION MEETING DATES**

September 19, 2019      October 17, 2019  
November 21, 2019      December 19, 2019

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### **AGENDA**

#### **RULES REVIEW COMMISSION**

**THURSDAY, SEPTEMBER 19, 2019 9:00 A.M.**  
**1711 New Hope Church Rd., Raleigh, NC 27609**

- I. Recognition and Swearing in of New Member of the Rules Review Commission
- II. Ethics reminder by the chair as set out in G.S. 163A-159(e)
- III. Approval of the minutes from the last meeting
- IV. Follow-up matters
  - A. Board of Elections - 08 NCAC 10B .0103 (May)
  - B. Social Services Commission - 10A NCAC 06S .0101, .0102, .0203, .0204, .0301, .0302, .0402, .0403, .0404, .0405, .0501, .0508; 06T .0201 (Reeder)
  - C. DHHS/ Division of Health Benefits - 10A NCAC 23G .0304 (Reeder)
  - D. Commission for the Blind - 10A NCAC 63C .0203, .0204, .0403, .0601 (Reeder)
  - E. Social Services Commission - 10A NCAC 67A .0101, .0201, .0202; 68 .0103, .0104, .0105, .0106, .0202, .0203, .0204, .0205, .0206, .0208, .0301, .0303; 69 .0602, .0604, .0605; 72 .0101 (May)
  - F. Department of Justice - 12 NCAC 02I .0306 (Reeder)
  - G. Environmental Management Commission - 15A NCAC 02B .0101, .0103, .0104, .0106, .0108, .0110, .0201, .0202, .0203, .0204, .0205, .0206, .0208, .0211, .0212, .0214, .0215, .0216, .0218, .0219, .0220, .0221, .0222, .0223, .0224, .0225, .0226, .0227, .0228, .0230, .0231, .0301, .0302, .0303, .0304, .0305, .0306, .0307, .0308, .0309, .0310, .0311, .0312, .0313, .0314, .0315, .0316, .0317 (May)
  - H. Environmental Management Commission - 15A NCAC 02B .0402, .0403, .0404, .0406, .0407, .0408, .0501, .0502, .0503, .0504, .0505, .0506, .0508, .0511; 02H .0101, .0102, .0103, .0105, .0106, .0107, .0108, .0109, .0111, .0112, .0113, .0114, .0115, .0116, .0117, .0118, .0120, .0121, .0124, .0125, .0127, .0138, .0139, .0140, .0141, .0142, .0143, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .1201, .1202, .1203, .1204, .1205, .1206 (May)
  - I. Board of Dietetics/Nutrition – 21 NCAC 17 .0101, .0303 (Reeder)
- V. Review of Log of Filings (Permanent Rules) for rules filed between July 23, 2019 through August 20, 2019
  - Department of Administration (May)
  - Board of Agriculture (Reeder)
  - Criminal Justice Education and Training Standards Commission (Reeder)
  - Alcoholic Beverage Control Commission (Snyder)

- Private Protective Services Board (Reeder)
- Wildlife Resources Commission 10B, 10F (Snyder)
- Wildlife Resources Commission 10H (Reeder)
- Commission for Public Health (Reeder)
- Board of Certified Public Accountant Examiners (Reeder)
- Board of Cosmetic Art Examiners (May)
- Board of Dental Examiners (Snyder)
- State Board of Opticians (Snyder)

- VI. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VII. Existing Rules Review
- Readoptions
- VIII. Commission Business
- Commission vote on adoption of the Administrative Rule Style Guide
  - Election of Commission Officers
  - Next meeting: Thursday, October 17, 2019

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**Commission Review  
Log of Permanent Rule Filings  
July 23, 2019 through August 20, 2019**

**ADMINISTRATION, DEPARTMENT OF**

The rules in Chapter 5 concern purchase and contract.

The rules in Subchapter 5A concern the division of purchase and contract.

|  |    |      |     |       |
|--|----|------|-----|-------|
| <u>Definitions</u>   | 01 | NCAC | 05A | .0112 |
| Amend*   |    |      |     |       |
| The rules in Subchapter 5B concern purchase procedures including requisitioning (.0100); specifications (.0200); procurement authorization and procedures (.0300); rejection of offers (.0500); purchase of used items (.0600); removal of certain items from general construction (.0700); inspection and testing (.0900); guarantees and warranties (.1000); term contracts (.1100); partial and multiple awards (.1200); waiver of competition (.1400); miscellaneous provisions (.1500) exemptions, emergencies and special delegations (.1600); inventories and stores (.1800); and records of the division of purchase and contract (.1900). |    |      |     |       |
| <u>Confidentiality</u>   | 01 | NCAC | 05B | .0103 |
| Amend*   |    |      |     |       |
| <u>Copies of Specifications</u>  | 01 | NCAC | 05B | .0207 |
| Readopt/Repeal*  |    |      |     |       |
| <u>Qualified Products List</u>   | 01 | NCAC | 05B | .0208 |
| Readopt/Repeal*  |    |      |     |       |
| <u>Confidentiality</u>   | 01 | NCAC | 05B | .0210 |
| Repeal*  |    |      |     |       |
| <u>Electronic, Facsimile, and Telephone Offers</u>   | 01 | NCAC | 05B | .0303 |
| Readopt with Changes*  |    |      |     |       |
| <u>Recall of Offers</u>  | 01 | NCAC | 05B | .0304 |
| Readopt with Changes*  |    |      |     |       |
| <u>Public Opening</u>  | 01 | NCAC | 05B | .0305 |
| Readopt with Changes*  |    |      |     |       |
| <u>Late Offers, Modifications, or Withdrawals</u>  | 01 | NCAC | 05B | .0306 |
| Readopt with Changes*  |    |      |     |       |
| <u>Extension of Acceptance Time</u>  | 01 | NCAC | 05B | .0308 |



|   |    |      |     |       |
|---|----|------|-----|-------|
| Readopt with Changes*                                       |    |      |     |       |
| <u>Evaluation</u>   | 01 | NCAC | 05B | .0309 |
| Readopt with Changes*                                       |    |      |     |       |
| <u>Notification of Award</u>                                | 01 | NCAC | 05B | .0310 |
| Readopt with Changes*                                       |    |      |     |       |
| <u>Tabulations and Abstracts</u>                            | 01 | NCAC | 05B | .0313 |
| Readopt/Repeal*   |    |      |     |       |
| <u>Advertisement Requirements</u>                           | 01 | NCAC | 05B | .0316 |
| Readopt with Changes*                                       |    |      |     |       |
| <u>Mandatory Conferences/Site Visits</u>                    | 01 | NCAC | 05B | .0317 |
| Readopt with Changes*                                       |    |      |     |       |
| <u>Rejection or Cancellation of Offers</u>                  | 01 | NCAC | 05B | .0501 |
| Readopt with Changes*                                       |    |      |     |       |
| <u>Public Record</u>  | 01 | NCAC | 05B | .0502 |
| Readopt/Repeal*   |    |      |     |       |
| <u>Negotiation</u>  | 01 | NCAC | 05B | .0503 |
| Readopt with Changes*                                       |    |      |     |       |
| <u>Extension of Contract Termination Dates</u>              | 01 | NCAC | 05B | .1108 |
| Readopt with Changes*                                       |    |      |     |       |
| <u>Use</u>  | 01 | NCAC | 05B | .1201 |
| Readopt with Changes*                                       |    |      |     |       |
| <u>Confidentiality</u>                                      | 01 | NCAC | 05B | .1501 |
| Readopt/Repeal*   |    |      |     |       |
| <u>Change in Corporate Structure</u>                        | 01 | NCAC | 05B | .1507 |
| Readopt with Changes*                                       |    |      |     |       |
| <u>Use of Purchasing Power for Private Gain</u>             | 01 | NCAC | 05B | .1510 |
| Readopt/Repeal*   |    |      |     |       |
| <u>Anticompetitive, Deceptive, and Fraudulent Practices</u> | 01 | NCAC | 05B | .1511 |
| Readopt with Changes*                                       |    |      |     |       |
| <u>Advertising</u>  | 01 | NCAC | 05B | .1516 |
| Readopt with Changes*                                       |    |      |     |       |
| <u>Protest Procedures</u>                                   | 01 | NCAC | 05B | .1519 |
| Readopt with Changes*                                       |    |      |     |       |
| <u>Debarment</u>  | 01 | NCAC | 05B | .1520 |
| Readopt with Changes*                                       |    |      |     |       |
| <u>Faithful Performance</u>                                 | 01 | NCAC | 05B | .1521 |
| Readopt with Changes*                                       |    |      |     |       |
| <u>Reciprocal Preference</u>                                | 01 | NCAC | 05B | .1522 |
| Readopt with Changes*                                       |    |      |     |       |

The rules in Subchapter 5D concern consultant contracts including contracting procedures.

|  |    |      |     |       |
|--|----|------|-----|-------|
| <u>Relationship of Consultant to State</u> | 01 | NCAC | 05D | .0209 |
| Readopt/Repeal*                            |    |      |     |       |

## **AGRICULTURE, BOARD OF**

The rules in Chapter 20 concern the North Carolina State Fair.

The rules in Subchapter 20B concern regulations of the state fair including general provisions (.0100); space rental: commercial exhibit and concession regulations (.0200); competitive exhibit regulations (.0300); and operation of state fair facilities (.0400).

|                        |    |      |     |       |
|------------------------|----|------|-----|-------|
| <u>Admission Rules</u> | 02 | NCAC | 20B | .0104 |
|------------------------|----|------|-----|-------|

Amend\*

## **CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

The rules in Chapter 9 are from the Criminal Justice Education and Training Standards Commission. This Commission has primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs).

The rules in Subchapter 9B cover minimum standards for: employment (.0100); schools and training programs (.0200); criminal justice instructors (.0300); completion of training (.0400); school directors (.0500); and certification of post-secondary criminal justice education programs (.0600).

Certification Training for School Resource Officers 12 NCAC 09B .0313  
Amend\*

The rules in Subchapter 9F cover concealed handgun training.

Topical Areas 12 NCAC 09F .0102  
Amend\*

Instructor Responsibilities 12 NCAC 09F .0105  
Amend\*

## **ALCOHOLIC BEVERAGE CONTROL COMMISSION**

The rules in Chapter 15 are from the Alcoholic Beverage Control Commission. The rules in Subchapter 15B concern retail beer, wine, mixed beverages, brownbagging, advertising, and special permits. The rules include definitions and permit application procedures (.0100); general rules affecting retailers and brownbagging permittees (.0200); malt beverages and the wine retailer/wholesaler relationship (.0300); additional requirements for brownbagging permittees (.0400); additional requirements for mixed beverages permittees (.0500); special requirements for convention centers, community theatres, sports clubs, and nonprofit and political organizations (.0600); special occasions permits (.0700); culinary permits (.0800); wine and beer tastings (.0900); advertising (.1000); and effect of administrative action, fines, and offers in compromise (.1100).

Refund Offers 14B NCAC 15B .1013  
Amend\*

## **PRIVATE PROTECTIVE SERVICES BOARD**

The rules in Chapter 16 are from the Private Protective Services Board and cover organization and general provisions (.0100); licenses and trainee permits (.0200); security guard patrol and guard dog service (.0300); private investigator: electronic countermeasures (.0400); polygraph (.0500); psychological stress evaluator (PSE) (.0600); unarmed security guard registration (.0700); armed security guard firearm registration permit (.0800); trainer certificate (.0900); recovery fund (.1000); training and supervision for private investigator associates (.1100); continuing education (.1300); and armed armored car service guards firearm registration permit (.1400).

Reporting Requirements for the Discharge of Firearms 14B NCAC 16 .0110  
Readopt with Changes\*

Investigation/Armed Security Guard Firearm Registration P... 14B NCAC 16 .0804  
Readopt with Changes\*

Armed Security Guard Firearm Registration Permit Ident Cards 14B NCAC 16 .0805  
Readopt with Changes\*

Renewal of Armed Security Guard Firearm Registration Permit 14B NCAC 16 .0806  
Readopt with Changes\*

Training Requirements for Armed Security Guards 14B NCAC 16 .0807  
Readopt with Changes\*

Concealed Weapons 14B NCAC 16 .0808

|  |     |      |    |       |
|--|-----|------|----|-------|
| Readopt with Changes*                                |     |      |    |       |
| <u>Authorized Firearms</u>                           | 14B | NCAC | 16 | .0809 |
| Readopt with Changes*                                |     |      |    |       |
| <u>Requirements for Firearms Trainer Certificate</u> | 14B | NCAC | 16 | .0901 |
| Readopt with Changes*                                |     |      |    |       |
| <u>Renewal of a Firearms Trainer Certificate</u>     | 14B | NCAC | 16 | .0904 |
| Readopt with Changes*                                |     |      |    |       |
| <u>Records Retention</u>                             | 14B | NCAC | 16 | .0906 |
| Readopt with Changes*                                |     |      |    |       |
| <u>Unarmed Trainer Certificate</u>                   | 14B | NCAC | 16 | .0909 |
| Readopt with Changes*                                |     |      |    |       |

## **WILDLIFE RESOURCES COMMISSION**

The rules in Chapter 10 are promulgated by the Wildlife Resources Commission and concern wildlife resources and water safety.

The rules in Subchapter 10B are hunting and trapping rules and cover general hunting and wildlife provisions (.0100), hunting specific animals (.0200), trapping (.0300), and tagging furs (.0400).

|  |     |      |     |       |
|--|-----|------|-----|-------|
| <u>Wildlife Taken for Depredations</u> | 15A | NCAC | 10B | .0106 |
| Amend*                                 |     |      |     |       |

The rules in Subchapter 10F cover motorboats and water safety including boat registration (.0100); safety equipment and accident reports (.0200); and local water safety regulations covering speed limits, no-wake restrictions, restrictions on swimming and other activities, and placement of markers for designated counties or municipalities (.0300).

|   |     |      |     |       |
|---|-----|------|-----|-------|
| <u>Catawba, Iredell, Lincoln, and Mecklenburg Counties</u>        | 15A | NCAC | 10F | .0307 |
| Amend*  |     |      |     |       |
| <u>Onslow County</u>  | 15A | NCAC | 10F | .0320 |
| Amend*  |     |      |     |       |
| <u>McDowell County</u>  | 15A | NCAC | 10F | .0339 |
| Amend*  |     |      |     |       |
| <u>City of Rocky Mount - Rocky Mount Millpond Dam Safety Zone</u> | 15A | NCAC | 10F | .0370 |
| Amend*  |     |      |     |       |

The rules in Subchapter 10H concern activities regulated by the Commission including controlled hunting preserves for domestically raised game birds (.0100), holding wildlife in captivity (.0300), commercial trout ponds (.0400), fish propagation (.0700), falconry (.0800), game bird propagators (.0900), taxidermy (.1000), furbearer propagation (.1100), controlled fox hunting preserves (.1200), and reptiles and amphibians (.1300).

|   |     |      |     |       |
|---|-----|------|-----|-------|
| <u>Definitions and General Requirements for Captivity License</u> | 15A | NCAC | 10H | .1401 |
| Adopt*  |     |      |     |       |
| <u>Captivity License for Rehabilitation</u>                       | 15A | NCAC | 10H | .1402 |
| Adopt*  |     |      |     |       |
| <u>Captivity License for Holding</u>                              | 15A | NCAC | 10H | .1403 |
| Adopt*  |     |      |     |       |
| <u>Minimum Standards Captivity License for Holding</u>            | 15A | NCAC | 10H | .1404 |
| Adopt*  |     |      |     |       |
| <u>Captivity License Revocation and Enforcement</u>               | 15A | NCAC | 10H | .1405 |
| Adopt*  |     |      |     |       |
| <u>Form for Captivity Licenses</u>                                | 15A | NCAC | 10H | .1406 |
| Adopt*  |     |      |     |       |

## **PUBLIC HEALTH, COMMISSION FOR**

The rules in Chapter 18 cover environmental aspects of health such as sanitation (18A), mosquito control (18B), water supplies (18C), and water treatment facility operators (18D). The rules in Subchapter 18A deal with sanitation and include handling, packing and shipping of crustacean meat (.0100) and shellfish (.0300 and .0400); operation of shellstock plants and reshippers (.0500); shucking and packing plants (.0600); depuration mechanical purification facilities (.0700); wet storage of shellstock (.0800); shellfish growing waters (.0900); summer camps (.1000); grade A milk (.1200); hospitals, nursing homes, rest homes, etc. (.1300); mass gatherings (.1400); local confinement facilities (.1500); residential care facilities (.1600); protection of water supplies (.1700); lodging places (.1800); sewage treatment and disposal systems (.1900); migrant housing (.2100); bed and breakfast homes (.2200); delegation of authority to enforce rules (.2300); public, private and religious schools (.2400); public swimming pools (.2500); restaurants, meat markets, and other food handling establishments (.2600); child day care facilities (.2800); restaurant and lodging fee collection program (.2900); bed and breakfast inns (.3000); lead poisoning prevention (.3100); tattooing (.3200); adult day service facilities (.3300); primitive camps (.3500); rules governing the sanitation of resident camps (.3600); and private drinking water well sampling (.3800).

Lead Poisoning Hazards in Child Care Centers  
Amend\*

15A NCAC 18A .2816

### **CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF**

The rules in Subchapter 8F are the requirements for CPA examination and certificate applicants including general provisions (.0100), fees and refunds (.0200), educational requirements (.0300), experience (.0400), and applications (.0500).

Conditioning Requirements  
Amend\*

21 NCAC 08F .0105

### **COSMETIC ART EXAMINERS, BOARD OF**

The rules in Subchapter 14H are sanitation rules for both operators and facilities including sanitation (.0100); shop licensing and physical dimensions (.0200); cosmetic art shop and equipment (.0300); sanitation procedures and practices (.0400); and enforcement, maintenance of licensure (.0500).

Copy of Rules to Cosmetology Students  
Amend\*

21 NCAC 14H .0101

Copy of Rules to Beauty Establishments  
Amend\*

21 NCAC 14H .0102

Ventilation and Light  
Amend\*

21 NCAC 14H .0302

Licensees and Students  
Amend\*

21 NCAC 14H .0401

Disinfection Procedures  
Amend\*

21 NCAC 14H .0403

The rules in Subchapter 14P are civil penalty rules.

Operations of Schools of Cosmetic Art  
Amend\*

21 NCAC 14P .0113

The rules in Subchapter 14R are continuing education rules.

Continuing Education  
Amend\*

21 NCAC 14R .0105

The rules in Subchapter 14T concern cosmetic art schools including the scope of the rules and school applications (.0100); physical requirements for cosmetic art schools (.0200); school equipment and supplies (.0300); student equipment (.0400); record keeping (.0500); curricula for all cosmetic art disciplines (.0600); school licensure, operations, closing and relocating schools (.0700); school inspections (.0800); and disciplinary actions (.0900).

|   |    |      |     |       |
|---|----|------|-----|-------|
| <u>New School Applications</u>                    | 21 | NCAC | 14T | .0102 |
| Amend*  |    |      |     |       |
| <u>All Cosmetic Art Schools</u>                   | 21 | NCAC | 14T | .0201 |
| Amend*  |    |      |     |       |
| <u>Permanent Records, Forms and Documentation</u> | 21 | NCAC | 14T | .0502 |
| Amend*  |    |      |     |       |
| <u>Cosmetic Art Curricula</u>                     | 21 | NCAC | 14T | .0601 |
| Amend*  |    |      |     |       |
| <u>Cosmetology Curriculum</u>                     | 21 | NCAC | 14T | .0602 |
| Amend*  |    |      |     |       |
| <u>Apprentice Cosmetology Curriculum</u>          | 21 | NCAC | 14T | .0603 |
| Amend*  |    |      |     |       |
| <u>Esthetics Curriculum</u>                       | 21 | NCAC | 14T | .0604 |
| Amend*  |    |      |     |       |
| <u>Manicuring Curriculum</u>                      | 21 | NCAC | 14T | .0605 |
| Amend*  |    |      |     |       |
| <u>Natural Hair Care Curriculum</u>               | 21 | NCAC | 14T | .0606 |
| Amend*  |    |      |     |       |
| <u>Cosmetology Teacher Trainee Curriculum</u>     | 21 | NCAC | 14T | .0607 |
| Amend*  |    |      |     |       |
| <u>Esthetic Teacher Trainee Curriculum</u>        | 21 | NCAC | 14T | .0608 |
| Amend*  |    |      |     |       |
| <u>Manicurist Teacher Trainee Curriculum</u>      | 21 | NCAC | 14T | .0609 |
| Amend*  |    |      |     |       |
| <u>Natural Hair Care Teacher Curriculum</u>       | 21 | NCAC | 14T | .0610 |
| Amend*  |    |      |     |       |
| <u>Online Instruction</u>                         | 21 | NCAC | 14T | .0611 |
| Amend*  |    |      |     |       |
| <u>Instruction Guidelines</u>                     | 21 | NCAC | 14T | .0612 |
| Amend*  |    |      |     |       |
| <u>School Operations/Licensure Maintenance</u>    | 21 | NCAC | 14T | .0701 |
| Amend*  |    |      |     |       |
| <u>Expiration of Student Credit</u>               | 21 | NCAC | 14T | .0703 |
| Amend*  |    |      |     |       |

## **DENTAL EXAMINERS, BOARD OF**

The rules in Subchapter 16A concern the organization of the board of dental examiners.

|  |    |      |     |       |
|--|----|------|-----|-------|
| <u>Definitions</u>                             | 21 | NCAC | 16A | .0101 |
| Amend*   |    |      |     |       |
| <u>Suspension of Authority to Expend Funds</u> | 21 | NCAC | 16A | .0105 |
| Adopt*   |    |      |     |       |

The rules in Chapter 16 cover the licensing of dentists and dental hygienists. The rules in Subchapter 16B concern licensure examination for dentists including examination required (.0100); qualifications (.0200); application (.0300); Board conducted examinations (.0400); licensure by credentials (.0500); limited volunteer dental license (.0600); instructor's license (.0700); temporary volunteer dental license (.0800); and exemptions for active military (.0900).

|   |    |      |     |       |
|---|----|------|-----|-------|
| <u>Examination Required; Exemptions</u> | 21 | NCAC | 16B | .0101 |
| Amend*                                  |    |      |     |       |
| <u>Board Approved Examinations</u>      | 21 | NCAC | 16B | .0303 |
| Amend*                                  |    |      |     |       |

The rules in Chapter 16 cover the licensing of dentists and dental hygienists. The rules in Subchapter 16C are dental hygienist licensure rules including general provisions (.0100); qualifications (.0200); application (.0300); Board conducted examinations (.0400); and licensure by credentials (.0500).

|                  |    |      |     |       |
|------------------|----|------|-----|-------|
| <u>Licensure</u> | 21 | NCAC | 16C | .0101 |
| Amend*           |    |      |     |       |

The rules in Subchapter 16H concern dental assistants including classification and training (.0100); and permitted functions of dental assistant (.0200).

|  |    |      |     |       |
|--|----|------|-----|-------|
| <u>General Permitted Functions of Dental Assistant I</u> | 21 | NCAC | 16H | .0201 |
| Amend*   |    |      |     |       |

|   |    |      |     |       |
|---|----|------|-----|-------|
| <u>Limited Exception for Assisting Hygienists</u> | 21 | NCAC | 16H | .0208 |
| Adopt*  |    |      |     |       |

The rules in Subchapter 16I concern the annual renewal of the dental hygienist license.

|  |    |      |     |       |
|--|----|------|-----|-------|
| <u>Fee for Late Filing and Duplicate License</u> | 21 | NCAC | 16I | .0106 |
| Amend*   |    |      |     |       |

The rules in Subchapter 16N concern rule-making and administrative hearing procedures including petitions for rulemaking (.0100); notice of rule-making hearings (.0200); rule-making hearings (.0300); declaratory rulings (.0400); administrative hearing procedures (.0500); and administrative hearings, decisions, related rights and procedures (.0600).

|                         |    |      |     |       |
|-------------------------|----|------|-----|-------|
| <u>Right to Hearing</u> | 21 | NCAC | 16N | .0501 |
| Amend*                  |    |      |     |       |

|                  |    |      |     |       |
|------------------|----|------|-----|-------|
| <u>Subpoenas</u> | 21 | NCAC | 16N | .0603 |
| Amend*           |    |      |     |       |

|                             |    |      |     |       |
|-----------------------------|----|------|-----|-------|
| <u>Disciplinary Factors</u> | 21 | NCAC | 16N | .0607 |
| Adopt*                      |    |      |     |       |

The rules in Subchapter 16V concern unprofessional conduct.

|  |    |      |     |       |
|--|----|------|-----|-------|
| <u>Definition: Unprofessional Conduct by a Dentist</u> | 21 | NCAC | 16V | .0101 |
| Amend*   |    |      |     |       |

|   |    |      |     |       |
|---|----|------|-----|-------|
| <u>Definition: Unprofessional Conduct by a Dental Hygienist</u> | 21 | NCAC | 16V | .0102 |
| Amend*  |    |      |     |       |

The rules in Subchapter 16W concern public health hygienists.

|  |    |      |     |       |
|--|----|------|-----|-------|
| <u>Training for Public Health Hygienists</u> | 21 | NCAC | 16W | .0102 |
| Amend*                                       |    |      |     |       |

## **OPTICIANS, STATE BOARD OF**

The rules in Chapter 40 are from the Board of Opticians and concern location (.0100); conduct of registrants (.0200); qualifications, applications and licensing (.0300); and administrative hearings (.0400).

|                              |    |      |    |       |
|------------------------------|----|------|----|-------|
| <u>Location and Function</u> | 21 | NCAC | 40 | .0101 |
| Amend*                       |    |      |    |       |

|                                    |    |      |    |       |
|------------------------------------|----|------|----|-------|
| <u>Information and Application</u> | 21 | NCAC | 40 | .0104 |
| Amend*                             |    |      |    |       |

|             |    |      |    |       |
|-------------|----|------|----|-------|
| <u>Fees</u> | 21 | NCAC | 40 | .0108 |
| Repeal*     |    |      |    |       |

|                            |    |      |    |       |
|----------------------------|----|------|----|-------|
| <u>Election of Members</u> | 21 | NCAC | 40 | .0109 |
| Amend*                     |    |      |    |       |

|  |    |      |    |       |
|--|----|------|----|-------|
| <u>Display of Registration and License</u> | 21 | NCAC | 40 | .0209 |
|--|----|------|----|-------|

|   |    |      |    |       |
|---|----|------|----|-------|
| Amend*  |    |      |    |       |
| <u>Duty to Provide Direct Supervision</u>                           | 21 | NCAC | 40 | .0212 |
| Amend*  |    |      |    |       |
| <u>Licensure Examination Fees</u>                                   | 21 | NCAC | 40 | .0302 |
| Amend*  |    |      |    |       |
| <u>Licensure Examination and Re-Examination</u>                     | 21 | NCAC | 40 | .0303 |
| Amend*  |    |      |    |       |
| <u>Apprenticeship and Internship Requirements: Registration</u>     | 21 | NCAC | 40 | .0314 |
| Amend*  |    |      |    |       |
| <u>Applicants from Other States</u>                                 | 21 | NCAC | 40 | .0319 |
| Amend*  |    |      |    |       |
| <u>License Renewal Information</u>                                  | 21 | NCAC | 40 | .0320 |
| Amend*  |    |      |    |       |
| <u>Training Establishment Requirements</u>                          | 21 | NCAC | 40 | .0321 |
| Amend*  |    |      |    |       |
| <u>Affidavit of Applicant</u>                                       | 21 | NCAC | 40 | .0323 |
| Amend*  |    |      |    |       |
| <u>Licensure for Military-Trained Applicant; Licensure for M...</u> | 21 | NCAC | 40 | .0325 |
| Amend*  |    |      |    |       |

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**CONTESTED CASE DECISIONS**

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*This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at <http://www.ncoah.com/hearings/decisions/>. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: [oah.clerks@oah.nc.gov](mailto:oah.clerks@oah.nc.gov) or phone 919-431-3000.*

**OFFICE OF ADMINISTRATIVE HEARINGS****Chief Administrative Law Judge****JULIAN MANN, III****Senior Administrative Law Judge****FRED G. MORRISON JR.****ADMINISTRATIVE LAW JUDGES**

Melissa Owens Lassiter  
Don Overby  
J. Randall May  
David Sutton  
Tenisha Jacobs

A. B. Elkins II  
Selina Malherbe  
J. Randolph Ward  
Stacey Bawtinheimer

| Year | Code | Number                    | Date<br>Decision<br>Filed | Petitioner  |    | Respondent  | ALJ          |
|------|------|---------------------------|---------------------------|---|----|---|--------------|
|      |      |                           |                           | <u>Published</u>  |    |   |              |
| 18   | CPS  | 06339                     | 7/17/2019                 | Brenda Rene<br>Branch   | v. | North Carolina Crime Victims<br>Compensation Commission   | Lassiter     |
| 18   | DHR  | 05219                     | 7/2/2019                  | Nicole Baines Sauls   | v. | NC Department of Health & Human<br>Services Division of Health Service<br>Regulations                                       | Jacobs       |
| 18   | DHR  | 07276                     | 7/29/2019                 | Audiasha Walker   | v. | Department of Health and Human<br>Services, Division of Health Service<br>Regulation  | Sutton       |
| 19   | DHR  | 00851                     | 7/25/2019                 | Debra P Dennis  | v. | DHHS DHSR   | Sutton       |
| 19   | DHR  | 02667                     | 7/12/2019                 | E C Canada &<br>Associates Inc<br>Timothy DeVane<br>Daniel Canada<br>Ethelean Canada<br>and Dwight Canada | v. | Special Nutrition Programs Nutrition<br>Services Branch Division of Public<br>Health Womens and Childrens Health<br>Section | Overby       |
| 19   | DHR  | 03052;<br>03053;<br>03054 | 7/12/2019                 | Sherry Gentry/<br>HOPE;<br>Sandra Kirkman/<br>HOPE;<br>Douglas<br>Jackson/HOPE                            | v. | NC Department of Health and Human<br>Services, Nutrition Services, Child &<br>Adult Care Food Program                       | Overby       |
| 19   | DOJ  | 01620                     | 7/29/2019                 | Randy Camacho   | v. | NC Sheriffs Education and Training<br>Standards Commission  | Bawtinheimer |
| 18   | EDC  | 07001                     | 7/3/2019                  | Kristyn Daney   | v. | State Board of Education  | May          |



**CONTESTED CASE DECISIONS**

|    |     |       |           | <u>Unpublished</u>   |    |  |             |
|----|-----|-------|-----------|--|----|--|-------------|
| 19 | ABC | 00212 | 7/29/2019 | Mr and Mrs Nunez<br>Enterprise LLC<br>Tabu Bar and<br>Lounge | v. | Alcoholic Beverage Control<br>Commission   | Mann        |
| 19 | ABC | 02353 | 7/26/2019 | NC Alcoholic<br>Beverage Control<br>Commission               | v. | Tipsy Crow LLC T/A Tipsy Crow  | Mann        |
| 19 | ABC | 03293 | 7/9/2019  | Town of<br>Wrightsville Beach<br>North Carolina              | v. | North Carolina Alcoholic Beverage<br>Control Commission  | Culpepper   |
| 19 | CPS | 02112 | 7/8/2019  | Alex C Williams  | v. | NC Crime Victims Compensation<br>Commission  | Mann        |
| 19 | CPS | 02113 | 7/8/2019  | Ray Darnell Smith<br>Jr                                      | v. | NC Crime Victims Compensation<br>Commission  | Mann        |
| 18 | CSE | 06941 | 7/8/2019  | Michael T<br>Holloway  | v. | NC Department of Health and Human<br>Services, Division of Social Services,<br>Child Support Enforcement Section | Jacobs      |
| 18 | CSE | 06986 | 7/12/2019 | Thomas N Baker III   | v. | NC Department of Health and Human<br>Services, Division of Social Services,<br>Child Support Enforcement         | Ward        |
| 18 | CSE | 07083 | 7/2/2019  | Sharon F<br>Springfield                                      | v. | NC Department of Health and Human<br>Services, Division of Social Services,<br>Child Support Enforcement         | May         |
| 19 | CSE | 00009 | 7/24/2019 | Kory Lee Helm  | v. | NC Department of Health and Human<br>Services, Division of Social Services,<br>Child Support Enforcement Section | Mann        |
| 19 | CSE | 00147 | 7/11/2019 | Larri Hillian  | v. | NC Department of Health and Human<br>Services, Division of Social Services,<br>Child Support Enforcement Section | Mann        |
| 19 | CSE | 00833 | 7/25/2019 | Ollie L Shamburger<br>Jr                                     | v. | NC Department of Health and Human<br>Services, Division of Social Services,<br>Child Support Enforcement Section | Mann        |
| 19 | CSE | 01321 | 7/8/2019  | Rodney K Kirby   | v. | NC Department of Health and Human<br>Services, Division of Social Services,<br>Child Support Enforcement Section | Jacobs      |
| 19 | CSE | 01504 | 7/22/2019 | Ronald L Roberts   | v. | NC Department of Health and Human<br>Services, Division of Social Services,<br>Child Support Enforcement Section | Malherbe    |
| 19 | CSE | 01872 | 7/26/2019 | Derrick Nicholson  | v. | NC Department of Health and Human<br>Services, Division of Social Services,<br>Child Support Enforcement         | Sutton      |
| 19 | CSE | 02532 | 7/24/2019 | Cory T Wilkerson   | v. | NC Department of Health and Human<br>Services, Division of Social Services,<br>Child Support Enforcement         | Ward        |
| 19 | CSE | 03357 | 7/1/2019  | Luigi Alessandro<br>Jac Lorfls                               | v. | NC Department of Health and Human<br>Services, Division of Social Services,<br>Child Support Enforcement Section | Lassiter    |
| 19 | CSE | 03937 | 7/29/2019 | Jorge A Salaverria   | v. | NC Department of Health and Human<br>Services, Division of Social Services,<br>Child Support Services            | Bawtinhimer |
|    |     |       |           |  |    |  |             |

**CONTESTED CASE DECISIONS**

|    |     |       |                         |                                     |    |   |          |
|----|-----|-------|-------------------------|-------------------------------------|----|---|----------|
| 18 | DCS | 05919 | 7/16/2019               | Alexis McNeil                       | v. | NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement  | Ward     |
| 19 | DCS | 02534 | 7/5/2019                | Willie J Moss                       | v. | NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement  | Lassiter |
|    |     |       |                         |                                     |    |   |          |
| 19 | DHR | 00925 | 7/9/2019                | Mamie Covington                     | v. | Health Care Registry  | Jacobs   |
| 19 | DHR | 01589 | 7/19/2019               | Marilene Comai Gilewala             | v. | Department of Health and Human Services Division of Health Service Regulation   | Malherbe |
| 19 | DHR | 01873 | 7/8/2019                | Iryna Martynyuk Vals Place Inc      | v. | NC Department of Health and Human Services, Division of Health Service Regulation   | Jacobs   |
| 19 | DHR | 01927 | 7/2/2019                | Adline Evans Patterson              | v. | Department of Health and Human Services, Division of Health Service Regulation  | May      |
| 19 | DHR | 01930 | 7/8/2019                | Sharpe and Williams Kesha Spaulding | v. | NC Department of Health and Human Services, Division of Health Service Regulation   | Mann     |
| 19 | DHR | 02055 | 7/8/2019                | Iryna Martynyuk Vals Place Inc      | v. | NC Department of Health and Human Services, Division of Health Service Regulation   | Jacobs   |
| 19 | DHR | 02214 | 7/19/2019               | Janice Mabe                         | v. | Rockingham County Department of Social Services   | May      |
| 19 | DHR | 02457 | 7/8/2019                | Natasia Nicole Knight               | v. | North Carolina Health and Human Services, Division of Health Service Regulation   | Jacobs   |
| 19 | DHR | 02793 | 7/18/2019               | Samantha Davis                      | v. | NC Department of Health and Human Services, Division of Child Development and Early Education   | Malherbe |
| 19 | DHR | 02905 | 7/24/2019               | Voca dba Community Alternative NC   | v. | NC Department of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification Section 2718 Mail Service Center Raleigh NC 27699-2718 | Sutton   |
| 19 | DHR | 03064 | 7/24/2019               | Litoya Mikel                        | v. | NC Department of Health and Human Services  | Sutton   |
|    |     |       |                         |                                     |    |   |          |
| 19 | DOJ | 02114 | 7/9/2019                | Lydia Waddell                       | v. | NC Sheriffs Education and Training Standards Commission   | Jacobs   |
| 19 | DOJ | 02496 | 7/29/2019               | Enricque Boyd                       | v. | North Carolina Criminal Justice Education and Training Standards Commission   | May      |
| 19 | DOJ | 02982 | 7/15/2019               | Justin Ryan Thomas                  | v. | NC Sheriffs Education and Training Standards Commission   | Elkins   |
|    |     |       |                         |                                     |    |   |          |
| 19 | INS | 01906 | 7/8/2019                | Dr Daniel N Adams                   | v. | North Carolina State Health Plan  | Jacobs   |
|    |     |       |                         |                                     |    |   |          |
| 19 | SOS | 01866 | 7/22/2019               | Stanley Bernard Anderson            | v. | Secretary of State  | May      |
|    |     |       |                         |                                     |    |   |          |
| 19 | UNC | 01645 | 7/19/2019;<br>7/29/2019 | Janet Davis                         | v. | University of North Carolina Hospitals  | Mann     |