

# NORTH CAROLINA REGISTER

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July 1, 2016

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## 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.

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**NORTH CAROLINA REGISTER**  
 Publication Schedule for January 2016 – December 2016

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	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 <sup>th</sup> day from publication in the Register
30:13	01/04/16	12/08/15	01/19/16	03/04/16	03/21/16	05/01/16	01/2017	09/30/16
30:14	01/15/16	12/21/15	01/30/16	03/15/16	03/21/16	05/01/16	01/2017	10/11/16
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30:16	02/15/16	01/25/16	03/01/16	04/15/16	04/20/16	06/01/16	01/2017	11/11/16
30:17	03/01/16	02/09/16	03/16/16	05/02/16	05/20/16	07/01/16	01/2017	11/26/16
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30:19	04/01/16	03/10/16	04/16/16	05/31/16	06/20/16	08/01/16	01/2017	12/27/16
30:20	04/15/16	03/24/16	04/30/16	06/14/16	06/20/16	08/01/16	01/2017	01/10/17
30:21	05/02/16	04/11/16	05/17/16	07/01/16	07/20/16	09/01/16	01/2017	01/27/17
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30:24	06/15/16	05/24/16	06/30/16	08/15/16	08/22/16	10/01/16	01/2017	03/12/17
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31:09	11/01/16	10/11/16	11/16/16	01/03/17	01/20/17	03/01/17	05/2018	07/29/17
31:10	11/15/16	10/24/16	11/30/16	01/17/17	01/20/17	03/01/17	05/2018	08/12/17
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## 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.

**FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:** This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date

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 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Structural Pest Control Committee intends to amend the rules cited as 02 NCAC 34 .0328, .0502, .0503, .0505, and .0506.

Link to agency website pursuant to G.S. 150B-19.1(c): http://www.ncagr.gov/AdministrativeRules/ProposedRules/index.htm

Proposed Effective Date: November 1, 2016

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than July 16, 2016 to James W. Burnette, Jr., Secretary, NC Structural Pest Control Committee, 1090 Mail Service Center, Raleigh, NC 27699-1090.

Reason for Proposed Action: Amendments allow the use of termiticides with application methodology that differs from those in 02 NCAC 34 .0503, .0505, and .0506, to be used without the approval of a "Waiver" by the property owner, or his authorized agent. There are also amendments to remove or correct outdated information, and to require a licensee of his employee to be present to provide access to records, pesticides and application equipment during an inspection.

Comments may be submitted to: James W. Burnette Jr., 1090 Mail Service Center, Raleigh, NC 27699-1090, phone (919) 733-3556, email james.burnette@ncagr.gov

Comment period ends: August 30, 2016

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 (check all that apply).

- State funds affected
Environmental permitting of DOT affected Analysis submitted to Board of Transportation
Local funds affected
Substantial economic impact (≥\$1,000,000)
Approved by OSBM
No fiscal note required by G.S. 150B-21.4

CHAPTER 34 – STRUCTURAL PEST CONTROL

SECTION .0300 - LICENSING AND CERTIFICATION

02 NCAC 34 .0328 RECORDS: PESTICIDES AND APPLICATION EQUIPMENT USED

- (a) All required structural pest control records and pesticides and application equipment used by the licensee or noncommercial certified applicator shall be maintained at the office location to which the license or certified applicator's card is issued. During inspections the licensee or his employee shall be present to provide access to all structural pest control records, pesticides and application equipment, upon request by the Division.
(b) Notwithstanding the requirements of Paragraph (a) of this Rule, a licensee may request permission, annually, from the Division, to maintain records, pesticides, and application equipment in a location other than the office location specified in Paragraph (a) of this Rule. In determining whether or not to grant such permission, the Division shall ensure that its ability to regulate the licensee will not be adversely affected by granting the request.
(c) All such records, pesticides, and equipment shall be made available for inspection during regular business hours upon request by the Division.

Authority G.S. 106-65.29.

SECTION .0500 - WOOD-DESTROYING ORGANISMS

02 NCAC 34 .0502 PESTICIDES FOR SUBTERRANEAN TERMITE PREVENTION AND/OR CONTROL

- (a) Through June 30, 1999, any pesticide may be used for the prevention or control of subterranean termites provided that it bears an EPA approved label for such use and the pesticide is applied according to the directions of its label.
(b)(a) Effective July 1, 1999, only those products which bear an EPA-approved label for such use and for which the Committee has received the following information may be used for subterranean termite control:

- (1) A statement from the pesticide registrant that the termiticide is primarily intended, either for use:
  - (A) as a supplement to or in combination with other treatment(s); or
  - (B) by itself, as the sole source of termite control; and
- (2) For termiticides under Part ~~(b)(1)(B)~~(a)(1)(B) of this ~~Rule~~ Rule, ~~data to support all efficacy claims made on the label, labeling and any promotional materials distributed by the registrant or manufacturer.~~
  - ~~(A) data to support all efficacy claims made on the label, labeling and any promotional materials distributed by the registrant or manufacturer;~~
  - (B) if the Committee approves a termiticide under Part (a)(1)(B) and the Directions for Use differ from the requirements of Rules .0503, .0505 or .0506 of this Section, the committee may determine that treatments with those termiticides are exempt from all or part of the requirements of Rule .0503(a)(4) and (6) through (11), .0505 or .0506 of this Section provided:
    - ~~(i) the product is labeled for protection of the entire structure,~~
    - ~~(ii) the licensee provides a warranty for the control of subterranean termites on the entire structure.~~

- (1) Access openings shall be provided to permit inspection of all basement and crawl space areas of a building and all open porches.
- (2) Clean up and remove all wood debris and cellulose material, such as wood, paper, and cloth, contacting soil in all crawl space areas. This excludes shavings or other cellulose material too small to be raked with the tines of an ordinary garden rake. Remove all visible stumps from all crawl space areas. Remove all visible form boards in contact with soil.
- (3) Remove all earth which is within 12 inches of the bottom edges of floor joists or within eight inches of the bottom edges of subsills or supporting girders, but not below footings of foundation walls. If foundation footings are less than 12 inches below the bottom edges of joists or subsills or supporting girders, a bank of soil 12 inches to 18 inches wide shall be left adjacent to footings for the purpose of support. Clearance shall be adequate to provide passage of a person to all crawl space areas of a building.
- (4) All visible termite tubes or tunnels on pillars, pilasters, foundation walls, chimneys, step buttresses, sills, pipes, and other structures below the sill line shall be removed.
- (5) Eliminate all wooden parts making contact with the building and soil, either outside or inside, as follows:
  - (A) No wood of any access opening shall be in contact with the soil.
  - (B) Where wood parts such as door frames, partition walls, posts, stair carriages, or other wood parts can be reasonably ascertained to be making direct soil contact through concrete or where there is evidence of termite activity or damage they shall be cut off above the ground or floor level and the wood removed from the concrete; and the hole shall be filled with concrete or covered with a metal plate, after the point of contact has been treated with a termiticide.
  - (C) Where wood parts such as vertical wood supports or other wood parts under a building or steps outside a building are not resting on solid masonry or concrete bases extending at least two inches above the soil surface or are in direct soil contact and such supports or steps are not removed, the supports and steps shall be cut off and set on a solid masonry or concrete footing extending at least two inches above the ground after the point of contact has been treated with a termiticide.

~~(c) Effective July 1, 2002, only~~ Only those products approved by the Committee based on the data submitted pursuant to Subparagraph ~~(b)(2)(a)(2)~~ of this Rule may be used for the prevention or control of subterranean ~~termites~~ termites as the sole source of termite control or prevention. The Committee shall approve the product if the data submitted substantially supports the efficacy claims.

~~(d)(c)~~ Termiticides intended for use as a supplement to or in combination with other termiticides may not be used alone without first disclosing the registrants' recommendations to the property owner or agent.

~~(e)(d)~~ A list of approved termiticides may be obtained by writing the North Carolina Department of Agriculture and Consumer Services, Structural Pest Control and Pesticides Division, ~~P.O. Box 27647, Raleigh, NC 27611-1090 Mail Service Center, Raleigh, NC 27699-1090,~~ or by calling (919) 733-6100.

*Authority G.S. 106-65.29.*

**02 NCAC 34 .0503 SUBTERRANEAN TERMITE CONTROL: BUILDINGS AFTER CONSTRUCTED**

(a) The following standards and requirements apply to the treatment of a building for subterranean termite control after construction if the building has a basement or crawl space:

- (D) When wood skirting and lattice work are suspended, there shall be at least a two-inch clearance between the top of the soil and the bottom edges of the wood skirting or lattice work. If the two-inch clearance is not acceptable to the property owner, it may be closed with solid masonry or concrete but a minimum clearance of one-fourth of one inch shall be provided between the masonry and wood.
- (E) Where houses or decks are built on pressure treated wood pilings, pillars, or all-weather wood foundations, such pilings, pillars, and wood foundation members, including wood step supports, are not subject to Parts (a)(5)(A), (B), or (C) of this Rule.
- (6) Where evidence of either past or present subterranean termite infestation exists, drill and treat all voids in multiple masonry foundation and bearing walls and all voids created by their placement at and a minimum distance of four feet in all directions from such evidence. Porch foundation walls shall be drilled to a distance of three feet from the main foundation wall and the point of contact with any wooden members. Drill as follows:
  - (A) The distance between drill holes shall not exceed 16 lineal inches and holes shall be no more than 16 inches above the footing or for footings deeper than 16 inches, immediately above the lowest soil level.
  - (B) Test drill the main foundation wall behind any porch or slab area to determine if the porch or slab is supported by a wall whose placement creates a void between itself and the main foundation wall. If test reveals that a void exists, drill and treat all voids therein as specified in this Rule.
- (7) Where evidence of either past or present subterranean termite infestation exists, drill and treat all voids in all multiple masonry pillars, pilasters, chimneys, and step buttresses associated or in contact with such evidence, and any void created by their placement. Drill as follows:
  - (A) The distance between drill holes shall not exceed 16 lineal inches and shall be no more than 16 inches above the footing or for footings deeper than 16 inches, immediately above the lowest soil level.
  - (B) Drilling is not required if solid concrete masonry footings of pillars, pilasters, chimneys, or step buttresses extend eight inches or more above top of soil surface.
- (8) Where concrete slabs over dirt-filled areas are at the level of, above the level of, or in contact with, wood foundation members, treat dirt-filled areas with a termiticide as follows:
  - (A) Drill vertically three-eighths of one inch or larger holes in the slab, no more than six inches from the building foundation, at no more than 12-inch intervals and treat soil below slab from the bottom of the slab to the top of the footing; or
  - (B) Drill horizontally three-eighths of one inch or larger holes in the foundation wall of the concrete slab, no more than six inches from the building foundation, every 16 vertical inches starting immediately below the bottom of the slab and rod treat all soil adjacent to building foundation from the bottom of the slab to the lowest outside grade.
- (9) Trench or trench and rod treat soil to establish a continuous termiticide barrier in the soil adjacent to, but not more than six inches from, all pillars, pilasters, chimneys, pressure treated wood supports, and step buttresses; inside of foundation walls; outside of foundation walls; the outside of foundation walls of concrete slabs over dirt-filled areas, and the entire perimeter of a slab foundation wall from the top of the grade to the top of the footing or to a minimum depth of 30 inches, whichever is less. Where footings are exposed, treatment shall be performed adjacent to the footing but not below the bottom of the footing. The trench shall be no less than six inches in depth or to the bottom of the footing, whichever is less. Where outside concrete slabs adjacent to the foundation prevent trenching of soil, drill three-eighths of one inch or larger holes, not more than 12 inches apart and within six inches of the foundation wall, through slabs or through adjoining foundation wall, and rod treat soil below slabs as indicated above to establish a continuous termiticide barrier at all known points of entry. The soil immediately around pipes and other utility conduits making contact with the structure shall be treated.
- (10) Where stucco on wood or similar type materials, including extruded or expanded rigid foam insulation or similar materials, extend to or below grade, trench soil to a depth below and under the edge of the stucco or similar type materials and treat soil to establish a continuous termiticide barrier in the soil. After the soil has been treated, a masonry barrier wall may be erected to hold back the soil from making direct

contact with the stucco or similar type materials. Where outside slabs on grade adjacent to foundation prevent trenching of soil, drill three-eighths of one inch or larger holes through slabs within six inches of the foundation wall, or through adjoining foundation wall, not more than 12 inches apart and rod treat soil below slabs. Where drain tile, french drains, or other foundation drainage systems present a hazard of contamination outside the treatment zone, treatment shall be performed in a manner that will not introduce termiticide into the drainage system.

(11) Paragraph (b) of this Rule shall be followed if applicable to basement or crawl space construction.

(b) The following standards and requirements apply to the treatment of a building for subterranean termite control after construction if the building has a slab-on-ground construction:

(1) Treat soil to establish a continuous termiticide barrier in, under, and around, all traps and openings in the slab.

(2) Drill vertically three-eighths inch or larger holes, at all visible or known expansion and construction joints, cracks, and crevices in slab and around all utility conduits in the slab at no more than 12-inch intervals and rod treat soil below slab to establish a continuous termiticide barrier from the bottom of the slab to a depth of 30 inches or to the top of the footing, whichever is less, at all known points of entry. Where wooden structural members are in contact with concrete or masonry floors which have joints or cracks beneath the wooden structural members, including wall plates in utility or storage rooms adjoining the main building, the concrete or masonry shall be drilled and treated in order to achieve treatment of the soil beneath them. As an exception, expansion and construction joints at the perimeter of the exterior wall may be rod treated by drilling through the foundation wall at no more than 12-inch intervals directly below the bottom of the slab.

(3) Paragraph (a) of this Rule shall also be followed, where applicable.

(c) Reapplication of Pesticide(s) to a Structure Previously Treated for Subterranean Termite Control:

(1) A reapplication of termiticide is required if soil test by the Division reveals that the soil is deficient in the termiticide which was applied to the soil.

(2) Any reapplication of pesticides under this Rule shall be in accordance with the label of the pesticide used.

(d) A licensee may enter into a written agreement for the control or prevention of subterranean termites in a building after it has been constructed without having to abide by Paragraphs (a) and (b) of this Rule provided that:

(1) The licensee has written proof that he or his authorized agent treated the entire building for subterranean termites at the time of its construction as required in 02 NCAC 34 .0505 or 02 NCAC 34 .0506 (or comparable rules in effect at the time of treatment); and

(2) A written agreement is issued in compliance with 02 NCAC 34 .0605.

(e) Paragraphs (a)(3), (a)(6) through (a)(11) and (b) of this Rule do not apply to subterranean termite treatment performed using termite bait(s) labeled for protection of the entire structure when the licensee provides a warranty for the control of subterranean termites on the entire structure.

(f) If the licensee uses a termiticide that has been approved by the Committee pursuant to Rule .0502(a)(2)(B) of this Section and the licensee complies with the requirements of that subsection, the licensee is excused from complying with Subparagraphs (a)(4) and (a)(6) through (11) of this Rule. For a list of termiticides the Committee has approved under Rule .0502(a)(2)(B), see <http://www.ncagr.gov/SPCAP/structural/documents/TTermiticidesApprovedForUseInNorthCarolinapdf.pdf>.

Authority G.S. 106-65.29.

**02 NCAC 34 .0505 SUBTERRANEAN TERMITE PREVENTION/RES BLDGS UNDER CONST**

(a) All treatments performed pursuant to this Rule shall be performed at the label recommended rate and concentration only.

(b) The following standards and requirements shall apply to the treatment of a building for subterranean termite control during construction if the building has a basement or crawl space:

(1) Establish a vertical barrier in the soil by trenching or trenching and rodding along inside of the main foundation wall; the entire perimeter of all multiple masonry chimney bases, pillars, pilasters, and piers; and both sides of partition or inner walls with a termiticide from the top of the grade to the top of the footing or to a minimum depth of 30 inches, whichever is less. Where footings are exposed, treatment shall be performed adjacent to the footing but not below the bottom of the footing. Trench shall be no less than six inches in depth or to the bottom of the footing, whichever is less. Where drain tile, french drains, or other foundation drainage systems present a hazard of contamination outside the treatment zone, treatment shall be performed in a manner that will not introduce termiticide into the drainage system.

(2) After a building or structure has been completed and the excavation filled and leveled, so that the final grade has been reached along the outside of the main foundation wall, establish a vertical barrier in the soil by trenching or trenching and rodding adjacent to the outside of the main foundation wall with a termiticide from the top of the grade to the top of the footing or to a minimum depth of 30

inches, whichever is less. Where footings are exposed, treatment shall be performed adjacent to the footing and not below the bottom of the footing. Trench shall be no less than six inches in depth or to the bottom of the footing, whichever is less. Where drain tile, french drains, or other foundation drainage systems present a hazard of contamination outside the treatment zone, treatment shall be performed in a manner that will not introduce termiticide into the drainage system.

- (3) Establish a horizontal termiticide barrier in the soil within three feet of the main foundation, under slabs, such as patios, walkways, driveways, terraces, gutters, etc., attached to the building. Treatment shall be performed before slab is poured, but after fill material or fill dirt has been spread.
- (4) Establish a horizontal termiticide barrier in the soil under the entire surface of floor slabs, such as basements, porches, entrance platforms, garages, carports, breezeways, sun rooms, etc. The treatment shall be performed before slab is poured but after fill material or fill dirt has been spread.
- (5) Establish a vertical termiticide barrier in the soil around all critical areas, such as expansion and construction joints and plumbing and utility conduits, at their point of penetration of the slab or floor or, for crawl space construction, at the point of contact with the soil.
- (6) If concrete slabs are poured prior to treatment, treatment of slabs shall be performed as required by 02 NCAC 34 .0503(a) or (b): Except that; the buyer of the property or his authorized agent may release the licensee from further treatment of slab areas under this Rule provided such release is obtained in writing on the Subterranean Termite Sub-Slab Release Form provided by the Division, which shall contain the name of the builder, address of property, identification of the slab areas not treated, name and address of the structural pest control company and shall be signed by the company representative and the home buyer. This form may be obtained by writing the North Carolina Department of Agriculture and Consumer Services, Structural Pest Control Division, 1001 Mail Service Center, Raleigh, NC 27699-1001 or by calling (919) 733-6100.

(c) Slab-on-Ground Construction. All parts of Paragraph (a) of this Rule shall be followed, as applicable, in treating slab-on-ground construction.

(d) All treating requirements specified in this Rule shall be completed within 60 days following the completion of the structure, as described in Subparagraph (b)(2) of this Rule.

(e) Paragraphs (b) and (c) of this Rule shall not apply to subterranean termite treatment performed using termite bait(s) labeled for protection of the entire structure when the licensee

provides a warranty for the control of subterranean termites on the entire structure.

(f) Paragraphs (b) and (c) of this Rule shall not apply to subterranean termite treatment performed using EPA registered topically applied wood treatment termiticides labeled for the protection of the entire structure when the licensee applies the material according to labeled directions and provides a warranty for the control of subterranean termites on the entire structure.

(g) No later than the date of the completion of any treatment performed under this Rule, the licensee or his employee shall place a durable sticker/label, no less than three inches square, on the meter base, circuit breaker box or inside surface of kitchen cabinet door or other readily noticeable location providing, at a minimum, the following information:

- (1) The statement: "This structure was treated for the prevention of subterranean termites. A warranty has been issued to the builder. If you did not receive your copy of this warranty at closing, contact your builder or the company below for additional warranty information." in boldface type;
- (2) Name, address and telephone number of the company performing the treatment; and
- (3) Date of final treatment.

(h) If the licensee uses a termiticide that has been approved by the Committee pursuant to Rule .0502(a)(2)(B) of this Section and the licensee complies with the requirements of that subsection, the licensee is excused from complying with this Rule. For a list of termiticides the Committee has approved under Rule .0502(a)(2)(B) of this Section, see <http://www.ncagr.gov/SPCAP/structural/documents/TTermiticidesApprovedForUseInNorthCarolinapdf.pdf>.

Authority G.S. 106-65.29.

**02 NCAC 34 .0506 MIN REQUIRE/SUBTERRANEAN TERMITE PREV/COMMERCIAL BLDGS UNDER CONST**

(a) All treatments performed pursuant to this Rule shall be performed at the label recommended rate and concentration only.

(b) Minimum Treatment Requirements:

- (1) Establish a vertical barrier in the soil by trenching or trenching and rodding along inside of the main foundation wall; the entire perimeter of all multiple masonry chimney bases, pillars, pilasters, and piers; and both sides of partition or inner walls with a termiticide from the top of the grade to the bottom of the footing or a minimum depth of 30 inches, whichever is less. Where footings are exposed, treatment shall be performed adjacent to the footing but not below the bottom of the footing. Trench shall be no less than six inches in depth or to the bottom of the footing, whichever is less. Where drain tile, french drains, or other foundation drainage systems present a hazard of contamination outside the treatment zone, treatment shall be performed in

a manner that will not introduce termiticide into the drainage system.

- (2) After a building or structure has been completed and the excavation filled and leveled, so that the final grade has been reached along the outside of the main foundation wall, establish a vertical barrier in the soil adjacent to the outside of the main foundation wall by trenching or trenching and rodding with a termiticide from the top of the grade to the top of the footing or to a minimum depth of 30 inches, whichever is less. Where footings are exposed, treatment shall be performed adjacent to the footing and not below the bottom of the footing. Trench shall be no less than six inches in depth or to the bottom of the footing, whichever is less. Where drain tile, french drains, or other foundation drainage systems present a hazard of contamination outside the treatment zone, treatment shall be performed in a manner that will not introduce termiticide into the drainage system.
- (3) Establish a horizontal termiticide barrier in the soil within three feet of the main foundation, under slabs, such as patios, walkways, driveways, terraces, gutters, etc. Treatment shall be performed before slab is poured but after fill material or fill dirt has been spread.
- (4) Establish a vertical termiticide barrier in the soil around all critical areas, such as expansion and construction joints and plumbing and utility conduits, at their point of penetration of the slab of floor, or for crawl space construction, at the point of contact with the soil.
- (5) If concrete slabs are poured prior to treatment, treatment of slabs shall be performed as required by 02 NCAC 34 .0503(a) or (b).

(c) Paragraph (b) of this Rule shall not apply to subterranean termite treatment performed using termite bait(s) labeled for protection of the entire structure when the licensee provides a warranty for the control of subterranean termites on the entire structure.

(d) Paragraph (b) of this Rule shall not apply to subterranean termite treatments using EPA registered topically applied wood treatment termiticides labeled for the protection of the entire structure and the licensee applies the material according to labeled directions and provides a warranty for the control of subterranean termites on the entire structure. When foundation areas contain no wood or cellulose components and the wood treatment termiticide cannot be applied according to label directions then applications specified in Paragraph (b) or (c) of this Rule would be required.

(e) If the licensee uses a termiticide that has been approved by the Committee pursuant to Rule .0502(a)(2)(B) of this Section and the licensee complies with the requirements of that subsection, the licensee is excused from complying with this Rule. For a list of termiticides the Committee has approved under Rule .0502(a)(2)(B) of this Section, see

<http://www.ncagr.gov/SPCAP/structural/documents/TTermiticidesApprovedForUseInNorthCarolinapdf.pdf>.

Authority G.S. 106-65.29.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Soil And Water Conservation Commission intends to amend rules cited as 02 NCAC 59H .0102 and .0103.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** <http://www.ncagr.gov/AdministrativeRules/ProposedRules/index.htm>

**Proposed Effective Date:** November 1, 2016

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than July 16, 2016 to Christina Waggett, Rule-making Coordinator, NC Department of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.*

**Reason for Proposed Action:** *These changes are suggested to improve program efficiency, district delivery and water quality improvements made by this program. The revisions allow the Commission to specify in its annual Detailed Implementation Plan the proportion of available funds to allocate for cost share payments, technical and administrative assistance, and education and outreach purposes and the proportion of those funds to be allocated to district, statewide, and regional allocations pools. This is particularly important given the limited amount of recurring funding currently available in this program.*

**Comments may be submitted to:** Christina Waggett, 1001 Mail Service Center, Raleigh, NC 27699-1001, phone (919) 707-3008, email [Christina.waggett@ncagr.gov](mailto:Christina.waggett@ncagr.gov)

**Comment period ends:** August 30, 2016

**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 (check all that apply).**

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

**CHAPTER 59 – SOIL AND CONSERVATION  
COMMISSION**

**SUBCHAPTER 59H - COMMUNITY CONSERVATION  
ASSISTANCE PROGRAM FOR NONPOINT SOURCE  
POLLUTION CONTROL**

**SECTION .0100 - COMMUNITY CONSERVATION  
ASSISTANCE PROGRAM**

**02 NCAC 59H .0102      DEFINITIONS FOR  
SUBCHAPTER 59H**

The following terms used in this Subchapter have the following meanings:

- (1) Nonpoint Source (NPS) Pollution means pollution originating from a diffuse source.
- (2) District Allocation Pool means the annual share of the state's appropriation to participating districts.
- (3) Statewide Allocation Pool means the annual share of the state's appropriation allocated for applications ranked at the state level as specified in the annual detailed implementation plan.
- (4) Regional Allocation Pool means the annual share of the state's appropriation allocated for applications ranked in the division's three regions as specified in the annual detailed implementation plan.
- ~~(3)~~(5) Applicant means a person(s) who applies for best management practice cost sharing monies from the district. An applicant may also be referred to as a cooperator.
- ~~(4)~~(6) Average Costs means the calculated cost, determined by averaging actual costs and current cost estimates necessary for best management practice implementation. Actual costs include labor, supplies, and other direct costs required for physical installation of a practice.
- ~~(5)~~(7) Best Management Practice (BMP) means a practice used to reduce nonpoint source inputs to receiving waters, including both those types of practices which are structural or nonstructural management practices.
- ~~(6)~~(8) Conservation Plan of Operation (CPO) means a written plan scheduling the applicant's decisions concerning land use, and both cost shared and non-cost shared BMPs to be installed and maintained on the operating unit.

- ~~(7)~~(9) Cost Share Agreement means an agreement between the applicant and the district which defines the BMPs to be cost shared, rate and amount of payment, minimum practice life, and date of BMP installation. The agreement shall state that the recipient shall maintain and repair the practice(s) for the specified minimum life of the practice. The Cost Share Agreement shall have a maximum contract life of three years for BMP installation. The district shall perform an annual status review during the installation period.
- ~~(8)~~(10) Cost Share Incentive (CSI) means a predetermined fixed payment paid to an applicant for implementing a nonstructural management BMP in lieu of cost share on a structural practice.
- ~~(9)~~(11) Cost Share Rate means a cost share percentage paid to an applicant for implementing BMPs.
- ~~(10)~~(12) ~~Detailed Implementation Plan means the plan approved by the commission that specifies the guidelines for the current program year pursuant to the Rules of the Commission.~~ Detailed Implementation Plan means the plan approved by the Commission that specifies the guidelines for the current program year including annual program goals; district, statewide and regional allocations; BMPs that will be eligible for cost sharing and the minimum life expectancy of those practices.
- (13) District BMP means a BMP designated by a district to reduce the delivery of NPS pollution and which is reviewed and approved by the Division to be technically adequate prior to funding.
- (14) Division means the Division of Soil and Water Conservation.
- ~~(12)~~(15) Encumbered Funds means monies from a district's allocation, which have been committed to an applicant after initial approval of the cost share agreement.
- ~~(13)~~(16) Full Time Equivalent (FTE) means 2,080 hours per annum which equals one full time technical position.
- ~~(14)~~(17) In-kind Contribution means a contribution by the applicant towards the implementation of BMPs. In-kind contributions shall be approved by the district and may include labor, fuel, machinery use, and supplies and materials necessary for implementing the approved BMPs.
- ~~(15)~~(18) Landowner means any natural person or other legal entity, including a governmental agency, who holds either an estate of freehold (such as a fee simple absolute or a life estate) or an estate for years or from year to year in land, but does not include an estate at will or by sufferance in land. A governmental or quasi-governmental agency such as a drainage district or a soil and

water conservation district, or any such agency, by whatever name called, exercising similar powers for similar purposes, can be a landowner for the purposes of this Subchapter if the governmental agency holds an easement in land.

- ~~(16)~~(19) Program Year means the period from July 1 through June 30 for which funds are allocated to districts.
- ~~(17)~~(20) Proper Maintenance means that a practice(s) is being maintained such that the practice(s) is successfully performing the function for which it was originally implemented.
- ~~(18)~~(21) Strategy Plan means the annual plan for the Community Conservation Assistance Program for Nonpoint Source Pollution Control to be developed by each district. The plan identifies pollution treatment needs and the level of cost sharing and technical assistance monies required to address those annual needs in the respective district.
- ~~(19)~~(22) Technical Representative of the district means a person designated by the district to act on their behalf who participates in the planning, design, implementation and inspection of BMPs.
- ~~(20)~~(23) Unencumbered Funds means the portion of the allocation to each district, which has not been committed for cost sharing.

- (1) Cost share and cost share incentive payments,
- (2) technical assistance and administrative assistance, and
- (3) statewide or local education and outreach activities.

The percentage of funding available for each purpose and each allocation pool shall be specified in the annual Detailed Implementation Plan based on the recommendation of the division and the needs expressed by the districts.

~~(a)(b) District Allocations:~~ The Commission shall allocate ~~the~~ cost share funds ~~from the district allocation pool to the districts in the designated program areas.~~ ~~districts.~~ To receive fund allocations, each district designated eligible by the ~~commission~~ Commission shall submit an annual strategy plan to the ~~commission~~ Commission at the beginning of each fiscal year. ~~Funds may be allocated to each district and the Division for any or all of the following purposes:~~

- ~~(1) Cost share and cost share incentive payments,~~
- ~~(2) technical assistance and administrative assistance, and~~
- ~~(3) statewide or local education and outreach activities.~~

~~(b) The Commission shall consider the relative needs of the program for BMP implementation, local technical assistance, and education to determine the proportion of available funds to be allocated for each eligible purpose prior to allocating funds to districts and the Division.~~

(c) Funds for cost share and cost share incentive payments shall be allocated to the districts at the beginning of the fiscal year and whenever the Commission determines that sufficient funds are available in the district allocation pool to justify a reallocation. Districts shall be allocated monies based on the identified level of nonpoint source pollution problems and the respective district's BMP installation goals as demonstrated in the district annual strategy plan. The allocation method used for disbursement of funds is based on the score of each respective district for those parameters approved by the Commission pursuant to Subparagraph ~~(9)~~(7) of this Paragraph. The points each district scores on each parameter are totaled and proportioned to the total dollars available for district allocation under the current program year funding according to the following formula:

(1) Sum of Parameter Points		=		=	Total Points
(2) Percentage Total Points Each District	x		Total Dollars Available	=	Dollars Available to Each District

- ~~(3) The minimum allocated to a particular district shall be one thousand five hundred dollars (\$1,500) per program year, unless the district requests less than one thousand five hundred dollars (\$1,500).~~
- ~~(4) If a district requests less than the dollars available to that district in Subparagraph (2) of this Paragraph, then the excess funds beyond those requested by the district shall be allocated to the districts who did not receive their full requested allocation using the same methodology described in Subparagraph (2) of this Paragraph.~~

- ~~(5)~~(3) 95 percent of the ~~total~~ program funding designated for district allocations shall be allocated to the district accounts in the initial allocation. The Division shall retain five percent of the total funding in a contingency fund to be used to respond to an emergency or natural disaster. ~~If the funds are not needed to respond to an emergency, then the contingency fund shall be allocated at the March meeting of the Commission.~~
- ~~(6)~~(4) The Commission may recall funds allocated to a district that have not been encumbered to an agreement during a fiscal year that have not

Authority G.S. 106-840; 106-860; 139-4; 139-8.

**02 NCAC 59H .0103 ALLOCATION GUIDELINES AND PROCEDURES**

(a) The Commission shall consider the total amount of funding available for allocation, relative needs of the program for BMP implementation, local technical assistance, and education to determine the proportion of available funds to be allocated for each eligible purpose. This determination shall be done prior to allocating funds to statewide, regional and district allocation pools and the Division. Funds may be allocated for any or all of the following purposes:

**PROPOSED RULES**

- ~~been encumbered to an agreement at any time~~ if it determines the recalled funds are needed to respond to an emergency or natural disaster.
- (7)(5) At any time a district may submit a revised strategy plan and apply to the Commission for additional funds.
- (8)(6) CPOs that encumber funds under the current year must be submitted to the Division by 5:00 p.m. on the first Wednesday in June.
- (9)(7) Districts shall be allocated funds based on their respective data for each of the following parameters:
- (A) ~~Relative rank of the number of miles of stream identified as less than fully supporting due to nonpoint source pollution as reported in the North Carolina Water Quality Assessment and Impaired Waters List and the most recent Basinwide Water Quality Plan for each river basin, where the source of pollution is not solely due to agriculture. (20 percent)~~ Relative rank of the percentage of the county draining to waters identified as impaired or impacted on the most recent Integrated Report produced by the North Carolina Division of Water Resources. (20 percent). ~~The North Carolina Water Quality Assessment and Impaired Waters list and the Basinwide Water Quality Plans are produced by the Division of Water Quality.~~
- (B) Relative rank of the percentage of the county draining to waters classified as Outstanding Resource Waters, High Quality Waters, ~~Trout Waters and Trout Waters or Shellfishing (open)~~ Trout Waters or Shellfishing (open) on the current schedule of Water Quality Standards and ~~Classifications.~~ Classifications, and shellfish growing areas (open) as determined by the Department of Environmental Quality's Division of Marine Fisheries. (20 percent)
- (C) The percentage of each county covered by ~~NPDES~~ Phase I and Phase II requirements. (20 percent)
- (D) Relative rank of population density for the county. (20 percent)
- (E) Relative rank of the percentage of a county's land area that is located within drinking water assessment areas, as delineated by the Public Water Supply Section of the Division of ~~Environmental Health.~~ Water Resources. (20 percent)
- (F) The Commission may consider additional factors as recommended by the Division of Soil and Water Conservation when making its allocations.
- (d) Statewide and Regional Allocations: The Commission shall allocate cost share funds from the statewide and regional allocation pools. To receive fund allocations, each district designated eligible by the Commission shall submit applications to appropriate pools when solicited by the division. The division shall rank each application and recommend to the Commission for its approval an amount to allocate to each district corresponding to the highest ranking applications.
- (e) The funds available for technical and administrative assistance shall be allocated by the Commission based on the needs as expressed by the district and needs to accelerate the installation of BMPs in the respective district. Each district may use these monies to fund new positions or to accelerate present technical assistance. Districts must provide an itemized budget to the division in order to qualify for technical assistance funds. N.C. Community Conservation Assistance Program technical assistance funds may be used for technical assistance with the district matching at least 50 percent of the total. Each district to which funds are allocated for technical assistance shall demonstrate to the Commission that matching funds are available prior to any expenditure of funds. The allocation method used for disbursement of funds is based on the score of each respective district for those parameters approved by the Commission pursuant to Subparagraph (4) of this Paragraph. The points each district scores for each parameter are totaled and proportioned to the total dollars available under the current program year funding according to the following formula:
- |     |                                       |   |                                    |
|-----|---------------------------------------|---|------------------------------------|
| (1) | Sum of Parameter Points               | = | Total Points                       |
| (2) | Percentage Total Points Each District | x | Total Dollars Available            |
|     |                                       | = | Dollars Available to Each District |
- (3) If a district requests less than the dollars available to that district in Subparagraph (2) of this Paragraph, then the excess funds beyond those requested by the district shall be allocated to the districts who did not receive their full requested allocation using the same methodology described in Subparagraph (2) of this Paragraph.
- (4) Priority for funding shall be based upon the following parameters:
- (A) Whether the position is presently funded by Community Conservation Assistance Program technical assistance funds. (25 percent)
- (B) The proportion of Community Conservation Assistance Program funds for cost share and cost share

incentive allocated to districts served by this technical assistance request (normalized to 1 to 100 scale by multiplying each district's score by a factor such that the product of the highest score for this parameter is 100) (50 percent), and

(C) The amount of additional funds leveraged by grants and other funds committed to districts served by this technical assistance request (normalized to 1 to 100 scale by multiplying each district's score by a factor such that the product of the highest score for this parameter is 100). (25 percent)

(5) Subject to availability of funds and local match, provide support for technical assistance for every district.

(6) District technicians may be jointly funded by more than one district to accelerate the program

in each participating district. Each district must be eligible for cost sharing in the program. Requests for funding (salary, FICA, insurance, etc.) of a shared position must be presented to the division by all concerned districts and the division shall cost share to the billing district at a 50-50 rate based on the portion of the FTE provided each respective district. A shared position must be officially housed in one specific district and cost share for support items (office rent, telephone, etc.) shall be paid to one district only.

(7) Funds, if available, may be allocated to each participating district to provide for administrative costs under this program. These funds shall be used for clerical assistance and other related program administrative costs and shall be matched with in-kind funds of an equal amount from the district.

(e)(f) The funds available for the education and outreach purpose shall be allocated by the Commission based on the needs as expressed by the district and needs to accelerate the installation of BMPs in that respective district. Districts and the Division may use these funds for holding workshops for potential applicants and for developing, duplicating, and distributing outreach materials or signs. Districts must provide an itemized budget to the Division in order to qualify for education and outreach funds. Education and outreach funds shall be allocated to each district in accordance with the following formula:

(1) Each district shall receive the lesser of one thousand dollars (\$1,000) or the result of the following equation:

$$\frac{\text{Total Education and Outreach Dollars Available}}{\text{Total Education and Outreach Dollars Requested by Each District}} \times \frac{\text{Total Education and Outreach Dollars Requested by All Districts}}{\text{Total Education and Outreach Dollars Available to Each District}} = \text{Education and Outreach Dollars Available to Each District}$$

(2) If more Education and Outreach funds are available for allocation than are requested by districts or the Division, then the excess funds shall be added to the funds to be allocated for cost share and cost share incentive payments.

Authority G.S. 106-840; 106-860; 139-4; 139-8.

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Cape Fear Navigation and Pilotage Commission intends to readopt without substantive changes the rules cited as 04 NCAC 15 .0119, .0121, .0123, .0124, .0127, and .0128.

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

Link to agency website pursuant to G.S. 150B-19.1(c): [www.cfpilots.com](http://www.cfpilots.com)

Proposed Effective Date: November 1, 2016

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Call or email John

Harriss at (919) 395-4911 ext. 1 or [capefearnavandpilot@gmail.com](mailto:capefearnavandpilot@gmail.com)

Reason for Proposed Action: Agency has completed the periodic review process and expiration of existing rules. These rules were identified as necessary with substantive public input and are therefore going through the readoption process.

Comments may be submitted to: John Harriss, 3905 Oleander Drive, Suite 2, Wilmington, NC 28403, phone (910) 395-4911 ext 1, fax (910) 395-4913, email [capefearnavandpilot@gmail.com](mailto:capefearnavandpilot@gmail.com)

Comment period ends: August 30, 2016, 5:00 p.m.

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 (check all that apply).**

- State funds affected
- Environmental permitting of DOT affected  
Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4
- No fiscal note required by G.S. 150B-21.3A(d)(2)

**CHAPTER 15 - COMMISSION OF NAVIGATION AND PILOTAGE FOR THE CAPE FEAR RIVER AND BAR**

**SECTION .0100 - NAVIGATION AND PILOTAGE FOR THE CAPE FEAR RIVER AND BAR**

**04 NCAC 15 .0119 NUMBER OF PILOTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**04 NCAC 15 .0121 APPRENTICESHIP (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**04 NCAC 15 .0123 INCIDENTS OR ACCIDENTS INVOLVING PILOTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**04 NCAC 15 .0124 MOVEMENT OF VESSELS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**04 NCAC 15 .0127 PILOTAGE RATES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**04 NCAC 15 .0128 FEES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to amend the rules cited as 10A NCAC 27G .6702, and 10A NCAC 27H .0201-.0207.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://www.ncdhhs.gov/divisions/mhddsas/councils-commissions/rulemakingprocess/proposedrules>

**Proposed Effective Date:** November 1, 2016

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): An agency must hold a public hearing on a rule it proposes to adopt if the agency publishes the text of the proposed rule in the North Carolina Register and the agency receives a written request for a public hearing on the proposed rule within 15 days after the notice of text is published. A request for a public hearing must be submitted in writing to dmhddsarules@dhhs.nc.gov.*

**Reason for Proposed Action:** *These rules are proposed for amendment to require forensic evaluators appointed pursuant to G.S. 15A-1002(b) to complete all training requirements necessary to be credentialed as a certified forensic evaluator and to attend annual continuing education seminars that provide continuing education and training in conducting forensic evaluations and screening examinations of defendants to determine capacity to proceed and in preparing written reports required by law.*

**Comments may be submitted to:** *W. Denise Baker, 3001 Mail Service Center, Raleigh, NC 27699-3001, email dmhddsarules@dhhs.nc.gov*

**Comment period ends:** August 30, 2016

**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 (check all that apply).**

- State funds affected
- Environmental permitting of DOT affected  
Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

**CHAPTER 27 - MENTAL HEALTH: COMMUNITY FACILITIES AND SERVICES**

**SUBCHAPTER 27G - RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES**

**SECTION .6700 - FORENSIC SCREENING AND EVALUATION SERVICES FOR INDIVIDUALS OF ALL DISABILITY GROUPS**

**10A NCAC 27G .6702 OPERATIONS**

(a) ~~Forensic Screening And Evaluation.~~ Forensic screening and evaluation to assess capacity to proceed to trial shall be provided by evaluators trained and ~~registered~~ certified in accordance with the provisions of 10A NCAC 27H .0201 through ~~.0207,~~ **TRAINING AND REGISTRATION OF FORENSIC EVALUATORS (DMH/DD/SAS publication APSR 100-3).** .0207.

(b) ~~Consultation To Law Enforcement Officials.~~ Consultation to with law enforcement officials, including consultation prior to the commitment of an offender or alleged offender to any state psychiatric hospital, shall be provided.

(c) Justice Treatment Services:

(1) ~~Each area program~~ Local Management Entity-Managed Care Organization (LME-MCO) shall develop and implement a written justice treatment services plan which shall provide for the coordination of ~~area program~~ LME-MCO court related activities with the criminal justice system.

(2) ~~An~~ Each LME-MCO shall designate an individual shall be designated who has responsibility for developing and implementing the justice treatment services plan.

*Authority G.S. 15A-1002; 143B-147.*

**SECTION .0200 – TRAINING AND CERTIFICATION OF FORENSIC EVALUATORS**

**10A NCAC 27H .0201 SCOPE**

(a) The purpose of Rules .0201 through .0207 of this Section is to specify the requirements that shall be met to be ~~registered~~ certified as a local forensic evaluator by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services.

(b) The provisions of Rules .0201 through .0207 of this Section apply to any ~~qualified mental health professional or qualified substance abuse professional~~ Licensed Clinician, as defined in 10A NCAC 27G .0104, seeking registration certification as a local forensic evaluator by the Division.

(c) Individuals who are not Licensed Clinicians but were registered under these Rules prior to November 1, 2016 shall be eligible for certification provided they meet all other requirements.

*Authority G.S. 15A-1002; 143B-147.*

**10A NCAC 27H .0202 DEFINITIONS**

For the purposes of Rules .0201 through .0207 of this ~~Section~~ Section, the following terms shall have the meanings indicated:

(1) "Forensic Evaluation" means ~~an~~ a local examination ordered by the court to determine if the defendant has the capacity to proceed to trial, does not have the capacity to proceed to

~~trial, or needs further treatment at an inpatient facility or further evaluation at the Pre-Trial Evaluation Center.~~

(2) ~~"Pre Trial Evaluation Center" means the forensic unit at Dorothea Dix Hospital.~~ "Licensed Clinician" means the same as defined in 10A NCAC 27G .0104.

(3) ~~"Qualified Mental Health Professional" means the same as defined in 10A NCAC 27G .0104(e) contained in Division publication, Rules for Mental Health, Developmental Disabilities and Substance Abuse Facilities and Services, APSM 40-2.~~ "Local Certified Forensic Evaluator" means a Licensed Clinician who:

(a) has completed the training for certification and annual training seminars described in Rule .0204 of this Section; and

(b) is employed by, or under contract with, an LME-MCO as a Certified Forensic Evaluator.

(4) ~~"Qualified Substance Abuse Professional" means the same as defined in 10A NCAC 27G .0104(e) contained in Division publication, Rules for Mental Health, Developmental Disabilities and Substance Abuse Facilities and Services, APSM 40-2.~~ "Pre-Trial Evaluation Center" means the Forensic Services Unit so designated by the Secretary of the North Carolina Department of Health and Human Services.

*Authority G.S. 15A-1002; 143B-147.*

**10A NCAC 27H .0203 ELIGIBILITY FOR TRAINING**

(a) To be eligible for training as a local certified forensic evaluator the applicant shall:

(1) ~~be a qualified mental health professional or a qualified substance abuse professional;~~ Licensed Clinician;

(2) ~~be an employee of, or work under contract with, an area program;~~ LME-MCO; and

(3) ~~have his name submitted as an applicant for the training and registration certification program by the area~~ LME-MCO director.

(b) ~~The area program~~ LME-MCO shall verify that the applicant is a Licensed Clinician, or meets the requirements of Rule .0201(c) of this Section, and has expertise with the mental health, developmental disabilities, or substance abuse (mh/dd/sa) population for whom the applicant will provide forensic evaluations, meets the appropriate standards for a qualified mental health professional that are referenced in Rule .0202 of this Section.

*Authority G.S. 15A-1002; 143B-147.*

**10A NCAC 27H .0204 TRAINING AND CERTIFICATION**

(a) ~~The applicant shall successfully complete a minimum of six hours of initial training covering procedure, techniques, and reporting that is provided by the Mental Health Section of the Division in order to be registered-certified as a local forensic evaluator. The initial training shall include:~~

- ~~(1) current laws and practices including the role of the local forensic evaluator in the capacity to proceed evaluation process;~~
- ~~(2) procedures for conducting interviews including evaluation for the presence of mh/dd/sa disorders, or other relevant conditions;~~
- ~~(3) components of reports to be submitted to the court;~~
- ~~(4) process for reporting findings to the court; and~~
- ~~(5) an examination at the conclusion of the training which assesses comprehension of the training material and an understanding of the duties of a local forensic evaluator.~~

~~(b) Each local forensic evaluator is required to complete a minimum of four hours of required annual continuing education modules provided by the Pre-Trial Evaluation Center by December 31 of each calendar year.~~

~~(c) Local forensic evaluators shall be exempt from the continuing education requirement in the calendar year in which they are first certified and shall complete the annual continuing education requirement by December 31 of the following year and each calendar year thereafter.~~

~~(d) Continuing education module topics may include:~~

- ~~(1) evaluation skills training to enhance skills acquired through the initial local forensic evaluator training;~~
- ~~(2) changes in existing laws and current practices; and~~
- ~~(3) evaluation of mh/dd/sa populations.~~

*Authority G.S. 15A-1002; 143B-147.*

**10A NCAC 27H .0205 LME-MCO OVERSIGHT OF FORENSIC EVALUATOR PROGRAM**

~~Registration shall continue to be valid unless registration is terminated as specified in Rule .0206 of this Section.~~

~~(a) The LME-MCO shall ensure there is a sufficient number of local certified forensic evaluators to conduct forensic evaluations in its catchment area.~~

~~(b) Each LME-MCO shall maintain a list of local certified forensic evaluators who are currently employed or contracted by the LME-MCO that includes the mh/dd/sa populations for which each evaluator has reported having expertise to conduct forensic evaluations.~~

~~(c) The LME-MCO shall verify that each local forensic evaluator meets the requirements set forth in Rules .0203 and .0204 of this Section.~~

~~(d) The LME-MCO shall notify the Pre-Trial Evaluation Center of any changes which would result in termination of certification per Rule .0206 of this Section.~~

~~(e) The LME-MCO shall maintain a log of local forensic evaluations done in each county within its catchment area and~~

provide that log to the Pre-Trial Evaluation Center on a monthly basis.

(f) The LME-MCO shall identify potentially qualified individuals to enroll in training for certification to replace any evaluator whose certification has been terminated or to increase the number of evaluators due to increased numbers of evaluations logged.

(g) The LME-MCO shall establish a mechanism to ensure a quality management process is included in the LME-MCO's Quality Improvement System for oversight of the local certified forensic evaluators in its catchment area that includes:

- (1) identifying an individual who is a local certified forensic evaluator who will monitor the overall quality and outcomes of the reports of forensic evaluations completed by other local forensic evaluators; and
- (2) establishing a procedure for responding to questions or concerns related to the quality of reports of forensic evaluations completed by local certified forensic evaluators in its catchment area.

*Authority G.S. 15A-1002; 143B-147.*

**10A NCAC 27H .0206 TERMINATION OF CERTIFICATION**

~~A Forensic Evaluator Registration will be declared-The LME-MCO shall declare a forensic evaluator certification void when:~~

- ~~(1) the evaluator notifies the LME-MCO in writing that he no longer desires-wishes to be registered-certified;and perform the duties required by an evaluator;~~
- ~~(2) the evaluator is no longer employed by, or under contract with, an area program; or LME-MCO;~~
- ~~(3) the evaluator no longer meets the registration requirements-eligibility requirements set forth in Rule .0203 of this Section;~~
- ~~(4) the evaluator fails to complete annual continuing education modules as set forth in Rule .0204 of this Section; or~~
- ~~(5) the evaluator fails to perform any of the duties described in Rule .0207 of this Section.~~

*Authority G.S. 15A-1002; 143B-147.*

**10A NCAC 27H .0207 DUTIES OF CERTIFIED FORENSIC EVALUATOR**

When ordered by the court, the local certified forensic evaluator shall conduct a forensic evaluation or a ~~screening~~ examination of the defendant and ~~report to the court~~ in accordance with G.S. 15A-1002 ~~whether~~ shall submit a report that:

- ~~(1) there is sufficient question of mental or emotional disorder to recommend inpatient evaluation or treatment; or is limited to evaluation of capacity to proceed to trial and does not address criminal responsibility, legal insanity, or diminished capacity;~~
- ~~(2) there is sufficient information to recommend that the defendant does have capacity to~~

~~proceed and further evaluation is not indicated.~~  
indicates the opinion of the evaluator that the defendant clearly has the capacity to proceed, that the defendant clearly lacks the capacity to proceed, or that the evaluator is unable to form a clear opinion;

- (3) addresses the likelihood that the defendant will gain capacity if, in the opinion of the evaluator, the defendant clearly lacks the capacity to proceed; and
- (4) recommends a full evaluation at the Pre-Trial Evaluation Center if the evaluator is unable to form a clear opinion and the defendant is charged with a felony.

Authority G.S. 15A-1002; 143B-147.

**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.

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

**CHAPTER 23 – IRRIGATION CONTRACTORS' LICENSING BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Irrigation Contractors' Licensing Board intends to adopt the rule cited as 21 NCAC 23 .0208 and amend the rules cited as 21 NCAC 23 .0101, .0102, .0104, .0301, .0401, .0402, .0404-.0406, .0501-.0511, and .0601-.0603.*

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

**Proposed Effective Date:** November 1, 2016

**Public Hearing:**

**Date:** August 10, 2016

**Time:** 10:00 a.m.-12:00 p.m.

**Location:** State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors, 1109 Dresser Court, Raleigh, NC 27609

**Reason for Proposed Action:** 21 NCAC 23 .0208 is being proposed for adoption to comply with a proposed statute that will require all occupational licensing boards to develop and implement a complaint process. The Board is proposing amendment of the other rules because the Board desires to improve the rules by: 1) providing clarification and organization so that the rules are clear and unambiguous. 2) eliminating certain requirements so as to reduce the burden upon the licensees who must comply with the rules, and 3) updating the rules so that they reflect the current reasonable available scientific and technical information.

**Comments may be submitted to:** Lisa Deubler, P.O. Box 41421, Raleigh, NC 27629, email [info@nciclb.org](mailto:info@nciclb.org)

**Comment period ends:** August 30, 2016

**Fiscal impact (check all that apply).**

- State funds affected
- Environmental permitting of DOT affected  
Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

**SECTION .0100 - LICENSING**

**21 NCAC 23 .0101 DEFINITIONS**

As used in G.S. 89G and this Chapter:

- (1) As used in G.S. 89G-2, "Direct supervision" is defined as means an individual licensed contractor having personal responsibility for and control over all aspects of irrigation work done at each job site.
- (2) "Irrigation plan" means a graphic representation of the irrigation system to be installed and other constructed features.
- (3) "Irrigation record drawing" means a graphic representation of the irrigation system that was installed and other constructed features.
- (4) "Large community water system" means a public water system that regularly serves 1,000 or more service connections or 3,000 or more individuals.
- (5) "Local Government" means a county, city, consolidated city-county, sanitary district, or other local political subdivision or authority or agency.
- (6) "Product information" means the manufacturer specifications, model, and size.

Authority G.S. 89G-2; 89G-5; 140-350.

**21 NCAC 23 .0102 SURETY BONDS AND LEGAL STATUS**

(a) For purposes of this Section a corporate entity is a person as defined in G.S. 89G-1(5) who engages in irrigation contracting, other than natural persons. A natural person licensed by the Board

shall post a surety bond or irrevocable letter of credit for his individual license listing his name and the name of any corporation, partnership, limited liability corporation, limited liability partnership or assumed or registered business name under which he does business.

(b) If any licensed individual employed by a corporate entity does irrigation contracting on his or her own behalf, outside the scope of his employment, agency or other relationship with the corporate entity named on the surety bond or irrevocable letter of credit submitted to the Board, that individual licensee must obtain and post a separate surety bond or irrevocable letter of credit with the Board, naming himself as principal.

(c) When a licensed individual terminates his or her relationship (e.g. employment, partnership, or agency) with a corporate entity that lists the individual on a surety bond or irrevocable letter of credit, the licensed individual must purchase and post his own surety bond or irrevocable letter of credit with the Board. The licensed individual shall report the termination to the Board within five business days of its effective date.

(d) If a licensed individual uses a corporate entity to engage in irrigation contracting and is required to file any corporate documents with the North Carolina Secretary of State pursuant to North Carolina law or rules, the individual licensee who qualifies said corporate entity to engage in irrigation contracting shall notify the Board of having filed corporate documents by providing the Board with copies of the same within five business days of the filing date. In lieu of submitting paper copies of such filings, the individual licensee may submit an e-mail to the Board's administrator including a link to the filed corporate documents on the North Carolina Secretary of State's website within 24 hours of those documents being available on said website.

(e) If a corporate entity's ownership changes or the right to control the corporate entity passes from one person or group to another person, group or receiver, the individual licensee who qualifies that corporate entity to engage in irrigation contracting shall notify the Board within five business days of the date when the change in the right of control has become effective. Such changes include addition of or termination of partnerships, changes in corporate form such as from corporation to limited liability company, sale or transfer of a controlling interest in the corporate entity, merger of the corporate entity with another person, or dissolution of the person's corporate or other legal status.

(f) An individual licensee who qualifies a corporate entity to engage in irrigation contracting shall notify the Board in a timely fashion of the beginning of any of the following legal actions in which the corporate entity, as the petitioner or respondent:

- (1) has been named a respondent under an action for legal dissolution by the North Carolina Department of Justice or by a partner, shareholder or such other person as may have the right or authority to bring such action;
- (2) has been notified of its administrative dissolution by the North Carolina Secretary of State; or
- (3) has been notified of the initiation of any legal proceeding as may affect its corporate form, ownership or right of control or otherwise affect

its status or ability to comply with G.S. 89G and the Board's rules.

Notice to the Board is timely if the Board receives written notice or e-mail of such action within 10 business days of the receipt of notice or service of legal process by the individual licensee or the registered agent of the corporate entity.

(g) Any individual licensee who has been suspended solely due to cancellation of his or her surety bond or irrevocable letter of credit may apply for reinstatement upon providing the following to the Board:

- (1) A valid surety bond or irrevocable letter of credit naming him as principal;
- (2) An affidavit affirming that the suspended licensee has otherwise complied with all obligations of a licensee under G.S. 89G, and has refrained from practicing irrigation construction or contracting except as may be subject to a statutory exemption;
- (3) Proof of compliance with the licensee's continuing education requirements for each calendar year in which the suspension has been in force; and
- (4) A ~~license application fee of one hundred dollars (\$100.00)~~ reinstatement fee.

Authority G.S. 89G-5; 89G-6; 89G-10.

**21 NCAC 23 .0104 CONTINUING EDUCATION**

(a) Continuing Education (CEU) credit shall not be obtained for the same course more frequently than every three years.

(b) Each individual licensee must earn ten hours of approved continuing education each calendar year. The 10 hours shall include ~~at least two but not more than~~ four hours of business education. The remaining ~~six~~ hours of continuing education shall consist of training in landscape and turf irrigation technology.

(c) A licensed contractor shall provide proof of attendance for all continuing education upon request by the Board.

(d) Only continuing education classes or activities that have been approved by the Board as providing adequate education regarding the requirements of this Chapter satisfy the licensee's continuing education requirement.

Authority G.S. 89G-5; 89G-9.

**SECTION .0200 – COMPLAINT PROCESS AND HEARING RULES OF THE NORTH CAROLINA IRRIGATION CONTRACTORS LICENSING BOARD**

**21 NCAC 23 .0208 COMPLAINT PROCESS**

(a) Upon receipt of a complaint alleging misconduct or unlicensed practice that might subject a licensee or other person to discipline, or upon notice of such otherwise coming to the Board's attention through investigatory means, the Board's Investigative Committee may investigate such matter to determine whether probable cause exists to believe a violation occurred. The Board shall send a notice of complaint to the respondent.

(b) The complainant shall submit the complaint form online through the Board office.

(c) The Board shall not respond to or investigate anonymous complaints or inquiries.

(d) The Board shall administratively close any complaint that:

- (1) is anonymously submitted;
- (2) is withdrawn by the complainant at any stage of the investigation; or
- (3) is more than two years after the irrigation system was completed.

(e) The Investigative Committee may:

- (1) be assisted by any attorney retained by the Board;
- (2) hire an investigator or such persons as it deems necessary to determine whether probable cause exists to believe a violation occurred;
- (3) subpoena persons to provide the Committee with sworn testimony or documents, provided that the subpoena is signed by the President or Secretary-Treasurer of the Board;
- (4) make inquiries designed to assist the Committee in its review of matters under investigation; or initiate charges against a licensee or other persons if violations are suggested by the evidence considered by the Committee during an investigation of a complaint.

(f) After a preliminary review of a complaint, the Investigative Committee shall:

- (1) Find that there is probable cause to believe a violation occurred, and send the respondent a notice of violation; or
- (2) Find that there is no probable cause to believe a violation occurred, and send the respondent and complainant notification of the same.

(g) The Investigative Committee, by and through the Board's legal counsel, may undertake negotiations with the respondent to settle the matter without a hearing when such settlement accomplishes the Board's duty to protect the consuming public. The settlement agreement shall not be final until and unless the Board votes to approve the agreement.

(h) If a settlement agreement is reached, the Investigative Committee shall present the proposed settlement agreement to the Board, but shall not identify the parties to the complaint to the full Board except by descriptive titles, such as licensee or other persons. The Board shall either vote to approve the settlement agreement or vote to reject the settlement agreement. If the Board approves the settlement agreement, the Board shall notify the respondent and complainant and shall close the case upon satisfaction of all terms in the settlement agreement.

(i) If a settlement agreement is not reached or if the Board votes to reject a proposed settlement agreement, the Board shall serve the respondent with a notice of hearing and shall conduct a hearing in accordance with the rules of this Section and as required by G.S. 150B, Article 3A.

*Authority G.S. 89G-5; 150B.*

**SECTION .0300 - IRRIGATION RECORD DRAWING  
MINIMUM STANDARDS**

**21 NCAC 23 .0301 IRRIGATION RECORD  
DRAWING**

(a) As required in Rule .0511 of this Chapter a record drawing is a graphic representation of the irrigation system that was installed and other constructed features. All irrigation record drawings shall:

- (1) accurately portray the site; and be drawn to accurately portray the site;
- (2) be legible and reproducible;
- (3) include the site information of all surrounding development (e.g. building edges, walks, walls, roads), irrigated areas, turf areas, and planted areas; and
- (4) show the sprinkler system and/or drip micro irrigation system as installed and include the location of:
  - (a) emergency shut-off valve(s);
  - (b) water source(s);
  - (c) backflow devices;
  - (d) all types of valves;
  - (e) all wire splices;
  - (f) all wire paths;
  - (g) controllers;
  - (h) all sensors;
  - (i) all grounding location(s) and type(s);
  - (j) all pumps;
  - (k) all filters;
  - (l) all quick couplers or any other water connection points; and
  - (m) all main line piping.

(b) Site information shall include all development (e.g. building edges, walks, walls, roads), irrigated areas, turf areas, and planted areas. The drawings shall show the sprinkler system as it is installed.

(c) The record drawings shall include locations and product information regarding the location of:

- (1) emergency shut-off valve(s);
- (2) water source(s);
- (3) backflow devices;
- (4) all types of valves;
- (5) all wire splices;
- (6) all wire paths;
- (7) all controllers;
- (8) all sensors;
- (9) all grounding location(s) and type(s);
- (10) all pumps;
- (11) all filters;
- (12) all quick couplers or any other water connection points; and
- (13) all main line piping.

(d) All manual and automatic valve locations shall be shown with actual measurements distances to permanent reference points so they may be located in the field. Proper permanent reference points are buildings, drainage inlets, sidewalks, curbs, light poles, and other permanent, immovable objects.

~~(e)(c)~~ The irrigation record drawings. Record drawings shall be labeled "Record Drawings".

Authority G.S. 89G-5(15).

**SECTION .0400 - IRRIGATION DESIGN MINIMUM STANDARDS**

**21 NCAC 23 .0401 SYSTEM DESIGN OBJECTIVES AND REQUIREMENTS**

(a) An irrigation contractor shall design an irrigation system ~~shall be designed to so that it~~ uniformly distribute ~~distributes~~ water.

(b) An irrigation contractor shall prepare a system design considering the following criteria:

- (1) soil type;
- (2) slope;
- (3) plant root depth;
- (4) differing plant material water requirements;
- (5) microclimates;
- (6) weather conditions;
- (7) quantity, quality and delivery pressure of the water source; and
- (8) any issues relating to the long-term management of the system and the landscape it serves.

~~(c) To conserve and protect water resources, When designing an irrigation system, an irrigation system contractor shall select equipment components and installation techniques that meet state and local code requirements and site requirements.~~

~~(d) The irrigation system shall be designed to provide uniform distribution of water.~~

~~(e)(d)~~ When designing an irrigation system, an irrigation shall do the below to ~~To~~ ensure that the irrigation system is designed to uniformly distribute the water, to conserve and protect water resources, and to function well as a component of the overall ~~landscape. landscape, the irrigation system contractor shall:~~

- (1) Obtain direct knowledge of site conditions by visiting it. Viewing and relying solely on plot plans to generate a design is not adequate preparation for designing an irrigation system.
- (2) Produce a design that meets all applicable state and local codes, including plumbing and electrical codes.
- (3) When allowable by law, specify in the plan the manufacturer, model, type, and size of all components to eliminate ambiguity during construction and to facilitate management of the system.
- (4) Select pipe, electrical wire and other materials based on design parameters, environmental conditions, code requirements, and long-term management requirements of the system.
- (5) Design the irrigation system to minimize installation and maintenance difficulties.
- (6) Select and place shrubs, trees, and groundcover sprinkler and drip/micro-irrigation components according to the expected size of larger specimen plants through a minimum three-year

establishment period for shrubs and 10 years for trees.

Authority G.S. 89G-5.

**21 NCAC 23 .0402 PIPING**

(a) The following rules of maximum safe flow rate apply to irrigation systems connected to municipal and community water suppliers, with the lowest safe flow rate prevailing as the design minimum standard:

- (1) The maximum allowable pressure loss through the meter shall be less than 10 percent of the static pressure at the meter.
- (2) The maximum flow rate through the meter shall not exceed 75 percent of the maximum safe flow rate through the meter.
- (3) Piping in irrigation systems shall be designed and installed so that the flow of water in the pipe will not exceed a velocity of five feet per second for polyvinyl chloride (PVC), polyethylene (PE) and high density polyethylene (HDPE) pipe and seven feet per second for metal pipe.

(b) When designing an irrigation system, an ~~An~~ irrigation contractor shall ~~follow~~ use the following criteria for piping:

- (1) The manufacturer's recommendations for ~~all pipe usage and fabrication shall be followed.~~ intended application.
- (2) The minimum PVC pipe thickness shall be PR200 - (SDR21) with sch40 fittings.
- (3) PVC piping from the above-grade backflow to below grade shall be a minimum of sch80.
- (4) All PVC risers shall be a minimum thickness of sch80.
- (5) Thrust blocking details and locations shall be included when bell and gasket pipe is used.
- (6) Exposed PVC piping shall be protected from UV degradation per the manufacturer's recommendations.

Authority G.S. 89G-5.

**21 NCAC 23 .0404 WATER PRESSURE**

(a) For systems on a municipal or community water supply, an irrigation contractor shall provide allowances in the design for a reduction in static pressure of up to 10 pounds per square inch (psi) to accommodate possible ~~expansion~~ loss of pressure in the supply network.

(b) Where variable or excessive static pressure exists, an irrigation contractor shall specify pressure regulation.

~~(c) At the maximum design flow rate of the system an irrigation contractor shall specify the recommended operating pressure for the irrigation system.~~ An irrigation contractor shall specify the recommended minimum operation pressure for the irrigation system at the maximum design flow rate.

Authority G.S. 89G-5.

**21 NCAC 23 .0405 DRIP/MICROIRRIGATION**

For zones with drip or microirrigation, when designing an irrigation system, an irrigation contractor shall:

- (1) ~~provide~~ Provide a means of filtration at the master control valve to remove particulate matter;
- (2) Use separate drip/microirrigation zones where differing plant water requirements and root zone depths make such zones practical;
- (3) ~~To improve overall uniformity specify~~ Specify pressure-compensated compensating devices; ~~devices to improve overall uniformity~~;
- (4) Specify pressure regulation upstream from the drip/microirrigation components to anticipate periodic increases in the pressure of municipal or community water sources when there is flushing or other maintenance on the water supply system. Pressure regulating devices may be omitted only when the maximum possible pressure is known to be lower than the maximum allowable pressure for all drip/microirrigation components; and
- ~~(5) To improve system uniformity connect (loop) the ends of individual laterals; and~~
- ~~(6)(5) To minimize ingestion of soil and other contaminants into the emitters, use~~ Use air release valves ~~valves to minimize ingestion of soil and other contaminants into the emitters.~~

Authority G.S. 89G-5.

**21 NCAC 23 .0406 COMPONENTS AND ZONE**

**DESIGN**

When designing an irrigation system, an irrigation contractor shall:

- ~~(1)(a) An irrigation contractor shall design~~ Design the layout of heads and other emission devices to reduce evaporation loss, reduce surface run-off, and limit overspray across or onto a street, public driveway or sidewalk, parking area, building, fence, or adjoining property.
- ~~(b) When changes are required an irrigation contractor shall specify in the plan notes that any required equipment shall meet or exceed the design standards of the system.~~
- ~~(2)(c) An irrigation contractor shall design~~ Design sprinkler head spacing with an approximate "head-to-head" coverage. ~~coverage, unless the coverage is designed for wind derating. Wind derating shall be based on wind criteria for the time period that the system is normally operated.~~
- ~~(3)(d) An irrigation contractor shall use~~ Use separate stations or zones (hydrozones) for areas with dissimilar environmental conditions or dissimilar water or scheduling requirements (hydrozones). These conditions or requirements include sun exposure, plant type, soil type, varying wind conditions, grades, and dimensional issues. When not practicable due

to accessibility, dimensional issues or other constraints, practical modifications to this standard may be acceptable.

- ~~(4)(e) An irrigation contractor shall, when~~ When selecting system components:
  - ~~(a)(4) Select components to avoid surface runoff;~~
  - ~~(b)(2) Select components to keep the sprinkler precipitation rate below the infiltration rate of the soil;~~
  - ~~(c)(3) Specify the use of repeat cycles to allow the water to soak into the root zone; and~~
  - ~~(d)(4) Specify stations or zones for sprinklers at the top and toe of sloped areas.~~
- ~~(5)(f) An irrigation contractor shall locate~~ Place sprinkler heads based on an evaluation of physical, environmental, and hydraulic site conditions, including typical wind conditions during the normal irrigation period.
- ~~(6)(g) An irrigation contractor shall divide the irrigation systems into zones consistent with the types of sprinkler heads and nozzles being used in order to achieve an approximate matched precipitation rate. Select sprinkler heads and nozzles to achieve an approximate matched precipitation rate within each zone.~~
- ~~(7)(h) An irrigation contractor shall utilize water-conserving equipment as follows:~~ Plan to use the following water conserving equipment:
  - ~~(a)(4) Check valves to minimize low-head drainage when grades exceed five percent;~~
  - ~~(b)(2) Pressure regulators or pressure compensating devices when pressures exceed manufacturer's recommendations;~~
  - ~~(c)(3) Rain sensors to suspend irrigation during rain or other forms of precipitation;~~
  - ~~(d)(4) A controller that has multi-program capability with at least four start times (for multiple repeat soak cycles) and run time adjustments in one-minute increments; and~~
  - ~~(e)(5) Low-trajectory sprinkler nozzles and modified head spacings to mitigate the effects of wind.~~ wind; and
  - ~~(f)(6) Components that do not mist when manufacturer's pressure specifications are met.~~
  - ~~(i) An irrigation contractor shall select components that do not mist when manufacturer's pressure specifications are met.~~
  - ~~(j) An irrigation contractor shall design irrigation systems with control wire splices made with a waterproof wire splice kit that is UL-listed for underground applications. The design shall specify the manufacturer's recommended splice kits for two-wire control systems.~~

~~(8)(k) An irrigation contractor shall offset turf grass sprinklers from pavement edges a minimum of two inches to allow for edging of the turf. Offset turf grass sprinklers a minimum of two inches from pavement edges to allow for edging of the turf.~~

~~(9)(l) An irrigation contractor shall offset Offset sprinklers from vertical walls to limit spray on the walls.~~

~~(10)(m) An irrigation contractor shall locate Ensure that valves are located in such a way valves to allow reasonable access for maintenance or service.~~

~~(11)(n) An irrigation contractor shall protect Ensure that the roots of existing trees are protected by:~~

~~(a)(1) Planning pipe system layout to limit its effect on existing trees and other planting.~~

~~(b)(2) When necessary to trench into the root zone of an established plant in order to provide irrigation within the root zone:~~

~~(i)(a) planning to dig digging the trench in such a way as to minimize the effect on the roots (for example, by digging the trench in a straight line towards the base of the tree or shrub such that, if the line of the trench were extended, it would intersect with the base of the tree or shrub); or~~

~~(ii)(b) planning to use using direct boring or hand-trenching. An irrigation contractor shall use hand trenching techniques that dig a trench without damaging roots having a diameter of one-half inch or more.~~

~~(c)(3) In the event of trenching, maintaining a distance of one foot from the tree trunk for every inch of tree diameter at a height of four feet six inches above the ground. For example, piping shall be kept at least 20 feet away from the trunk of a tree having a 20 inch diameter at four feet six inches above the ground.~~

~~(d)(4) In the event of boring, maintaining a distance of at least one-half foot from the tree trunk for each inch of tree diameter at a height of four feet six inches above the ground and, in any event, maintaining a distance of at least five feet from the tree trunk. When direct boring, an irrigation contractor shall bore to a minimum of 36 inches.~~

~~(e)(5) Avoiding placing sprinklers in a position to directly spray water on tree trunks of mature trees by placing them no closer to a tree than one-third of the sprinkler spray radius.~~

~~(o) An irrigation contractor shall use the appropriate size American Wire Gauge ("AWG") wire, as noted by the manufacturer, to operate a valve.~~

~~(12)(p) An irrigation contractor shall: With respect to wiring:~~

~~(a)(1) Install control wires in the same trench along the side of the main line piping;~~

~~(b)(2) Allow slack in the wiring; and~~

~~(c)(3) Bundle an expansion coil for all wires at each valve location location;~~

~~(d) Use the appropriate size American Wire Gauge ("AWG") wire, as noted by the manufacturer, to operate a valve;~~

~~(e) Indicate common wiring (wire that runs through the entire circuit of valves) by using a different colored wire from all other wire connections;~~

~~(f) Provide additional wire along the irrigation wire path for future expansion or replacement of damaged wires;~~

~~(g) Design irrigation systems with control wire splices made with a waterproof wire splice kit that is UL listed for underground applications. For two-wire control systems, the design shall specify the manufacturer's recommended splice kits; and~~

~~(h) Follow the manufacturer's recommendation for all wiring and grounding, including two-wire control systems.~~

~~(q) An irrigation contractor shall indicate common wiring (wire that runs through the entire circuit of valves) by using a different colored wire from all other wire connections.~~

~~(r) An irrigation contractor shall provide additional wire along the irrigation wire path for future expansion or replacement of damaged wires.~~

~~(13)(s) An irrigation contractor shall use Use valve boxes that are large enough to provide sufficient space for servicing the valve housed inside. For single valve boxes, valve Valve boxes shall be at least 10 inches in diameter for both manual and automatic valves.~~

~~(t) An irrigation contractor shall follow the manufacturer's recommendation for all wiring and grounding, including two wire control systems.~~

Authority G.S. 89G-5.

**SECTION .0500 - IRRIGATION SYSTEM INSTALLATION MINIMUM STANDARDS**

**21 NCAC 23 .0501 GENERAL REQUIREMENTS**

(a) When an irrigation contractor determines that the design provided by others does not meet the minimum standards set forth by the rules of this Chapter or local requirements, the irrigation contractor shall notify the designer in writing of such ~~deficiencies~~ minimum standard violations and not complete the job until all such minimum standards are met.

(b) All irrigation system components shall be installed in accordance with manufacturer's specifications, local code requirements and the requirements of the rules of this Section.

*Authority G.S. 89G-5.*

**21 NCAC 23 .0502 SITE CONSIDERATIONS**

(a) An irrigation contractor shall confirm all property corners and lines that will determine the borders of landscaped or irrigated areas including any Right of Way (local, state or federal).

(b) The irrigation contractor shall address and note any encroachment agreements and other easement requirements.

(c) Before the irrigation contractor and those working under his supervision do any excavation he shall call 1-800-632-4949 or 811 or go to [www.ncocc.org](http://www.ncocc.org) to have major utilities located on the subject property by the appropriate utility companies. Installation shall not be started until all underground utilities are located and marked.

(d) An irrigation contractor shall review the site where the irrigation system is to be installed with the owner to identify private underground lines or structures and locate those that present a potential problem before digging (~~i.e. e.g. Low low~~ voltage lighting wires, propane gas tanks and lines, private power lines to out buildings, drainage lines, septic field lines and tanks).

(e) In the case of new landscape construction where a landscape plan is provided, an irrigation contractor shall verify that the landscape plan is the most current plan available and is not subject to change before starting the installation.

(f) If no landscape plan exists or the landscaping is in place, an irrigation contractor shall review the site with the owner or landscape designer to determine what the irrigation needs of the site are. The irrigation contractor shall address specific issues, including:

- (1) plant water needs;
- (2) soil type;
- (3) root depth;
- (4) microclimates; and
- (5) grades.

(g) An irrigation contractor shall inform the owner or landscape designer of the importance of designing the irrigation system to meet the needs of the landscape.

(h) An irrigation contractor shall review planting plans prior to installation of the irrigation system to minimize conflicts between larger plants, existing root zones and irrigation heads and review construction plans for conflicts between hardscape and sprinkler head placement.

(i) An irrigation contractor shall inform the property owner and irrigation designer of unusual or abnormal soil conditions which may impact the design and management of the irrigation system.

(j) Where deviations from the design are required (e.g., routing pipe around a tree or other structure or adding sprinklers to an area larger than the plan shows), an irrigation contractor shall consult

with the designer prior to making the change to ensure that the change is within the design performance specifications.

*Authority G.S. 89G-5.*

**21 NCAC 23 .0503 WATER SUPPLY**

(a) Before commencing installation, an irrigation contractor shall verify that the point of connection, water supply, flow rate and static and dynamic pressures meet design criteria.

(b) All new irrigation systems that have a pressurized water supply under continuous pressure must include an isolation valve. The isolation valve's location must be in the main line before the first zone valve or quick coupler.

(c) If a master valve is used, it shall be installed on the discharge side of the backflow prevention device on all new installations.

(d) If the water supply is potable water, an irrigation contractor shall verify that a backflow prevention device is installed upstream of the irrigation system before pressurizing the irrigation mainline.

(e) For local government water systems and large community water systems, an irrigation contractor shall, when required by local code, install a separate meter for new in-ground systems on lots platted and recorded in the office of the register of deeds in the county or counties in which the real property is located after July 1, 2009.

*Authority G.S. 89G-5; 143-355.4.*

**21 NCAC 23 .0504 SYSTEM LAYOUT**

(a) An irrigation contractor shall install the irrigation system's components according to the design specifications and manufacturer's performance standards.

~~(b) The spacing of microirrigation devices shall be selected. The microirrigation devices shall be installed at a spacing to meet the maximum irrigation requirements of the plants being irrigated. The flow rate of the microirrigation devices, soil types and plant types must all be considered in selecting the spacing of the microirrigation devices.~~

~~(c) The maximum spacing between sprinklers must not exceed the radius listed in the manufacturer's specifications. The sprinklers shall be installed such that the spacing between sprinklers results in approximate "head-to-head" coverage, but in no event shall the spacing exceed the radius listed in the manufacturer's specifications. An irrigation contractor shall determine the radius by referring to the manufacturer's specifications for a sprinkler at a specific operating pressure.~~

~~(d) An irrigation contractor shall determine the radius by referring to the manufacturer's specifications for a sprinklers at a specific operating pressure.~~

~~(e)~~ (d) Irrigation systems shall be installed such that they do not spray water onto or over surfaces made of concrete, asphalt, brick, wood or any other continuous impervious material, such as walls, fences, sidewalks and streets. The irrigation system as installed may spray water onto such surfaces due to irregularly-shaped hardscapes, wind drift or fixed spray patterns of sprinklers.

~~(f) An irrigation contractor shall insure that no water is allowed to run off a site onto impervious surfaces where the water flows for a distance of more than 15 feet during any irrigation day or into a storm water inlet.~~

~~(g)(e)~~ Under sloping conditions, ~~All an~~ irrigation systems shall be installed with use check valves and stronger springs to hold the water in the piping system.

~~(h)~~ When the irrigation contractor determines that water pressure at the head is too low to operate a sprinkler he shall correct this problem with a solution in accordance with Paragraph (a) of this Rule.

~~(i)~~ An irrigation contractor shall provide an irrigation schedule to the property owner or his agent that limits the amount of water applied in any one given time period.

Authority G.S. 89G-5.

**21 NCAC 23 .0505 TRENCHING AND PIPING**

(a) All portions of an irrigation system that do not meet the standards in this Rule shall be noted on the record drawing.

(b) An irrigation contractor shall install an irrigation system such that he protects the root systems of the trees on the site by not trenching across the established root systems of existing trees and shrubs.

(c) Notwithstanding the requirement in Paragraph (b) of this Rule, when the irrigation contractor finds that it is necessary to trench into the root zone of an established plant in order to provide adequate irrigation to the surrounding area within the root zone, he shall dig the trench in such a way as to minimize the effect on the roots (for example, by digging the trench in a straight line towards the base of the tree or shrub such that, if the line of the trench were extended, it would intersect with the base of the tree or shrub).

(d) An irrigation contractor shall cut damaged roots cleanly at right angles.

(e) Piping in irrigation systems shall be ~~designed and installed~~ selected so that the flow velocity of water in the pipe will not exceed a velocity of five feet per second for polyvinyl chloride (PVC), polyethylene (PE), and high density polyethylene (HDPE) pipe and seven feet per second for metal pipe.

(f) The main line and lateral line piping shall be installed to provide a minimum of 12 inches between the top of the pipe and the natural grade.

(g) If a utility, man-made structure, or roots create an unavoidable obstacle that makes the 12 inch depth coverage requirement impractical, the piping shall be installed at a minimum of 6 inches between the top of the pipe and the finish grade.

~~(g)(h)~~ The bottom of the trench shall be smooth and provide a flat bed on which to rest the pipe.

~~(h)(i)~~ The irrigation contractor shall clean backfill material of any debris that may damage the pipe.

~~(i)~~ If a utility, man-made structure, or roots create an unavoidable obstacle that makes the 12 inch depth coverage requirement impractical, the piping shall be installed inside a larger section of pipe for added protection.

(j) When swing joints are used, the depth of the pipe shall allow the swing joint to operate as designed.

(k) All trenches and holes created during installation of an irrigation system shall be backfilled and compacted to the final grade. The trench shall be compacted in lifts no greater than six inches to insure proper compaction.

(l) All PVC connections installed in new irrigation systems ~~that are installed using PVC~~ shall be prepared according to

manufacturer's recommendations. (e.g. priming and glue application) prior to connection.

~~(m)~~ When the irrigation contractor uses PR 200 pipe, the manufacturer's directions shall be followed.

~~(n)(m)~~ The irrigation contractor shall use the manufacturer's approved lubricant when assembling Bell and Gasket Pipe and Fittings.

~~(o)(n)~~ The irrigation contractor shall use Teflon tape on all threaded fittings, wrapping the tape around the pipe three times to insure a proper seal.

~~(p)(o)~~ When the irrigation system uses reclaimed water, the irrigation contractor shall use purple pipe or mark the pipe with purple tape placed above all piping in the system. Tape shall be within six inches of the top of the pipe. The irrigation contractor shall use purple valve box covers and purple quick coupler flaps and place an eight inch by eight inch sign with purple background stating "RECLAIMED WATER-DO NOT DRINK," and "AGUA DE RECUPERION-NO BEBER."

Authority G.S. 89G-5(15); 89G-5(16).

**21 NCAC 23 .0506 ELECTRICAL**

(a) This Rule applies to irrigation control wiring of thirty (30) volts or less, or where the installation, construction, maintenance or repair of devices is exempt from the requirement of licensure as an electrical contractor under G.S. 87-43.1 and 21 NCAC 18B .0805.

(b) Underground electrical wiring used to connect an automatic controller to any electrical component of the irrigation system must be listed by Underwriters Laboratories (UL) as acceptable for burial underground.

(c) Electrical wiring that connects any electrical components of an irrigation system must be sized according to the manufacturer's recommendation.

(d) Electrical wire splices which are exposed to moisture must be waterproofed using a UL Listed device.

(e) Underground electrical wiring that connects an automatic controller to any electrical component of the irrigation system must be buried with a minimum of twelve inches of backfill.

(f) The wire connections on the two wire path of two wire control systems shall be made using devices rated for the higher voltage of the control system.

(g) Multi-strand wire may be used if the material exposed is of rated minimum wire size of 18 AWG for underground application and if the splicing device used water proofs the outer most casing of the wire. An irrigation contractor may splice a multi-wire cable in underground applications when the wire is a minimum size of 18 AWG and when the splicing device water proofs the outer most casing of the wire.

Authority G.S. 89G-5.

**21 NCAC 23 .0507 GROUNDING**

(a) This Rule applies to irrigation control wiring and components of thirty (30) volts or less, or where the installation, construction, maintenance or repair of devices exempt from the requirement of licensure as an electrical contractor under G.S. 87-43.1 and 21 NCAC 18B .0805.

(b) An irrigation contractor shall ground all components of the irrigation system per manufacturers' recommendations.

Authority G.S. 89G-5.

**21 NCAC 23 .0508 SPRINKLERS**

(a) ~~Emission devices must be installed to operate at or above the minimum and not above the maximum sprinkler head pressure as published by the manufacturer for the nozzle and emission device spacing that is used. An irrigation contractor shall select sprinklers such that the operating pressure at each sprinkler location is within the range published by the manufacturer of the sprinkler nozzles.~~

(b) Sprinklers shall be set perpendicular to the grade. In turf areas sprinklers shall be set at a height recommended by the manufacturer. Sprinklers installed on athletic fields shall be equipped with rubber covers on the sprinkler and the sprinklers shall be installed at or below the grade per the manufacturer's specifications.

Authority G.S. 89G-5.

**21 NCAC 23 .0509 CONTROLLER**

All automatically controlled irrigation systems must include sensor or other technology designed to inhibit or interrupt operation of the irrigation system during periods of either adequate soil moisture or rainfall. Rain or moisture shutoff technology must be installed according to the manufacturer's published recommendations.

Authority G.S. 89G-5.

**21 NCAC 23 .0510 INITIAL SYSTEM START UP**

~~(a) An irrigation contractor shall perform a post installation inspection to verify that the system meets the design criteria including static water pressure at point of connection, working (dynamic) water pressure at sprinklers, head radius, head adjustment, that all sensors are operational and that there are no leaks in the system. operates as designed by:~~

- ~~(1) flushing the system;~~
- ~~(2) checking the static water pressure at point of connection;~~
- ~~(3) checking the operating pressure at sprinklers;~~
- ~~(4) checking and adjusting sprinkler head wetted radius as needed;~~
- ~~(5) ensuring that the system does not spray water onto or over surfaces made of concrete, asphalt, brick, wood or any other continuous impervious material, such as walls, fences, sidewalks and streets;~~
- ~~(6) verifying that all sensors are operational; and~~
- ~~(7) checking that there are no leaks in the system.~~

(b) An irrigation contractor shall educate the end user of the irrigation system, informing him that plant material water needs change during the year and the watering schedule should change accordingly.

Authority G.S. 89G-5.

**21 NCAC 23 .0511 OWNER'S MANUAL**

(a) A permanent sticker which contains the irrigation contractor's name, license number, company name and telephone number and date of completion of the installation ~~and the dates of the warranty period~~ shall be affixed to each automatic controller installed by an irrigation contractor. The information contained on the sticker must be printed with waterproof ink.

(b) The irrigation contractor shall, upon completion of any irrigation system or addition to an existing irrigation system provide an ~~owners~~ owner's manual to the owner ~~of~~ or owner's representative containing each the following:

- ~~(1) A maintenance checklist of items such as the nozzles, heads, microirrigation components, pumps, and filters that require maintenance and the recommended frequency for the service to insure that the irrigation system remains in good working order.~~
- ~~(2) A report on the system's specifications and a performance by station or zone that includes the plant type, soil type, average root zone depth, precipitation rate, target gallons per minute flow rate, recommended operating pressure range, and maximum recommended cycle run time without runoff. The irrigation contractor shall also maintain a copy of this report at his place of business for a period not less than three years.~~
- ~~(3) A seasonal watering schedule based on monthly historical reference evapotranspiration (historical ET) data, monthly effective rainfall estimates, plant landscape coefficient factors, and site factors.~~
- ~~(4)~~(1) Manufacturer's manual for the automatic controller and all sensors.
- ~~(5)~~(2) Winterization instructions and precautions on protection of the potable water supply.
- ~~(6) A written explanation regarding the operation of the irrigation controller, valves, sensors, pressure regulators, backflow prevention device and sprinklers. An irrigation contractor shall review advanced programming features such as multi cycle irrigation to prevent run off and the use of the percentage water increase or decrease function. An irrigation contractor shall educate the owner on features and capabilities of the system including the maintenance requirements.~~
- ~~(7)~~(3) The irrigation record drawing. ~~that accurately portray the site, and is legible and reproducible. Site information shall include all development (e.g. building edges, walks, walls, roads,); irrigated areas, turf areas, and planted areas. The drawings shall show the sprinkler system as it is installed. An irrigation contractor shall include locations and product information regarding the location of the emergency shut-off valve, meters, backflow devices, valves, controllers, pumps, wire paths, wire splice locations and main line piping. All manual and~~

automatic valve locations shall be shown with actual measurements to permanent reference points so they may be easily located in the field. Examples of permanent reference points include buildings, drainage inlets, sidewalks, curbs, light poles. The statement, "This irrigation system has been designed and installed in accordance with all applicable state and local laws, ordinances, rules, regulations or orders. I have tested the system and determined that it has been installed according to the Irrigation Plan and is properly adjusted for the most efficient application of water at this time" shall be included in the irrigation drawing record. The irrigation contractor shall provide a plan to scale that includes locations and product information regarding the lateral piping, sprinklers, and rain switches or sensors.

Authority G.S. 89G-5.

**SECTION .0600 - IRRIGATION SYSTEM MANAGEMENT FOR WATER EFFICIENCY STANDARDS**

**21 NCAC 23 .0601 PURPOSE**

This Section sets minimum standards for irrigation contractors who are hired to maintain an irrigation system. ~~water efficiency.~~ The purpose of irrigation system management is to ensure that the irrigation system performs optimally, ensuring efficient and uniform distribution of water.

Authority G.S. 89G-5.

**21 NCAC 23 .0602 BASIC SYSTEM MAINTENANCE PRACTICES**

(a) An irrigation contractor shall establish a systematic maintenance schedule for inspecting, testing and reporting on performance conditions of the irrigation system to the owner.

(b) An irrigation contractor shall ~~report any deviations from the original design to the owner.~~ inform the owner of any minimum standards violations observed in the irrigation system.

(c) ~~As part of a systematic maintenance program, an irrigation contractor shall tell the owner to:~~

- (1) ~~Check, adjust and repair irrigation equipment at least once a year;~~
- (2) ~~Post irrigation schedules, zone location map and other relevant programming information in each controller or identify for the irrigation contractor and his employees where information is kept;~~
- (3) ~~Inspect the irrigation system after annual activation in the spring, and bring the system up to intended operating conditions;~~
- (4) ~~Maintain irrigation systems to keep water off impervious surfaces;~~
- (5) ~~Repair all leaks immediately or shut off a zone or zones with leaks. If leaks are in main line the owner shall turn water off at the point of~~

~~connection. Signs of leakage include overgrown or particularly green turf areas, soggy areas around spray heads and above ground hoses, jammed spray heads and torn hoses. In drip systems, leakage problems may be due to damaged tubing from foot traffic or gnawing by animals. The irrigation contractor shall flush pipes, valves, sprinklers, drip components and filters after repairs are completed; and~~

~~(6) As plants mature move sprinklers to preserve system performance. The irrigation contractor shall add additional sprinklers or other hardware as required to compensate for blocked spray patterns or changes in the irrigation needs of the landscape. The owner shall ensure that system modifications are in keeping with design specifications and do not cause landscape water demand to exceed the hydraulic capacity of the system.~~

(d)(c) An irrigation contractor ~~who provides monthly inspections~~ shall:

- (1) Verify that the water supply and pressure are adequate for proper operation;
- (2) Adjust valves and flow regulators for proper pressure and flow operation. Valves must shut off tightly to prevent leakage, and operate without abruptly opening or closing to prevent damage to the irrigation system caused by water hammer and pressure surges;
- (3) Verify that sprinklers are properly adjusted - check the nozzle, arc, radius, level and attitude with respect to slope; slope and ensure that water is not spraying on impervious surfaces;
- (4) Verify that sensors are working properly; ~~properly and are within their calibration specifications;~~
- (5) Look for debris (e.g., rocks, sand, and soil) lodged in sprinklers and drip emitters;
- (6) Examine filters and clean filtration elements at least once a year or when the irrigation system fails to operate properly due to clogged filters;
- (7) Verify proper operation of the controller. Confirm correct date and time input and functional back-up battery at least once a year;
- (8) Repair or replace broken hardware and pipelines with originally specified materials or equivalent, equal, thereby restoring the system to the original design specifications;
- (9) Check for leaks and Complete complete repairs to support the integrity of the irrigation design and to minimize the waste of water;
- (10) Move, adjust, add or remove sprinklers or other hardware as required to compensate for blocked spray patterns or changes in the irrigation needs of the landscape; and
- (10) ~~Notify the end user (or owner) of any deviations from the original design; and~~

- (11) Test all ~~repairs~~ repairs and flush pipes, valves, sprinklers, drip components and filters as needed.

~~(e) An irrigation contractor shall ensure that the replacement hardware used for system repairs matches the existing hardware specifications, and is in accordance with the design.~~

~~(d) In the event an irrigation contractor makes any changes to the irrigation system, he shall amend the irrigation record drawing to reflect those changes.~~

~~(f)(e)~~ An irrigation contractor shall establish a "winterization" protocol in areas where low temperatures will damage an irrigation system. Winterization consists of removing enough water from the irrigation system and equipment so that no damage occurs to any part of the irrigation system during temperatures below thirty-two (32) degrees Fahrenheit. This is accomplished by turning off the main water supply, opening all drains, and if necessary using compressed air to remove water from the irrigation system.

~~(g)(f)~~ An irrigation contractor shall establish an "activation/start-up" protocol. Activation consists of re-pressurization of the irrigation system, and inspection.

~~(h)(g)~~ Whenever possible, an irrigation contractor shall update and retrofit existing irrigation systems with new technology that will reduce overall water ~~consumption~~ use.

Authority G.S. 89G-5.

**21 NCAC 23 .0603 SCHEDULING**

(a) An irrigation contractor shall recommend to the owner or his representative that:

- (1) The owner ~~manage~~ adjust the irrigation schedule ~~and automatic controller~~ to respond to the changing water and seasonal requirements ~~for plant water needs in the landscape;~~ of the landscape;
- ~~(2) The owner reset automatic controllers according to the seasonal plant needs;~~
- ~~(3) The owner adjust controllers upon completion of the grow in phase of a landscape or new plant material and should be changed, as soon as possible;~~
- ~~(4)(2)~~ The owner inspect irrigation controllers at least monthly to change irrigation frequencies or run times as needed; and
- ~~(5)(3)~~ The owner should avoid irrigation during rain events.

~~(b) An irrigation contractor shall recommend to the owner or his representative that he understand the capabilities of the irrigation controller and use these features to efficiently irrigate.~~

- ~~(e)(b)~~ An irrigation contractor shall:
- (1) Identify soil ~~type~~ type, microclimates, and root depths of plants in each zone;
  - (2) Calculate the run-time of each zone to supply the needed water based upon precipitation rate of the sprinkler zones, the water-holding capacity of the soil, the changing weather conditions and the plant's water requirements; and

- (3) Set initial run times and intervals to minimize runoff.

~~(d) An irrigation contractor shall advise the owner to periodically verify that the plant material is healthy and that soil moisture is adequate. An irrigation contractor shall use a soil probe to visually inspect root depth, soil structure and moisture.~~

~~(e) An irrigation contractor shall educate the end user of the irrigation system, informing him that plant material water needs change during the year and the watering schedule should change accordingly.~~

Authority G.S. 89G-5.

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**CHAPTER 36 - BOARD OF NURSING**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Nursing intends to amend the rules cited as 21 NCAC 36 .0120, .0302-.0303, .0309, .0317-.0318, .0320-.0323.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** [www.ncbon.com](http://www.ncbon.com)

**Proposed Effective Date:** November 1, 2016

**Public Hearing:**

**Date:** July 20, 2016

**Time:** 1:00 p.m.

**Location:** NC Board of Nursing, 4516 Lake Boone Trail, Raleigh, NC 27607

**Reason for Proposed Action:** *The Board of Nursing, with the goal of assuring that the NCBON Administrative Codes regulating pre-licensure Nursing Education Programs are current, consistent and conducive to the preparation of nurses able to provide safe, effective care, now and in the future, carefully reviewed the literature, rules and practices of other state boards of nursing and testimony from NC education and practice stakeholders. Based on the evidence and best practices studied, the Board approved proposed revisions to the following Rules: 21 NCAC 36 .0120 Definitions; 21 NCAC 36 .0302 Establishment of Nursing Program - Initial Approval; 21 NCAC 36 .0303 Existing Nursing Program; 21 NCAC 36 .0309 Process for Closure of a Program; 21 NCAC 36 .0317 Administration; 21 NCAC 36 .0318 Faculty; 21 NCAC 36 .0320 Students; 21 NCAC 36 .0321 Curriculum; 21 NCAC 36 .0322 Facilities; and, 21 NCAC 36 .0323 Records and Reports*

**Comments may be submitted to:** Angela H. Ellis, APA Coordinator, NC Board of Nursing, PO Box 2129, Raleigh, NC 27602-2129, phone (919)782-3211 x259, fax (919)781-9461, email [angela@ncbon.com](mailto:angela@ncbon.com)

**Comment period ends:** August 30, 2016

**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 (check all that apply).**

- State funds affected**
- Environmental permitting of DOT affected Analysis submitted to Board of Transportation**
- Local funds affected**
- Substantial economic impact (≥\$1,000,000)**
- Approved by OSBM**
- No fiscal note required by G.S. 150B-21.4**

**SECTION .0100 - GENERAL PROVISIONS**

**21 NCAC 36 .0120 DEFINITIONS**

The following definitions apply throughout this chapter unless the context indicates otherwise:

- (1) "Academic term" means one semester of a school year.
- (2) "Accountability/Responsibility" means being answerable for action or inaction of self, and of others in the context of delegation or assignment.
- (3) "Accredited institution" means an institution accredited by a United States Department of Education approved institutional accrediting body.
- (4) "Active Practice" means activities that are performed, either for compensation or without compensation, consistent with the scope of practice for each level of licensee as defined in G.S. 90-171.20(4), (7) and (8).
- (5) "Advanced Practice Registered Nurse (APRN)" means a nurse practitioner, nurse anesthetist, nurse-midwife or clinical nurse specialist.
- (6) "Assigning" means designating responsibility for implementation of a specific activity or set of activities to a person licensed and competent to perform such activities.
- (7) "Clinical experience" means application of nursing knowledge in demonstrating clinical ~~judgment.~~ judgment in a current or evolving practice setting where the student provides care to clients under the guidance of an instructor or preceptor.
- (8) "Clinical judgment" means the application of the nursing student's knowledge, skills, abilities

- and experience in making decisions about client care.
- (9) "Competent" means having the knowledge, skills and ability to safely perform an activity or role.
  - (10) "Continuing Competence" means the on-going acquisition and application of knowledge and the decision-making, psychomotor, and interpersonal skills expected of the licensed nurse resulting in nursing care that contributes to the health and welfare of clients served.
  - (11) "Contact Hour" means 60 minutes of an organized learning experience.
  - (12) "Continuing Education Activity" means a planned, organized learning experience that is related to the practice of nursing or contributes to the competency of the nurse as defined in 21 NCAC 36 .0223 Subparagraph (a)(2).
  - (13) "Controlling institution" means the degree-granting organization or hospital under which the nursing education program is operating.
  - (14) "Curriculum" means an organized system of teaching and learning activities directed toward the achievement of specified learning objectives/outcomes.
  - (15) "Delegation" means transferring to a competent individual the authority to perform a selected nursing activity in a selected situation. The nurse retains accountability for the delegation.
  - (16) "Debriefing" means an activity that follows a clinical or simulated experience and is led by a trained faculty facilitator. Students' reflective thinking is encouraged, and feedback is provided regarding the students' performance while various aspects of the completed experiences are discussed.
  - ~~(17)~~ (17) "Dimensions of Practice" means those aspects of nursing practice that include professional responsibility, knowledge-based practice, legal/ethical practice and collaborating with others, consistent with G.S. 90-171.20(4), (7) and (8).
  - ~~(18)~~ (18) "Distance education" means the teaching and learning strategies used to meet the learning needs of students, when the students and faculty are separate from each other.
  - (19) "External standardized examinations" means a commercially available standardized predictive test that provides individual student scores that are linked to a probability of passing the NCLEX™ examination.
  - ~~(20)~~ (20) "Faculty directed clinical practice" means the responsibility of nursing program faculty in overseeing student clinical learning including the utilization of preceptors.
  - ~~(21)~~ (21) "Focused client care experience" means a clinical experience that ~~simulates~~ emulates an entry-level work experience. The intent is to assist the student to transition to an entry-level

- practice. There is no specific setting requirement. Supervision may be by faculty and preceptor dyad or direct faculty supervision.
- ~~(20)~~(22) "Interdisciplinary faculty" means faculty from professions other than nursing.
- ~~(21)~~(23) "Interdisciplinary team" means all individuals involved in providing a client's care who cooperate, collaborate, communicate and integrate care to ensure that care is continuous and reliable.
- (24) "Learning resources" means a variety of instrumental materials that faculty use to assist students to meet the expectations for learning defined by the curriculum.
- ~~(22)~~(25) "Level of Licensure" means practice of nursing by either a Licensed Practice Nurse or a Registered Nurse as defined in G.S. 90-171.20(7) and (8).
- ~~(23)~~(26) "Level of student" means the point in the program to which the student has progressed.
- ~~(24)~~(27) "Maximum enrollment" means the total number of pre-licensure students that can be enrolled in the nursing program at any one time. The number reflects the capacity of the nursing program based on demonstrated resources sufficient to implement the curriculum.
- ~~(25)~~(28) "Methods of Instruction" means the planned process through which teacher and student interact with selected environment and content so that the response of the student gives evidence that learning has taken place. It is based upon stated course objectives and outcomes for learning experiences in classroom, ~~laboratory~~laboratory, simulation and clinical settings.
- ~~(26)~~(29) "National Credentialing Body" means a credentialing body that offers certification or re-certification in the licensed nurse's or Advanced Practice Registered Nurse's specialty area of practice.
- ~~(27)~~(30) "NCLEX-PN™" means the National Council Licensure Examinations for Practical Nurses.
- ~~(28)~~(31) "NCLEX-RN™" means the National Council Licensure Examinations for Registered Nurses.
- ~~(29)~~(32) "Nursing Accreditation body" means a national nursing accrediting body, recognized by the United States Department of Education.
- ~~(30)~~(33) "Nursing program faculty" means individuals employed full or part time by academic institution responsible for developing, implementing, evaluation and updating nursing curricula.
- ~~(31)~~(34) "Nursing project" means a project or research study of a topic related to nursing practice that includes a problem statement, objectives, methodology and summary of findings.
- ~~(32)~~(35) "Participating in" means to have a part in or contribute to the elements of the nursing process.
- ~~(33)~~(36) "Pattern of noncompliance" means episodes of recurring non-compliance with one or more Rules in Section .0300.
- ~~(34)~~(37) "Preceptor" means a registered nurse at or above the level of licensure that an assigned student is seeking, who may serve as a teacher, mentor, role model and supervisor for a faculty directed clinical experience.
- ~~(35)~~(38) "Prescribing Authority" means the legal permission granted by the Board of Nursing and Medical Board for the nurse practitioner and nurse midwife to procure and prescribe legend and controlled pharmacological agents and devices to a client in compliance with Board of Nursing rules and other applicable federal and state law and regulations.
- ~~(36)~~(39) "Program Closure" means to cease operation of a nursing program.
- ~~(37)~~(40) "Program Type" means a course of study that prepares an individual to function as an entry-level practitioner of nursing. The three program types are:
- (a) BSN - Curriculum components for Bachelor of Science in Nursing provides for the attainment of knowledge and skill sets in the current practice in nursing, nursing theory, nursing research, community and public health, health care policy, health care delivery and finance, communications, therapeutic interventions and current trends in health care. For this program type, the client is the individual, family, group, and community.
  - (b) Associate Degree in Nursing (ADN)/Diploma in Registered Nursing - Curriculum components for the ADN/Diploma in Registered Nursing provides for the attainment of knowledge and skill sets in the current practice in nursing, community concepts, health care delivery, communications, therapeutic interventions and current trends in health care. For this program type, client is the individual, group of individuals, and family.
  - (c) Practical Nurse Diploma - Curriculum prepares for functioning in a dependent role in providing direct nursing care under the direction of a registered nurse or other health care provider as defined by the Nursing Practice Act. Curriculum components provide for the attainment of

knowledge and skill sets in the current practice of practical nursing, communications, therapeutic interventions, including pharmacology, growth and development and current trends in health care. For this program type client is the individual, or group of individuals.

- ~~(38)~~(41) "Review" means collecting and analyzing information to assess compliance with Section .0300 of this Chapter. Information may be collected by multiple methods including review of written reports and materials, on-site observations and review of documents or in person or telephone interview(s) and conference(s).
- ~~(39)~~(42) "Rescind Approval" means a Board action that removes the approval status previously granted.
- ~~(40)~~(43) "Self Assessment" means the process whereby the individual reviews her or his own nursing practice and identifies the knowledge and skills possessed, as well as those skills to be strengthened.
- (44) "Simulation" means a technique, not a technology, to replace or amplify clinical experiences with guided experiences that evoke or replicate substantial aspects of the real world in a fully interactive manner.
- ~~(41)~~(45) "Specialty" means a broad, population-based focus of study encompassing the common health-related problems of that group of patients and the likely co-morbidities, interventions and responses to those problems.
- ~~(42)~~(46) "Supervision" means the provision of guidance or direction, evaluation and follow-up by the licensed nurse for accomplishment of an assigned or delegated nursing activity or set of activities.
- ~~(43)~~(47) "Survey" means an on-site visit for the purpose of gathering data in relation to reviewing nursing programs compliance with Section .0300 of this Chapter.

Authority G.S. 90-171.23; 90-171.38.

**SECTION .0300 - APPROVAL OF NURSING PROGRAMS**

**21 NCAC 36 .0302 ESTABLISHMENT OF A NURSING PROGRAM - INITIAL APPROVAL**

(a) At least six months prior to the proposed enrollment of students in a nursing program, an institution seeking approval to operate a nursing program shall employ a program director qualified pursuant to 21 NCAC 36 .0317(c) to develop the application documenting the following:

- (1) a narrative description of the organizational structure of the program and its relationship to the controlling institution, including

- (2) accreditation status. The controlling institution must be an accredited institution;
- a general overview of the proposed total curriculum that includes:
- (A) program philosophy, purposes, and objectives;
- (B) master plan of the curriculum, indicating the sequence for both nursing and non-nursing courses, as well as prerequisites and corequisites;
- (C) course descriptions and course objectives for all courses; and
- (D) course syllabi pursuant to 21 NCAC 36 .0321(i) for all first-year nursing courses;
- (3) proposed student population;
- (4) projected student enrollment;
- (5) evidence of learning resources and clinical experiences available to implement and maintain the program;
- (6) financial resources adequate to begin and maintain program;
- (7) physical facilities adequate to house the program;
- (8) support services available to the program from the institution;
- (9) approval of the program by the governing body of the parent institution; and
- (10) a plan with a specified time frame for:
- (A) availability of qualified faculty as specified in 21 NCAC 36 .0318;
- (B) course syllabi as specified in 21 NCAC 36 .0321(h) of this Section for all nursing courses;
- (C) student policies pursuant to 21 NCAC 36 .0320 of this Section for admission, progression, and graduation of students; and
- (D) total program evaluation pursuant to 21 NCAC 36 ~~.0317(e)~~, .0317(d).

(b) The application to establish a nursing program must be on a Board form, contain current and accurate information, be complete, and be signed by the program director and the chief executive officer of the controlling institution.

(c) The completed application shall be received by the Board not less than ~~90~~ 120 days prior to a regular meeting of the Board to be considered for placement on the agenda of that meeting.

(d) The Board shall conduct an on-site survey of the proposed program ~~and agencies after the application meets all rule requirements~~ and afford the petitioning institution an opportunity to respond to the survey.

(e) The Board shall consider all evidence, including the application, the survey report, and ~~any testimony comments~~ from representatives of the petitioning ~~institution~~ institution, public comments, and the status of other nursing programs at the institution in determining approval status.

(f) If the Board finds, from the evidence presented, that the resources and plans meet all ~~rules~~ rule requirements for establishing a new nursing program, the Board shall grant Initial

Approval including a maximum enrollment and implementation date.

(g) If the Board determines that a proposed program does not comply with all rules, initial approval shall be denied.

(h) Failure of the controlling institution to submit documentation consistent with the time specified in the plan of Subparagraph (a)(10) of this Rule shall result in Initial Approval being rescinded.

(i) Following the Initial Approval, if the first class of students are not enrolled in the program within one year, the approval shall be rescinded.

(j) For 12 months following rescinded approval, the controlling institution shall not submit an application for establishing a nursing program.

(k) A program may retain Initial Approval Status for the time necessary for full implementation of the curriculum.

- (l) Programs with Initial Approval shall be surveyed:
  - (1) during the final term of curriculum implementation of the program; and
  - (2) when there is information that the program may not be complying with Section .0300.

(m) If at any time it comes to the attention of the Board that a program on initial approval is not complying with Section .0300 of this Chapter, the program, upon written notification, shall:

- (1) correct the area of noncompliance and submit written evidence of correction to the Board; or
- (2) submit and implement a plan for correction to the Board.

(n) If the Board determines that the program does not comply with Paragraph (m) of this Rule, Initial Approval shall be rescinded.

(o) If, following the survey during the final term for curriculum implementation, the Boards finds that the program is complying with Section .0300 of this Chapter, the Board shall place the program on Full Approval status.

(p) If, following the survey during the final term for curriculum implementation the Board finds that the program does not comply with the Section .0300 of this Chapter, the Board shall rescind Initial Approval and provide the program with written notice of the Board's decision.

(q) Upon written request from the program submitted within 10 business days of the Board's written notice, the Board shall schedule a hearing within 30 business days from the date on which the request was received.

(r) Following the hearing and consideration of all evidence provided, the Board shall assign the program Full Approval status or shall enter an Order rescinding the Initial Approval status, which shall constitute closure of the program pursuant to 21 NCAC 36 .0309.

Authority G.S. 90-171.23(b)(8); 90-171.38.

**21 NCAC 36 .0303 EXISTING NURSING PROGRAM**

(a) All nursing programs under the authority of the Board may obtain national program accreditation by a nursing accreditation body as defined in 21 NCAC 36 .0120(29).

- (b) Full Approval
  - (1) The Board shall review approved programs at least every eight years as specified in G.S. 90-

171.40. Reviews of individual programs shall be conducted at shorter intervals upon request from the individual institution or as considered necessary by the Board. National accreditation self study reports shall provide basis for review for accredited programs.

- (2) The Board shall send a written report of the review no more than 20 business days following the completion of the review process. Responses from a nursing education program regarding a review report or Board Warning Status as referenced in Paragraph (c) of this Rule shall be received in the Board office by the deadline date specified in the letter accompanying the report or notification of Warning Status. If no materials or documents are received by the specified deadline date, the Board shall act upon the findings in the review report and testimony of the Board staff.

(3) If the Board determines that a program has complied with the rules in this Section, the program shall be continued on Full Approval status.

(4) If the Board determines a pattern of noncompliance with one or more rules in this Section, a review shall be conducted. The program shall submit to the Board a plan of compliance to correct the identified pattern. Failure to comply with the correction plan shall result in withdrawal of approval, constituting closure, consistent with 21 NCAC 36 .0309.

(c) Warning Status

(1) If the Board determines that a program is not complying with the rules in this Section, the Board shall assign the program Warning Status, and shall give written notice by certified mail to the program specifying:

- (A) the areas in which there is noncompliance;
- (B) the date of notice by which the program must comply. The maximum timeframe for compliance is two years; and
- (C) the opportunity to schedule a hearing.

(2) On or before the required date of compliance identified in this Paragraph, if the Board determines that the program is complying with the rules in this Section, the Board shall assign the program Full Approval Status.

(3) If the Board finds the program is not in compliance with the rules in this Section by the date specified in Part (c)(1)(B) of this Rule, ~~the Board shall withdraw approval constituting closure consistent with 21 NCAC 36 .0309; the~~ program shall remain on Warning Status:

- (A) a review by the Board shall be conducted during that time;

(B) following review, the Board may continue the program on Warning Status; or

(C) the Board may withdraw approval constituting closure consistent with 21 NCAC 36 .0309.

(4) Upon written request from the program, submitted within 10 business days of the Board's written notice of Warning Status, the Board shall schedule a hearing within 30 business days from the date on which the request was received.

(5) When a hearing is held at the request of the program and the Board determines ~~that~~:

~~(A) the program is in compliance with the rules in this Section, the Board shall assign the program Full Approval status; or~~  
~~status.~~

~~(B)(6) When a hearing is held at the request of the program and the Board determines that the program is not in compliance with the rules in this Section, the program shall remain on Warning Status.~~  
~~Status:~~

~~(A) a review by the Board shall be conducted during that time-time;~~

~~(B) following review, the Board may continue the program on Warning Status; or~~

~~(C) the Board may withdraw approval constituting closure consistent with 21 NCAC 36 .0309.~~

NOTE: The Board recommends but does not require that all nursing programs under the authority of the Board pursue and maintain national nursing accreditation.

Authority G.S. 90-171.23(b); 90-171.38; 90-171.39; 90-171.40.

**21 NCAC 36 .0309 PROCESS FOR CLOSURE OF A PROGRAM**

(a) When the controlling institution makes the decision to close a nursing program, the Administration of the institution shall submit a written plan for the discontinuation of the program to the ~~Board.~~ Board and include reason(s) for the closing of the program, date of intended closure, and a plan for students to complete this or another approved program.

(b) When the Board closes a nursing program, the program director ~~shall develop and submit to the Board a plan, for discontinuation of the program including the transfer of students to approved programs.~~ Closure shall take place after the transfer of students to approved programs.shall, within 30 days, develop and submit a plan for discontinuation of the program for Board approval. The plan shall address transfer of students to approved programs.

(c) The controlling institution shall notify the Board of the arrangement for secure storage of permanent records. ~~and access to academic records and transcripts.~~

Authority G.S. 90-171.38; 90-171.39; 90-171.40.

**21 NCAC 36 .0317 ADMINISTRATION**

(a) The controlling institution of a nursing program shall provide those human, physical, technical, and financial resources and services essential to support program processes, outcomes, and maintain compliance with Section .0300 of this Chapter.

(b) A full time registered nurse qualified pursuant to Paragraph (c) of this Rule shall have the authority for the direction of the nursing program. This authority shall encompass responsibilities for maintaining compliance with rules and other legal requirements in all areas of the program. The program director shall have non-teaching time sufficient to allow for program organization, administration, continuous review, planning, and development.

(c) Program director in a program preparing for initial nurse licensure shall satisfy the following requirements:

(1) hold a current ~~unrestricted~~ unrestricted license or multistate licensure privilege to practice as a registered nurse in North Carolina;

(2) have two years of full-time experience as a faculty member in a board approved nursing program;

(3) be experientially qualified to lead the program to accomplish the mission, goals, and expected program outcomes;

(4) hold either a baccalaureate in nursing or a graduate degree in nursing from an accredited institution. If newly employed on or after January 1, 2016, hold a graduate degree from an accredited institution. If newly employed on or after January 1, 2021, hold a graduate degree in nursing from an accredited institution;

(5) prior to or within the first three years of employment, have preparation in teaching and learning principles for adult education, including curriculum development, implementation, and evaluation, appropriate to assignment. This preparation may be demonstrated by one of the following:

(A) completion of 45 contact hours of Board approved continuing education courses;

(B) completion of a certificate program in nursing education;

(C) nine semester hours of graduate course work;

(D) national certification in nursing education; or

(E) documentation of successful completion of structured, individualized development activities of at least 45 contact hours approved by the Board. Criteria for approval include content in the faculty role within the curriculum implementation, objectives to be met and evaluated, review of strategies for identified student population and expectations of student and faculty performance;

- (6) maintain competence in the areas of assigned responsibility; and
- (7) have current knowledge of nursing practice for the registered nurse and the licensed practical nurse.

(d) The nursing education program shall implement, for quality improvement, a comprehensive program evaluation that shall include the following:

- (1) students' achievement of program outcomes;
- (2) evidence of program resources including fiscal, physical, human, clinical, and technical learning resources; student support services, and the availability of clinical sites and the viability of those sites adequate to meet the objectives of the program;
- (3) measures of program outcomes for graduates;
- (4) evidence that accurate program information for consumers is available;
- (5) evidence that the head of the academic institution and the administration support program outcomes;
- (6) evidence that program director and program faculty meet board qualifications and are sufficient in number to achieve program outcomes;
- (7) evidence that the academic institution assures security of student information;
- (8) evidence that collected evaluative data is utilized in implementing quality improvement activities; and
- (9) evidence of student participation in program planning, implementation, evaluation, and continuous improvement.

(e) The controlling institution and the nursing education program shall communicate information describing the nursing education program that is accurate, complete, consistent across mediums, and accessible by the public. The following shall be accessible to all applicants and students:

- (1) admission policies and practices;
- (2) policy on advanced placement, transfer of credits;
- (3) number of credits required for completion of the program;
- (4) tuition, fees, and other program costs;
- (5) policies and procedures for withdrawal, including refund of tuition or fees;
- (6) grievance procedure;
- (7) criteria for successful progression in the program including graduation requirements; and
- (8) policies for clinical performance.

Authority G.S. 90-171.23(b)(8); 90-171.38.

**21 NCAC 36 .0318 FACULTY**

(a) Nursing program faculty shall include full-time and part-time faculty members. Part-time faculty shall participate in curriculum implementation and evaluation.

(b) Policies for nursing program faculty members shall be consistent with those for other faculty of the institution. Variations in these policies may be necessary due to the nature of the nursing curriculum.

(c) Fifty percent or more of the nursing faculty shall hold a graduate degree.

(d) As of January 1, 2021, at least 80 percent of the full time faculty shall hold a graduate degree in nursing.

(e) As of January 1, 2021, at least 50 percent of the part time faculty shall hold a graduate degree in nursing.

(f) Hold a current unrestricted license or multistate licensure privilege to practice as a registered nurse in North Carolina.

(g) Full-time and part-time nurse faculty who teach in a program leading to initial licensure as a nurse shall:

- (1) hold either a baccalaureate in nursing or a graduate degree in nursing from an accredited institution;
- (2) have two calendar years or the equivalent of full time clinical experience as a registered nurse;
- (3) if newly employed in a full time faculty position on or after January 1, 2016, hold a graduate degree from an accredited institution, or obtain a graduate degree in nursing from an accredited institution within five years of initial full time employment;
- (4) prior to or within the first three years of employment, have preparation in teaching and learning principles for adult education, including curriculum development, implementation, and evaluation, appropriate to assignment. This preparation may be demonstrated by one of the following:
  - (A) completion of 45 contact hours of Board approved continuing education courses;
  - (B) completion of a certificate program in nursing education;
  - (C) nine semester hours of graduate course work;
  - (D) national certification in nursing education; or
  - (E) documentation of successful completion of structured, individualized development activities of at least 45 contact hours approved by the Board. Criteria for approval include content in the faculty role within the curriculum implementation, objectives to be met and evaluated, review of strategies for identified student population and expectations of student and faculty performance;

(5) maintain competence in the areas of assigned responsibility; and

(6) have current knowledge of nursing practice for the registered nurse and the licensed practical nurse.

(h) Interdisciplinary faculty who teach in nursing program courses shall have academic preparation in the content area they are teaching.

(i) Clinical preceptors shall have competencies, assessed by the nursing program, related to the area of assigned clinical teaching responsibilities and serve as role models to the student. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences after a student has received basic instruction for that specific learning experience. Clinical preceptors shall hold a current, unrestricted license to practice as a registered nurse in North Carolina.

(j) Nurse faculty members shall have the authority and responsibility for:

- (1) student admission, progression, and graduation requirements; and
- (2) the development, implementation, and evaluation of the curriculum.

(k) Nurse faculty members shall be academically qualified and sufficient in number to implement the curriculum as demanded by the course objectives, the levels of the students, the nature of the learning environment, and to provide for teaching, supervision and evaluation.

(l) The faculty-student ratio for faculty directed preceptor clinical experiences shall be no larger than 1:15. The faculty-student ratio for all other clinical experiences shall be no larger than 1:10.

Authority G.S. 90-171.23(b)(8); 90-171.38; 90-171.83.

**21 NCAC 36 .0320 STUDENTS**

(a) Students in nursing programs shall meet requirements established by the controlling institution. Additional requirements may be stipulated by the nursing program for students because of the nature and legal responsibilities of nursing education and nursing practice.

(b) Admission requirements and practices shall be stated and published in the controlling institution's publications and shall include assessment of:

- (1) record of high school graduation, high-school equivalent, or earned credits from a post-secondary institution;
- (2) achievement potential through the use of previous academic records and pre-entrance examination cut-off scores that are consistent with curriculum demands and scholastic expectations; and
- (3) physical and emotional health that would provide evidence that is indicative of the applicant's ability to provide safe nursing care to the public.

(c) The number of students enrolled in nursing courses shall not exceed the maximum number approved by the Board as defined in 21 NCAC 36 .0302(f) and 21 NCAC 36 .0321(k) by more than 10 students.

(d) The nursing program shall publish policies in nursing student handbook and college catalog that provide for identification and dismissal of students who:

- (1) present physical or emotional problems which conflict with safety essential to nursing practice and do not respond to treatment or counseling

within a timeframe that enables meeting program objectives-~~objectives~~:

- (2) demonstrate behavior which conflicts with safety essential to nursing ~~practice-practice~~; or
- (3) ~~fail to demonstrate professional behavior, including honesty, integrity, and appropriate use of social media while in the nursing program of study.~~

(e) The nursing program shall maintain a three year average at or above 95 percent of the national pass rate for licensure level pass rate on first writing of the licensure examination for calendar years ending December 31.

(f) The controlling institution shall publish policies in nursing student handbook and college catalog for transfer of credits or for admission to advanced placement and the nursing program shall determine the total number of nursing courses or credits awarded for advanced placement.

Authority G.S. 90-171.23(b)(8); 90-171.38; 90-171.43.

**21 NCAC 36 .0321 CURRICULUM**

(a) Nursing program curriculum shall:

- (1) be planned by nursing program faculty;
- (2) reflect the stated program philosophy, purposes, and objectives pursuant to 21 NCAC 36 .0302(a)(2);
- (3) be consistent with the Statutes and Rules governing the practice of nursing;
- (4) define the level of performance required to pass each course in the curriculum;
- (5) enable the student to develop the nursing knowledge, skills and ~~competencies-abilities~~ necessary for the level, scope and competent practice consistent with the level of licensure and scope in all applicable Rules as defined in 21 NCAC 36 .0221, .0224, .0225, and .0231 ~~consistent with the level of licensure; and .0231;~~
- (6) include content in the biological, physical, social and behavioral sciences to provide a foundation for safe and effective nursing ~~practice-practice~~;
- (7) ~~provide students the opportunity to acquire and demonstrate, through theory and clinical experience under faculty supervision, the knowledge, skills, and abilities required for safe, effective, competent nursing practice across the lifespan; and~~
- (8) be revised as necessary to maintain a program that reflects changes and advances in health care and its delivery.

(b) Didactic content and supervised clinical experience across the lifespan appropriate to program type shall include:

- (1) Implementing safety principles and practices, minimizing risk of harm to clients and providers through both system effectiveness and individual performance;

- ~~(1)~~(2) Using informatics to communicate, manage knowledge, mitigate error and support decision ~~making, making;~~
- ~~(2)~~(3) Employing evidence-based practice to integrate best research with clinical expertise and client values for optimal care, including skills to identify and apply best practices to nursing ~~care~~ care ~~by care;~~
- ~~(A)~~(4) ~~providing~~ Providing client-centered, culturally competent ~~care;~~ care by:
  - ~~(B)~~(A) respecting client differences, values, preferences and expressed needs;
  - ~~(C)~~(B) involving clients in decision-making and care management;
  - ~~(D)~~(C) coordinating and managing continuous client care consistent with the level of licensure. This includes demonstration of the ability to supervise others and provide leadership of the profession appropriate for program type; and
  - ~~(E)~~(D) promoting healthy lifestyles for clients and populations.
- ~~(3)~~(5) Working in interdisciplinary teams to cooperate, collaborate, communicate and integrate client care and health promotion.
- ~~(4)~~(6) Participating in quality improvement processes to measure client outcomes, identify hazards and errors, and develop changes in processes of client care.

(c) Clinical experience shall be comprised of sufficient hours to accomplish the curriculum, shall be supervised by qualified faculty pursuant to 21 NCAC 36 .0318 and shall ensure students' ability to practice at an entry level.

(d) All student clinical experiences, including those with preceptors, shall be directed by nursing faculty.

(e) ~~By January 1, 2008, a~~ A focused client care experience with a minimum of 120 hours shall be provided in the final year of curriculum implementation for programs preparing registered nurses.

(f) ~~Beginning January 1, 2008, a~~ A focused client care experience with a minimum of 90 hours shall be provided in the final semester of curriculum implementation for programs preparing practical nurses.

(g) Learning experiences and methods of instruction, including distance education methods, shall be consistent with the written curriculum plan and demonstrate logical progression.

(h) Objectives for each course shall indicate the ~~knowledge and knowledge, skills~~ skills, and abilities expected of the students ~~for competent student performance.~~ These objectives shall be stated to:

- (1) indicate the relationship between the classroom learning and the application of this learning in the clinical ~~laboratory~~ experience;
- (2) serve as criteria for the selection of the types of and settings for learning experiences; and
- (3) serve as the basis for evaluating student performance.

(i) Student course syllabi shall include a description and outline of content, learning environments and activities, course placement, allocation of ~~time, time for theory, clinical experience,~~ laboratory, simulation and methods of evaluation of student performance, including didactic and clinical evaluation tools.

(j) Each course shall be implemented and evaluated in accordance with the student course syllabus.

(k) Requests for approval of changes in, or expansion of, the program accompanied by all required documentation shall be submitted ~~on the form in the format~~ provided by the Board at least 30 days prior to implementation for approval by the Board. Criteria for approval include the availability of classrooms, laboratories, clinical placements, equipment and supplies and faculty sufficient to implement the curriculum to an increased number of students. Approval is required: for any increase in enrollment that exceeds, by more than 10 students, the maximum number approved by the Board. Requests for expansion are considered only for programs with Full Approval status that demonstrate at least a three-year average ~~student retention licensure examination pass rate~~ equal to or ~~higher~~ greater than the ~~state NC three-year average retention pass rate~~ for program type.

- (l) The nursing education program shall notify the Board of:
- (1) alternative or additional program schedules; and
  - (2) planned decrease in the Board-approved student enrollment number to accurately reflect program capacity.

(m) For all programs using simulation experiences substituted for clinical experience time, the nursing education program shall:

- (1) demonstrate that simulation faculty have been formally educated, and maintain competencies in simulation and debriefing theory; and
- (2) provide a simulation environment with adequate faculty, space, equipment, and supplies to simulate realistic clinical experiences to meet the curriculum and course objectives.

(n) Programs not holding national nursing accreditation shall limit simulation experiences to no more than 25 percent in any course, including the focused client care experience.

(o) Programs holding national nursing accreditation shall limit simulation experiences to:

- (1) no more than 25 percent in the focused client care experience, and
- (2) no more than 50 percent of clinical experience time in any other course.

(p) External standardized examinations shall not be used as a determinant of a student's progression or graduation in a prelicensure nursing education program.

*Authority G.S. 90-171.23(b)(8); 90-171.38.*

**21 NCAC 36 .0322 FACILITIES**

(a) Campus facilities shall be appropriate in type, number, and accessibility for the total needs of the program.

(b) Classrooms, ~~laboratories,~~ laboratory/simulation space, and conference rooms shall be sufficient in size, number, and types for the number of students and purposes for which the rooms are to be used. Lighting, ventilation, location, and equipment must be

suitable for the number of students and purposes for which the rooms are to be used.

(c) Office and conference space for nursing program faculty members shall be appropriate and available for uninterrupted work and privacy including conferences with students.

(d) Learning resources, including clinical experiences, shall be comprehensive, current, developed with nursing faculty input, accessible to students and faculty and support the implementation of the curriculum.

Authority G.S. 90-171.23(b)(8); 90-171.38.

**21 NCAC 36 .0323 RECORDS AND REPORTS**

(a) The controlling institution's publications describing the nursing program shall be accurate.

(b) There shall be a system for maintaining official records. Current and permanent student records shall be stored in a secure manner that prevents physical damage and unauthorized access.

(c) Both permanent and current records shall be available for review by Board staff.

(d) The official permanent record for each graduate shall include documentation of graduation from the program and a transcript of the individual's achievement in the program.

(e) The record for each currently enrolled student shall contain up-to-date and complete information, including the following:

- (1) documentation of admission criteria met by the student;
- (2) high school graduation, high school equivalent, or earned credits from post-secondary institution approved pursuant to G.S. 90-171.38(a); and
- (3) transcript of credit hours achieved in the classroom, laboratory, and clinical instruction for each course that reflects progression consistent with program policies.

(f) The nursing program shall file with the Board records, data, and reports in order to furnish information concerning operation of the program as prescribed in the rules in this Section including:

- (1) an Annual Report to be filed with the Board by November 1 of each year;
- (2) a Program Description Report for non-accredited programs filed with the Board at least 30 days prior to a scheduled review; and
- (3) notification by institution administration of any change of the registered nurse responsible for the nursing program. This notification shall include a vitae for the new individual and shall be submitted within ~~20~~ 10 business days of the effective date of the change.

(g) All communications relevant to accreditation shall be submitted to the North Carolina Board of Nursing at the same time the communications are submitted to the accrediting body.

(h) The Board may require additional records and reports for review at any time to provide evidence and substantiate compliance with the rules in this Section by a program and its associated agencies.

(i) The part of the application for licensure by examination to be submitted by the nursing program shall include a statement verifying satisfactory completion of all requirements for

graduation and the date of completion. The nursing program director shall submit ~~the online verification form~~ to the Board within ~~one month~~ 10 business days following completion of the graduation from a Board approved nursing program.

Authority G.S. 90-171.23(b)(8); 90-171.38.

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**CHAPTER 63 – SOCIAL WORK CERTIFICATION AND LICENSURE BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Social Work Certification and Licensure Board intends to adopt the rules cited as 21 NCAC 63 .0214, and .0610, readopt with substantive changes the rules cited as 21 NCAC 63 .0102, .0204, .0211, .0401, and .0505.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** [www.ncswboard.org](http://www.ncswboard.org)

**Proposed Effective Date:** February 1, 2017

**Public Hearing:**

**Date:** September 15, 2016

**Time:** 4:00 p.m.

**Location:** 1207 S. Cox Street, Suite F, Asheboro, NC 27203

**Reason for Proposed Action:**

*For Adoption:*

**21 NCAC 63 .0610** - *The proposed adoption is set out to provide social workers involved in contested matters procedural information when requesting additional time to prepare for a scheduled hearing.*

**21 NCAC 63 .0214** - *The proposed adoption provides clarification for military and military spouse applicants seeking clinical social work licensure in North Carolina as prescribed by N.C.G.S. 93B-15.1.*

*For Readoption:*

**21 NCAC 63 .0102** – *The Board is amending the language to provide clarification of the definition of "probation" as a period of time in which practice is subject to specific conditions mandated by the Board, may or may not be associated with a stay of suspension or revocations, and for which noncompliance may result in additional disciplinary action.*

*Additional amendments include incorporating the use of psychotherapy as part of the definition of clinical social work as it relates to clinical experience required for LCSW licensure to be consistent with the definition of Clinical Social Work Practice defined in N.C. Gen. Stat. § 90B-3(6); and defining "client" and "client system" to provide clarification of what is meant by client or consumer addressed in other sections of the Rules, and to be consistent with the Association of Social Work Boards' (ASWB) Model Practice Act, the Social Work Encyclopedia, and multiple other jurisdictions.*

**21 NCAC 63 .0204** – *In response to comments and concerns expressed by applicants seeking licensure by comity who have been licensed for a long period of time and are unable to locate a supervisor reference, the Board is removing the requirement for a supervisor reference for applicants seeking LCSW licensure by comity, requiring instead that at least one reference comes from a registered, certified, or licensed social worker. This will allow feedback from someone familiar with social work knowledge, skills, and abilities, but not necessarily require the supervisory perspective for individuals currently licensed at the same level in another jurisdiction. The language still requires a supervisor reference for those applying for the Associate license (LCSWA) who are generally new graduates and able to obtain a reference from their field placement supervisor.*

**21 NCAC 63 .0211** – *Several amendments are proposed under work experience to support the definition of clinical social work experience for LCSW licensure, and to insure adequate supervision for Associate licensees. Proposed changes include the following:*

- *Amended language to clarify that clinical practice satisfy the definition of clinical social work as defined in the Social Work Certification and Licensure Act, and to allow military applicants to receive credit for military occupational specialty experience obtained post MSW and deemed substantially equivalent to clinical social work practice as defined in the Social Work Certification and Licensure Act.*
- *Insuring that clinical practice by Associate licensees is adequately supervised by requiring that, in addition to satisfying the mandate of one hour of supervision for every thirty hours of practice, supervision shall occur no less frequently than at least once every two weeks, and shall include review of case documentation.*
- *Allow up to 20 hours of supervision via electronic means for clinical licensure and for the Certified Social Work Manager credential to accommodate geographical constraints that interfere with regular supervision conducted in person, face-to-face. Language is incorporated to clarify what is acceptable technology delivered supervision.*
- *The number of years of experience required for supervisors for the Certified Social Work Manager credential is amended from five years of administrative experience to two years of administrative experience, to be consistent with the years of experience required by a clinical supervisor supervising candidates for clinical licensure.*

**21 NCAC 63 .0401** – *The Board is proposing several technical amendments to address capitalization and sentence structure. In addition, the Board is responding to several comments and concerns regarding access to continuing education for maintaining professional competencies through the following proposed amendments:*

- *Live synchronous audio-video broadcasts allowing for real time interaction between instructor and participants will be considered an attended training rather than a distance education activity.*

- *The Board recognizes the value of practitioner well being as it relates to practicing with reasonable skill and safety and will allow limited credit during each renewal cycle for activities focused on self-care and well being;*
- *The Board also recognizes the learning benefits practitioners may get from preparing for conducting an organized training event focused on social work practice and will allow limited credit during each renewal cycle for presenting a formal training.*
- *Language is amended to clearly describe what is meant by job orientation as it relates to activity that is not acceptable for continuing education credit.*

**21 NCAC 63 .0505** – *To remove confusion regarding to whom social workers may refer clients, language is amended to reflect the original intent, which is to refer to professionals who are recognized by their respective profession as competent to carry out the services required. In addition, language is incorporated to provide clear guidelines about appropriate relationship with colleagues over whom the social workers exercise professional authority and responsibility for reporting incompetent and unethical behavior to bring it in line with the National Association of Social Workers Code of Ethics and other jurisdictions.*

**Comments may be submitted to:** Micki Lilly, Executive Director, NCSWCLB P.O. Box 1043, Asheboro, NC 27204

**Comment period ends:** September 15, 2016

**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 (check all that apply).**

- State funds affected**
- Environmental permitting of DOT affected**
- Analysis submitted to Board of Transportation**
- Local funds affected**
- Substantial economic impact (≥\$1,000,000)**
- Approved by OSBM**
- No fiscal note required by G.S. 150B-21.4**
- No fiscal note required by G.S. 150B-21.3A(d)(2)**

**SECTION .0100 – SOCIAL WORK CERTIFICATION**

**21 NCAC 63 .0102 DEFINITIONS**

Whenever used in this Chapter, the definitions set forth in G.S. 90B-3 are herein incorporated by reference. The following definitions apply in this Chapter:

- (1) NCSWCLB - this designation represents the North Carolina Social Work Certification and Licensure Board.
- (2) CSW - this designation represents the certified social worker level of certification.
- (3) CMSW - this designation represents the certified master social worker level of certification.
- (4) CSWM - this designation represents the certified social work manager level of certification.
- (5) LCSW - this designation represents the licensed clinical social worker level of certification.
- (6) LCSWA - this designation represents the licensed clinical social worker associate level of certification.
- (7) Reprimand. Reprimand is a public rebuke and sanction by the Board for practice misconduct. A reprimand typically is given for less severe offenses and may require specific follow-up actions by the social worker.
- (8) Censure. Censure is an act involving severe condemnation and a sanction by the Board for practice misconduct. Censuring is typically for severe offenses and may require specific follow-up actions by the social worker.
- (9) Probation. ~~Probation is a stay of revocation or suspension allowing limited practice within preconditions established by the Board. Violations of these conditions may result in revocation.~~ is a period of time in which a license or certification is subject to specific practice conditions determined by the board. The individual is permitted to continue practice subject to compliance with the conditions set forth in the order determining the probation status. A violation of the conditions of probation can result in additional disciplinary action taken by the board.
- (10) Suspension. Suspension is the withdrawal of privilege to practice for a specific period of time.
- (11) Revocation. Revocation is the withdrawal of privilege to practice as a certified or licensed social worker in the State of North Carolina.
- (12) Clinical Social Work Experience. As it relates to the work experience required for LCSW licensure, two years of clinical social work experience in direct practice means the professional application of master or doctoral social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial function. Clinical social work experience requires the application of

specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and ~~treatment~~ treatment, including the use of psychotherapy, of to treat one or more of the following disorders or conditions: mental, emotional, addictive, behavioral, or developmental disorders and conditions. In addition, the clinical social work experience may also include clinical case management, information and referral, mediation, client education, clinical supervision and clinical consultation that is directly related to the treatment plan or personal care plan of a client or consumer.

- (13) Diagnosis. In the context of licensed clinical social work practice diagnosis is the process of distinguishing, beyond the general social work assessment, among one or more of the following: mental, emotional, addictive, behavioral, or developmental disorders and conditions within a psychosocial framework on the basis of their similar and unique characteristics consistent with American Psychiatric Association or World Health Organization classification systems.
- (14) Clinical Case Management. A comprehensive approach to care integrating a broad array of interventions to include planning, implementation and management of care for clients with one or more of the following: mental, emotional, addictive, behavioral, or developmental disorders and conditions. Interventions by the clinical case manager shall involve face-to-face contact with the client on a regular basis, shall be grounded in clinical social work theory, and shall be guided by the client's treatment plan or personal care plan.
- (15) Treatment. Clinical social work intervention, including individual, couples, family, or group psychotherapy, that is empirically grounded and used to help resolve symptoms of one or more of the following: mental, emotional, addictive, behavioral, or developmental disorders and conditions.
- (16) Surrender. Surrender is the voluntary relinquishment of a certification or license by its holder. The surrender of a certification or license shall be accepted only by Consent Order with the Board.
- (17) Client. Client means the individual, couple, family, group, organization, or community that seeks or receives social work services. Client status is not dependent on billing or payment of fees for such services. A power of attorney, legal guardian or person who is responsible for making decisions relative to the provision of social work services for a minor or adult is also deemed a recipient of social work services as part of the client system.

- (18) Client system. Client system means the client and those in the client's environment who are potentially influential in contributing to a resolution of the client's issues.

Authority G.S. 90B-3; 90B-6.

**SECTION .0200 - CERTIFICATION**

**21 NCAC 63 .0204 REFERENCES**

- (a) Applicants for the LCSW and CSWM classifications shall have a minimum of three references related to the applicant's experience, as required by G.S. 90B-7(d) and (e). Applicants for other classifications shall have a minimum of three references. Relatives of applicants, clients, or subordinates of applicants may not submit references for applicants. A current Board member shall not submit a reference for an applicant unless he/she is the applicant's current or only social work supervisor. In such a case the Board member may submit a reference, but he/she shall excuse himself/herself from review of that particular applicant.
- (b) All references ~~must~~ shall come from individuals who have or had a professional association with the applicant and have knowledge of the applicant's professional experience in the practice of social work.
- (c) For applicants for LCSWA licensure, ~~One at least one~~ reference must shall be from one who has been or is currently a supervisor supervising the applicant in a social work setting.
- (d) For applicants seeking certification or licensure by comity, at least one reference shall be from a registered, certified, or licensed social worker who has been or is currently practicing in a social work setting.

Authority G.S. 90B-6; 90B-7.

**21 NCAC 63 .0211 WORK EXPERIENCE**

- (a) For the Licensed Clinical Social Worker credential:
  - (1) Two years of post-MSW clinical social work experience shall mean 3,000 clock hours of work or employment for a fee or salary while engaged in the practice of clinical social ~~work~~ work as defined in this Chapter. The 3,000 hours shall be accumulated over a period of time not less than two years nor more than six consecutive years. Practicum or internship experience gained as part of any educational program shall not be included. Pursuant to G.S. 93B-15.1(a) military applicants may receive credit for military occupational specialty experience obtained post MSW degree and deemed substantially equivalent to clinical social work practice as defined in this Chapter.
  - (2) Appropriate supervision shall mean supervision ~~in person~~ by an a MSW who is also a Licensed Clinical Social Worker and who is in good standing with the Board. A supervisor formally disciplined by any professional credentialing body or professional organization, or who has violated the provisions of an occupational licensing Board may not provide supervision to

an associate licensee without the written permission of the Board. The Licensed Clinical Social Worker Associate's (LCSWA) clinical social work supervisor shall have an additional two years of clinical social work experience post LCSW licensure.

- (3) Appropriate supervision shall be that which is provided on a regular ~~basis~~ basis, conducted no less than once every two weeks, with at least one hour of supervision during every 30 hours of experience. A minimum of 100 hours of supervision is required. Unless otherwise preapproved by the Board, no more than 20 hours of supervision may be provided through the use of technology. All supervision provided through the use of technology shall be synchronous, involve visual and audio interaction throughout the entire session, and shall take place in such a manner as to maintain the confidentiality of the communication. It is the professional responsibility of the clinical supervisor to make the initial determination whether or not the applicant's work experience meets the definition of clinical social work practice. The Board shall make the final determination whether or not the applicant's work experience meets the definition of clinical social work practice. Appropriate supervision may be individual or group supervision. Individual supervision shall mean one on one, ~~in person, face-to-face~~ supervision by an a MSW who is also an a LCSW where the supervisor reviews and discusses clinical social work ~~eases~~ cases, reviews documentation, and provides evaluative comments and direction to the LCSWA. Group supervision shall mean face-to-face supervision provided by ~~an a~~ MSW who is also ~~an a~~ LCSW in a group setting, during which the supervisor reviews and discusses clinical social work ~~eases~~ cases, reviews documentation, and provides feedback and direction to each LCSWA in the group. A maximum of 25 hours of group supervision may be applied toward meeting the supervision requirements for the LCSW.
- (b) For the Certified Social Work Manager credential:
  - (1) Two years of post social work degree experience shall mean 3,000 clock hours of employment for a salary while engaged in administrative social work duties including, policy and budgetary development and implementation, supervision and management, program evaluation, planning, and staff development. Such duties shall be carried out in an administrative setting where social work or other mental health services are delivered. The 3,000 hours shall be accumulated over a period of time not less than two years nor more than six consecutive years. Practicum or

internship experience gained as part of any educational program shall not be included.

- (2) Appropriate supervision shall mean face-to-face supervision in person by a social work administrator certified by the Board on at least one level who has a minimum of five-two years of administrative experience in a social work or mental health setting. Appropriate supervision shall be that which is provided on a regular basis throughout the applicant's two years of administrative social work experience. A minimum of 100 hours of supervision is required. A maximum of 50 hours of group supervision may be applied toward meeting the supervision requirements for the CSWM. No more than 20 hours of supervision may be provided through the use of technology. All supervision provided through the use of technology shall be synchronous, involve visual and audio interaction throughout the entire session, and shall take place in such a manner as to maintain the confidentiality of the communication.

- (1) Applicants for certification and licensure by comity shall have passed an examination in the country, state, or territory in which he or she is currently licensed, certified, or registered that is determined by this Board to be equivalent to the qualifying examination required for the level of certification or license for which the applicant is applying.

- (2) Military trained applicants and military spouse applicants needing to expedite the licensing process in order to secure employment may apply for a temporary license as described in Rule .0213 of this Section. A temporary license shall apply only to clinical licensure and requires the following:

- (A) Submission of an application and official written verification of equivalent licensure, certification, or registration in good standing from the jurisdiction under which the applicant is currently licensed, certified, or registered;

- (B) Payment of the applicable temporary license fee;

- (C) Prior to the expiration of the temporary license, the applicant shall fulfill all requirements for documentation of education, experience, training, and examination, and pay any additional application fee as described in Rule .0202 of this Section. Upon receipt of all required documentation and applicable fees, the Board shall issue the appropriate clinical license for a period not to exceed two years.

Authority G. S. 90B-6; 90B-7.

**21 NCAC 63 .0214 CERTIFICATION AND LICENSURE FOR MILITARY PERSONNEL AND MILITARY SPOUSES**

(a) Upon receipt of a request for certification or licensure pursuant to G.S. 93B-15.1 from an applicant with military training and experience, the Board shall issue a certificate or license upon the applicant's satisfying the following conditions:

- (1) Has completed and submits to the Board, application information as described in Rules .0202, .0203, and .0204 of this Section;
- (2) Has provided to the Board written documentation to satisfy conditions set out in G.S. 93B-15.1(a) and (c); and
- (3) Has passed the qualifying examination for the level of certification or licensure for which the applicant is applying.

(b) Upon receipt of a request for certification or licensure pursuant to G.S. 93B-15.1 from a military spouse, the Board shall issue a certificate or license upon the applicant's satisfying the following conditions:

- (1) Has completed and submits to the Board, application information as described in Rules .0202, .0203, and .0204 of this Section;
- (2) Has provided written documentation to satisfy conditions set out in G.S. 93B-15.1(b) and (c); and
- (3) Has passed the qualifying examination for the level of certification or licensure for which the applicant is applying.

(c) Any military-trained applicant or military spouse applicant who meets the requirements of G.S. 93B-15.1 and is currently licensed, certified, or registered in another jurisdiction may apply for certification or licensure under G.S. 90B-8.

Authority G.S. 90B-6(h); 93B-15.1.

**SECTION .0400 – RENEWAL OF CERTIFICATION**

**21 NCAC 63 .0401 CONTINUING EDUCATION REQUIREMENTS**

(a) Continuing education for certification or licensure renewal is required to maintain professional knowledge and technical competency. Renewal of certification or licensure requires 40 contact hours of continuing education credits approved by the Board within each two year renewal cycle. However, if a certification or licensure is for less than a full two-year period, then 30 contact hours of continuing education credits are required. One unit of credit is equal to one contact hour. One academic course hour of credit is equal to 15 contact hours. Credit for auditing an academic course shall be for actual clock hours attended during which instruction was given with one clock hour equal to one contact hour of credit.

(b) During each renewal period all certified and licensed social workers shall engage in a minimum of four contact hours of continuing education focused on ethics related to social work practice and ethical decision-making.

(c) The following activities may be approved for continuing education: ~~education.~~

- (1) ~~academic~~ Academic social work courses taken for credit or ~~audit~~; audit.
- (2) ~~agency-based~~ Agency-based staff development, seminars, institutes, workshops, mini courses or conferences oriented to social work practice, values, skills and ~~knowledge~~; knowledge.
- (3) ~~cross-disciplinary~~ Cross-disciplinary offerings from medicine, law and the behavioral/social sciences or other disciplines, if such offerings are related to social work practice, values, skills and ~~knowledge~~; knowledge.
- (4) ~~distance~~ Distance learning activities including online courses and home study courses which have been pre-approved by the Association of Social Work Boards (ASWB) or the North Carolina Chapter of the National Association of Social Workers (NASW-NC). The maximum continuing education credit granted for distance learning activities is one half of the required hours, up to a maximum of 20 contact hours per renewal period. Live synchronous audio-video broadcasts allowing for real time interaction between the instructor and participants attending through electronic means are not considered distance learning activities.
- (5) ~~study~~ Study groups focusing on social work practice if the following can be documented:
  - (A) study topic;
  - (B) study material;
  - (C) facilitator; and
  - (D) date and hours of attendance.
- (6) Continuing education focusing on practitioner self-care and well-being shall not exceed six contact hours of credit during a single renewal cycle.
- (7) No more than five contact hours of credit may be acquired during a single renewal cycle for presenting a formal training focused on social work practice provided the following information can be provided and verified:
  - (A) Confirmation from the organization for which the licensee presented which identifies the licensee as the presenter, confirms the title and date of the presentation, the length of the presentation, and number of attendees; and
  - (B) The dates of the presentation shall fall within the renewal cycle;

(d) Credit shall not be granted for:

- (1) identical programs completed within the same renewal period;
- (2) ~~job orientation~~; orientation or training directed at procedural mandates such as, but not limited to health and safety practices, new hire training, and compliance training; or

- ~~(3) on the job training; or~~
- ~~(4)~~ (3) supervision and case consultation.

Authority G.S. 90B-6; 90B-9.

**SECTION .0500 - ETHICAL GUIDELINES**

**21 NCAC 63 .0505 RELATIONSHIPS WITH COLLEAGUES**

Social workers shall act with integrity in their relationships with colleagues and other professionals. They shall know the areas of competence of other professionals and shall cooperate with them in serving clients.

- (1) The social worker shall treat with respect and represent accurately the views, qualifications and findings of colleagues, and when expressing judgment on these matters shall do so fairly and through appropriate channels.
- (2) In referring clients, social workers shall refer to professionals who are recognized ~~members of their own disciplines and are by their respective profession as~~ competent to carry out the services required.
- (3) If a social worker's services are sought by an individual who is already receiving similar services from another professional, consideration for the client's welfare shall be paramount. It requires the social worker to proceed with great caution, carefully considering both the existing professional relationship and the therapeutic issues involved.
- (4) Social workers shall accept their responsibility to provide competent professional guidance to colleagues, employees, supervisees, and students. They shall foster working conditions that provide fairness, privacy and protection from physical or mental harm. They shall evaluate fairly the performance of those under their supervision, and share evaluations with supervisees. Social Workers shall not harass and shall not engage in sexual relationships with supervisees, students, trainees, or other colleagues over whom they exercise professional authority. They shall not abuse the power inherent in their position.
- (5) Social workers shall take appropriate measures to discourage, prevent, expose and correct unethical or incompetent behavior by colleagues, including reporting incompetent and unethical behavior to the appropriate licensing authority, but shall take equally appropriate steps to assist and defend colleagues unjustly charged with such conduct.

Authority G.S. 90B-6; 90B-11.

**SECTION .0600 – ETHICAL GUIDELINES**

**21 NCAC 63 .0610 CONTINUANCES**

(a) All motions for continuance shall be addressed to the Chair or the designated presiding officer of the contested case hearing.

(b) Motions for a continuance of a hearing may be granted in accordance with the Rules of Civil Procedure. The Board is not required to grant a motion to continue.

(c) Motions for a continuance shall be in writing and shall be received in the office of the Board no less than seven calendar days before the hearing date.

(d) In determining whether good cause exists, the presiding officer may consider the ability of the party requesting a continuance to proceed effectively without a continuance.

(e) A motion for a continuance filed less than seven calendar days from the date of the hearing shall be denied if a continuance has been previously granted unless the reason for the motion could not have been ascertained earlier.

*Authority G.S. 90B-6(h); 150B-38(h).*

**APPROVED RULES**

*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 May 19, 2016.

**REGISTER CITATION TO THE  
NOTICE OF TEXT**

**PESTICIDE BOARD**

<u>Definitions</u>	02 NCAC 09L .0504*	29:16 NCR
<u>Classifications</u>	02 NCAC 09L .0505*	29:16 NCR
<u>Categories of Consultants</u>	02 NCAC 09L .0507*	29:16 NCR
<u>Recertification Options</u>	02 NCAC 09L .0522*	29:16 NCR
<u>Definitions</u>	02 NCAC 09L .1102*	29:16 NCR
<u>Single Purchase Emergency Certification Permit</u>	02 NCAC 09L .1104*	29:16 NCR
<u>Term of Certification; Recertification</u>	02 NCAC 09L .1108*	29:16 NCR

**911 BOARD**

<u>Requests for Declaratory Rulings</u>	09 NCAC 06C .0111	30:15 NCR
<u>Response to a Request for Declaratory Ruling</u>	09 NCAC 06C .0112*	30:15 NCR
<u>Duration of a Declaratory Ruling</u>	09 NCAC 06C .0113	30:15 NCR
<u>Record of Ruling</u>	09 NCAC 06C .0114	30:15 NCR
<u>Comprehensive Emergency Management Plan (CEMP)</u>	09 NCAC 06C .0205	30:15 NCR
<u>Assessing PSAP Operations</u>	09 NCAC 06C .0216*	30:15 NCR

**SOCIAL SERVICES COMMISSION**

<u>Definitions</u>	10A NCAC 10 .0102*	30:15 NCR
<u>Support to Employment: Training for Employment</u>	10A NCAC 10 .0905*	30:15 NCR
<u>Requirements for Determination and Redetermination</u>	10A NCAC 10 .1007*	30:15 NCR

**RADIATION PROTECTION COMMISSION**

<u>Additional Requirements for Licensees Possessing</u>	10A NCAC 15 .1701*	30:16 NCR
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**SOCIAL SERVICES COMMISSION**

<u>Supervision</u>	10A NCAC 71P .0101*	30:06 NCR
<u>Definitions</u>	10A NCAC 71P .0102*	30:06 NCR
<u>State/County Special Assistance Program Procedures</u>	10A NCAC 71P .0103*	30:06 NCR
<u>Maximum Rates</u>	10A NCAC 71P .0201*	30:06 NCR
<u>Licensed Facilities</u>	10A NCAC 71P .0202*	30:06 NCR
<u>Minimum Payment</u>	10A NCAC 71P .0301*	30:06 NCR
<u>Beneficiary in Adult Care</u>	10A NCAC 71P .0302*	30:06 NCR
<u>Recipient in Domiciliary Care with Spouse at Home</u>	10A NCAC 71P .0303	30:06 NCR
<u>Recipient/Domiciliary Care: Spouse/Not Receiving</u>	10A NCAC 71P .0304	30:06 NCR
<u>Beneficiary in a Private Living Arrangement</u>	10A NCAC 71P .0306*	30:06 NCR

**APPROVED RULES**

<u>Minimum Payment</u>	10A NCAC 71P .0401	30:06 NCR
<u>Recipient/Domiciliary Care: Spouse/Children</u>	10A NCAC 71P .0402	30:06 NCR
<u>Recipient/Domiciliary Care: Spouse/Children Recv'g</u>	10A NCAC 71P .0403	30:06 NCR
<u>Recipient/Domiciliary Care: Spouse/Recv'g Medical</u>	10A NCAC 71P .0404	30:06 NCR
<u>Recipient/Spouse Both Receiving Special</u>	10A NCAC 71P .0405	30:06 NCR
<u>Recipient/Domiciliary Care: Spouse: Nursing/Intermed..</u>	10A NCAC 71P .0406	30:06 NCR
<u>Payee</u>	10A NCAC 71P .0501*	30:06 NCR
<u>Payment Authorization</u>	10A NCAC 71P .0502*	30:06 NCR
<u>Correction of Administrative Overpayments</u>	10A NCAC 71P .0504*	30:06 NCR
<u>Benefit Insurance</u>	10A NCAC 71P .0505*	30:06 NCR
<u>Receipt and Use of Checks</u>	10A NCAC 71P .0506	30:06 NCR
<u>Lost: Stolen and Forged Checks</u>	10a NCAC 71P .0507*	30:06 NCR
<u>Fraud</u>	10a NCAC 71P .0508*	30:06 NCR
<u>Acceptance of Application</u>	10A NCAC 71P .0601*	30:06 NCR
<u>Initial Application</u>	10A NCAC 71P .0602*	30:06 NCR
<u>Eligibility Determination Process</u>	10A NCAC 71P .0603*	30:06 NCR
<u>Time Standard</u>	10A NCAC 71P .0604*	30:06 NCR
<u>Notice to Beneficiary</u>	10A NCAC 71P .0608*	30:06 NCR
<u>Time and Content</u>	10A NCAC 71P .0701*	30:06 NCR
<u>Verification of Facility</u>	10A NCAC 71P .0702*	30:06 NCR
<u>Re-Evaluation</u>	10A NCAC 71P .0704	30:06 NCR
<u>Notice to Beneficiary of Intended Action</u>	10A NCAC 71P .0705*	30:06 NCR
<u>AA-SA: Group I</u>	10A NCAC 71P .0801	30:06 NCR
<u>AD-SA: Group I</u>	10A NCAC 71P .0802	30:06 NCR
<u>SAA</u>	10A NCAC 71P .0803	30:06 NCR
<u>SAD</u>	10A NCAC 71P .0804*	30:06 NCR
<u>SA: Certain Disabled</u>	10A NCAC 71P .0805*	30:06 NCR
<u>United States Citizenship</u>	10A NCAC 71P .0902*	30:06 NCR
<u>Residence</u>	10A NCAC 71P .0903*	30:06 NCR
<u>Resources</u>	10A NCAC 71P .0904*	30:06 NCR
<u>Income</u>	10A NCAC 71P .0905*	30:06 NCR
<u>Evaluation</u>	10A NCAC 71P .0906	30:06 NCR

**REVENUE, DEPARTMENT OF**

<u>Bookbinders</u>	17 NCAC 07B .4710	n/a G.S. 150B-1(d)(4)
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**APPRAISAL BOARD**

<u>Applicants Certified in Another State</u>	21 NCAC 57A .0211*	30:14 NCR
<u>Appraisal Standards</u>	21 NCAC 57A .0501*	30:14 NCR
<u>Experience Credit to Upgrade</u>	21 NCAC 57A .0601*	30:14 NCR
<u>Acceptable Experience - Residential Category</u>	21 NCAC 57A .0602	30:14 NCR
<u>Acceptable Experience - General Category</u>	21 NCAC 57A .0603*	30:14 NCR
<u>Types of Appraisal Experience</u>	21 NCAC 57A .0604*	30:14 NCR
<u>Reporting Appraisal Experience</u>	21 NCAC 57A .0605*	30:14 NCR
<u>Course Completion Standards</u>	21 NCAC 57B .0303*	30:14 NCR
<u>Course Scheduling</u>	21 NCAC 57B .0304*	30:14 NCR

<u>Instructors for the Trainee/Supervisor Course Required</u>	21 NCAC 57B .0614*	30:14 NCR
<u>Complaints Against Appraisers</u>	21 NCAC 57D .0309*	30:14 NCR
<u>Criminal Background Checks</u>	21 NCAC 57D .0403*	30:14 NCR

**TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**02 NCAC 09L .0504 DEFINITIONS**

The following definitions apply to Rules .0505, .0506, and .0507 of this Section:

- (1) "Agricultural pest control":
  - (a) Plant. Includes pesticide applicators using or supervising the use of pesticides in production of agricultural crops, including without limiting the foregoing, tobacco, peanuts, cotton, feed grains, soybeans and forage; vegetables; small fruits; tree fruits and nuts; as well as on grasslands and non-crop agricultural lands; and
  - (b) Animal. Includes pesticide applicators using or supervising the use of pesticides on animals, including without limiting the foregoing, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock, and to places where animals are confined. Doctors of veterinary medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in large-scale use of pesticides are included in this category.
- (2) "Forest pest control" includes pesticide applicators using or supervising the use of pesticides in forests, forest nurseries, and forest seed-producing areas.
- (3) "Ornamental and turf pest control" includes pesticide applicators using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.
- (4) "Seed treatment" includes pesticide applicators using or supervising the use of pesticides on seeds.
- (5) "Aquatic pest control" includes pesticide applicators using or supervising the use of any pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in Item (7) of this Rule.
- (6) "Right-of-way pest control" includes pesticide applicators using or supervising the use of pesticides in the maintenance of public roads,

- (7) electric powerlines, pipelines, railway rights-of-way, or other similar areas.
- (7) "Public health pest control" includes primarily, but is not limited to, state, federal, or other governmental employees using or supervising the use of pesticides in public health programs for the management and control of pests having medical and public health importance.
- (8) "Regulatory pest control" includes state, federal, or other governmental employees who use or supervise the use of pesticides in the control of regulated pests.
- (9) "Demonstration and research pest control" includes the following:
  - (a) persons who demonstrate to the public the use and techniques of application of pesticides or supervise such demonstration; This includes extension specialists and county agents, commercial representatives demonstrating pesticide products, and those persons demonstrating methods used in public programs; and
  - (b) persons who use or supervise the use of pesticides while conducting field research with pesticides. This includes state, federal, commercial, and other persons conducting field research on or utilizing pesticides.
- (10) "Wood treatment" includes pesticide applicators using or supervising the use of restricted use pesticides in wood preservation and wood products treatment.
- (11) "Soil and growing media fumigation pest control" includes individuals using or supervising the use of any fumigant pesticide injected or applied to soils or growing media. This category excludes fumigation of raw agricultural commodities and all structural fumigation such as:
  - (a) boxcars;
  - (b) warehouses;
  - (c) tractor trailers; and
  - (d) grain bins.
- (12) "Growing media" includes a substance or substances through which roots grow and extract water and nutrients.

*History Note: Authority G.S. 143-452(d); 143-460(29); 40 C.F.R. 171.3; Eff. February 1, 1976;*

*Amended Eff. June 1, 2016; November 1, 1984; August 1, 1982; October 27, 1979.*

**02 NCAC 09L .0505 CLASSIFICATIONS**

The following classifications and subclassifications shall apply to the licensing of pesticide applicators:

- (1) pesticide applicators and public operators utilizing ground equipment:
  - (a) agricultural pest control:
    - (i) plant; and
    - (ii) animal;
  - (b) forest pest control;
  - (c) ornamental and turf pest control;
  - (d) aquatic pest control;
  - (e) right-of-way pest control;
  - (f) public health pest control;
  - (g) regulatory pest control;
  - (h) demonstration and research pest control:
    - (i) agricultural pest control:
      - (A) plant; and
      - (B) animal;
    - (ii) forest pest control;
    - (iii) ornamental and turf pest control;
    - (iv) aquatic pest control;
    - (v) right-of-way pest control;
    - (vi) public health pest control;
    - (vii) regulatory pest control;
    - (viii) seed treatment;
    - (ix) wood treatment; and
    - (x) soil and growing media fumigation pest control;
  - (i) seed treatment;
  - (j) wood treatment; and
  - (k) soil and growing media fumigation pest control;
- (2) pesticide applicators and public operators utilizing aerial equipment:
  - (a) agricultural pest control: plant;
  - (b) forest pest control;
  - (c) ornamental and turf pest control;
  - (d) aquatic pest control;
  - (e) right-of-way pest control;
  - (f) public health pest control;
  - (g) regulatory pest control; and
  - (h) demonstration and research pest control:
    - (i) agricultural pest control:
      - (i) plant;
    - (ii) forest pest control;
    - (iii) ornamental and turf pest control;
    - (iv) aquatic pest control;
    - (v) right-of-way pest control;
    - (vi) public health pest control; and
    - (vii) regulatory pest control.

*History Note: Authority G.S. 143-452(d); 143-460(29); 143-460(33);*

*Eff. February 1, 1976;*

*Amended Eff. June 1, 2016; November 1, 1984; August 26, 1976.*

**02 NCAC 09L .0507 CATEGORIES OF CONSULTANTS**

Each person acting as a pest control consultant as defined in G.S. 143-460(27) shall be licensed. The categories requiring a license may include the following:

- (1) agricultural pest control:
  - (a) plant; and
  - (b) animal;
- (2) forest pest control;
- (3) ornamental and turf pest control;
- (4) aquatic pest control;
- (5) right-of-way pest control;
- (6) public health pest control;
- (7) regulatory pest control;
- (8) seed treatment;
- (9) wood treatment; and
- (10) soil and growing media fumigation pest control.

*History Note: Authority G.S. 143-455; 143-460(27);*

*Eff. February 1, 1976;*

*Amended Eff. June 1, 2016; November 1, 1984; October 28, 1978; January 27, 1978.*

**02 NCAC 09L .0522 RECERTIFICATION OPTIONS**

(a) Commercial pesticide applicators, public operators, and pest control consultants may be recertified by completion of approved continuing certification credit requirements in the pest control category in which the individual is certified and desires to retain certification. A "continuing certification credit" is defined as one hour of approved continuing certification training. Continuing certification training shall be approved by the Board based upon the US Environmental Protection Agency "Standards for certification of commercial applicators," as contained in 40 CFR 171.4, and such training may consist of grower meetings, seminars, short courses, or other presentations taught by extension pesticide personnel, or other privately or publicly sponsored training organizations approved by the Board. Continuing certification requirements for each pest control category are as follows:

- |                         |            |
|-------------------------|------------|
| (1) aquatic             | 6 credits  |
| per 5-year period       |            |
| (2) public health       | 6 credits  |
| per 5-year period       |            |
| (3) forest              | 6 credits  |
| per 5-year period       |            |
| (4) right-of-way        | 4 credits  |
| per 5-year period       |            |
| (5) regulatory          | 6 credits  |
| per 5-year period       |            |
| (6) ag pest-animal      | 6 credits  |
| per 5-year period       |            |
| (7) ornamental and turf | 10 credits |
| per 5-year period       |            |

- (8) seed treatment 3 credits per 5-year period
- (9) ag pest-plant 10 credits per 5-year period
- (10) demonstration and research 10 credits per 5-year period

The continuing certification credits required for demonstration and research may consist of any combination of credits divided between training in the primary categories set forth in Subparagraph (a)(1) through (a)(9) of this Rule and training in demonstration and research.

- (11) aerial 4 credits per 2-year period

The Continuing Certification Credits required for aerial applicators shall include one credit obtained through training in aerial methods.

- (12) wood treatment 4 credits per 5-year period
- (13) soil and growing media fumigation 3 credits per 5-year period

The Continuing Certification Credits established for each ground application pest control category shall be obtained in at least two years of the five-year period.

(b) Commercial pesticide applicators, public operators, and pest control consultants may be recertified by passing a written comprehensive examination administered by North Carolina Department of Agriculture and Consumer Services personnel and based on training materials that have been approved by the Board.

*History Note: Authority G.S. 143-437(1); 143-440(b); 143-453(c)(2); 143-455(d); Eff. September 10, 1980; Amended Eff. June 1, 2016; November 1, 1984.*

**02 NCAC 09L .1102 DEFINITIONS**

(a) Certified applicator - any individual who is certified to use or supervise the use of any restricted use pesticide.

(b) Private pesticide applicator - a person who uses or supervises the use of any restricted use pesticide under the following conditions:

- (1) for the purpose of producing any agricultural commodity on property owned or rented by the person or the person's employer; or
- (2) if the pesticide is applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.

(c) Private pesticide applicator certification standards review - a training session designed by the North Carolina State University Pesticide Safety Extension Specialist to advance a private pesticide applicator's practical knowledge in areas such as:

- (1) the pest problems and pest control practices associated with agricultural operations;
- (2) storage, use, handling, and disposal of pesticides and their containers;
- (3) labels and labeling information;
- (4) local environmental situations to consider during application to avoid contamination;

- (5) recognition of poisoning symptoms and procedures to follow in case of a pesticide accident;
- (6) protective clothing, equipment, and other worker protection standards;
- (7) federal and state pesticide laws and regulations and the applicator's related legal responsibility;
- (8) current agricultural production-related pesticide technology; and
- (9) sources of advice and guidance necessary for the safe and proper use of each pesticide related to his or her certification.

These training sessions shall be taught by Cooperative Extension Service pesticide training agents or other individuals approved by the Board on a case-by-case basis, based upon the individual's education, experience, and knowledge of Subparagraph (c)(1) through (9) of this Rule.

(d) Continuing certification credit - one hour of continuing certification training. Continuing certification training shall be approved by the Board. Such training may be offered during grower meetings, seminars, short courses, or other Board-approved presentations taught by Cooperative Extension Service pesticide training agents, or other privately or publicly sponsored training organizations. Private applicators may also earn continuing certification credits by attending approved training sessions for which credit has been assigned in the following commercial categories:

- (1) aquatic;
- (2) agricultural pest - animal;
- (3) agricultural pest - plant;
- (4) ornamental and turf;
- (5) forest;
- (6) seed treatment; and
- (7) soil and growing media fumigation

set forth in 02 NCAC 09L .0505(1)(a) through (1)(k).

*History Note: Authority G.S. 143-440; 143-453; Eff. December 1, 1976; Amended Eff. June 1, 2016; October 1, 2002; November 1, 1988; July 1, 1987; February 5, 1978; April 20, 1977.*

**02 NCAC 09L .1104 SINGLE PURCHASE EMERGENCY CERTIFICATION PERMIT**

(a) For emergency certification of any applicant who has not previously been certified and did not anticipate need for a restricted use pesticide, a 10-day Single Purchase Emergency Certification Permit may be issued by his or her resident county agricultural extension service pesticide coordinator authorizing the purchase and use of one restricted use pesticide for one application to a crop or site. Permits shall not be issued if:

- (1) there is sufficient time prior to the needed use for the individual to become certified;
- (2) an individual had been previously certified, but let the certification lapse; or
- (3) after discussion with the Cooperative Extension Agent, it is determined that a general use pesticide (one available to the general public and not requiring certification to purchase and apply) may be used.

(b) Prior to issuance of the permit, the resident county agricultural extension service pesticide coordinator shall:

- (1) provide the applicant with a training manual and information relative to obtaining full private pesticide applicator certification; and
- (2) discuss with the applicant proper use of the restricted use pesticide.

(c) If the individual requires further use of restricted use pesticides, he or she shall complete one of the certification options set forth in Rule .1103 of this Section.

(d) The agricultural extension service pesticide coordinator shall keep a copy of the permit provided by the North Carolina Department of Agriculture and Consumer Services that contains the following information:

- (1) the name and address of the applicant;
- (2) the name and amount of restricted use pesticide;
- (3) the crop or site to be treated; and
- (4) the date the permit was issued.

Copies of the permits shall be available for review by the North Carolina Department of Agriculture and Consumer Services.

(e) A Single Purchase Emergency Certification Permit shall not be issued for fumigation of soil, growing media, or agricultural commodities.

*History Note: Authority G.S. 143-440; Eff. December 1, 1976; Amended Eff. June 1, 2016; August 26, 1977.*

**02 NCAC 09L .1108 TERM OF CERTIFICATION; RECERTIFICATION**

(a) The term of certification shall be for a period of three years.

(b) In order to be recertified as a private pesticide applicator without a written examination, a person shall complete two hours of private pesticide applicator certification standards review, plus two continuing certification credit hours, as defined in Rule .1102(d) of this Section.

(c) A private pesticide applicator certified in the subclass of soil and growing media fumigation or agricultural commodity fumigation shall earn one hour of continuing certification credit specific to each applicable subclass to retain the subclass certification.

*History Note: Authority G.S. 143-440; 143-453; Eff. July 1, 1987; Amended Eff. June 1, 2016; October 1, 2002.*

**TITLE 09 – OFFICE OF THE GOVERNOR AND LT. GOVERNOR**

**09 NCAC 06C .0111 REQUESTS FOR DECLARATORY RULINGS**

(a) Requests for a declaratory ruling shall be in writing and dated.

(b) The request shall contain:

- (1) The petitioner's name, address, and telephone number;
- (2) The rule, statute, or order referred to;
- (3) A statement of facts supporting the petitioner's request for a declaratory ruling;

(4) A statement of the manner in which the petitioner is aggrieved by the rule, statute, or standard, or its potential application to the petitioner;

(c) After review of the information required in Paragraph (b) of this Rule, the Board may request the following additional information:

- (1) A statement of any legal authorities that support the interpretation of the given statute or rule by the petitioner;
- (2) A statement of the practices or procedures likely to be affected by the requested declaratory ruling and the persons likely to be affected by the ruling;
- (3) A draft of the declaratory ruling sought by the petitioner, if a specified outcome is sought by the petitioner; and
- (4) A statement of whether the petitioner desires to present oral argument.

*History Note: Authority G.S. 62A-42; 150B-4; Eff. July 1, 2016.*

**09 NCAC 06C .0112 RESPONSE TO A REQUEST FOR A DECLARATORY RULING**

(a) The Board shall consider the request within 30 days of receipt. The Board shall issue a ruling except:

- (1) When the Board finds that the person making the request is not a "person aggrieved," as defined in G.S. 150B-2(6);
- (2) When the petition does not provide the information required in Rule .0111 of this Section, the question is presented in such a manner that the Board cannot determine what the question is, or that the Board cannot respond with a specific ruling that shall be binding on all parties;
- (3) When the Board has made a determination in a similar contested case, or where the factual context being raised for a declaratory ruling was specifically considered upon the adoption of the rule or directive being questioned, as evidenced by the rulemaking record; or
- (4) Where the subject matter of the request is involved in pending litigation or contested case in any state or federal court in North Carolina.

(b) The Board shall, not later than the 30th day after receiving such a request, deposit in the United States mail, postage prepaid, a written statement addressed to the person making the request and setting forth the Board's decision to grant or deny the request. The Board may rule at any meeting convened to consider the request, or defer the ruling until a later date, but not later than the 45<sup>th</sup> day after granting the request for a ruling. The Board may gather additional information, give notice to other persons, and permit such other persons to submit information or arguments under such conditions as are set forth in any notice given to the requesting party.

*History Note: Authority G.S. 62A-42; 150B-4;*

*Eff. July 1, 2016.*

**09 NCAC 06C .0113 DURATION OF A DECLARATORY RULING**

For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:

- (1) The portion of the statute, rule, or order interpreted by the declaratory ruling is amended or repealed;
- (2) The Board changes the declaratory ruling prospectively; or
- (3) Any court sets aside the ruling.

*History Note: Authority G.S. 62A-42; 150B-4(a); Eff. July 1, 2016.*

**09 NCAC 06C .0114 RECORD OF RULING**

A record of all declaratory ruling proceedings shall be maintained at the Board's office and shall be available for public inspection during business hours.

*History Note: Authority G.S. 62A-42; 150B-4; Eff. July 1, 2016.*

**09 NCAC 06C .0205 COMPREHENSIVE EMERGENCY MANAGEMENT PLAN (CEMP)**

(a) Each PSAP shall have a written Comprehensive Emergency Management Plan (CEMP) that includes:

- (1) An emergency fire plan;
- (2) A damage control plan; and
- (3) A back-up PSAP plan that includes alternate 911 call routing conforming to 47 C.F.R. 20.18 and G.S. 62A-49.

(b) The PSAP shall test the plans in Paragraph (a) of this Rule and the CEMP at least once annually.

*History Note: Authority G.S. 62A-42; 62A-46; 47 C.F.R. 20.18; Eff. July 1, 2016.*

**09 NCAC 06C .0216 ASSESSING PSAP OPERATIONS**

(a) The Board shall conduct annual reviews of PSAP operations to determine whether a PSAP meets the requirements of Section .0200 of these Rules. Reviews shall be conducted by at least two persons selected by the Board based on each person's knowledge and experience of 911 systems and PSAP operations. The Board shall provide notice to a PSAP at least 90 days in advance of a review. The notice shall include the scope of the review and shall identify the reviewers.

(b) A written report shall be provided to a PSAP within 30 days of the date of review. The report shall state any deficiencies that identify a failure to fulfill the requirements of Section .0200 of these Rules.

(c) The report shall include procedures and recommendations to remediate the identified deficiencies. PSAPs shall respond to the report no more than 30 days following receipt and identify actions taken or planned to remediate deficiencies.

(d) Notwithstanding the annual review in Paragraph (a) of this Rule, a PSAP having no deficiencies or remediating deficiencies

identified within 30 days of the report delivery date shall not be subject to review for three years.

*History Note: Authority G.S. 62A-42(a)(4); 62A-42(a)(5); Eff. July 1, 2016.*

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

**10A NCAC 10 .0102 DEFINITIONS**

In addition to the terms defined in G.S. 110-86, the following definitions apply to the term used in this Chapter.

- (1) "Director" means the Director of the Division of Child Development and Early Education.
- (2) "Division" means the Division of Child Development and Early Education, Department of Health and Human Services, located at 820 South Boylan Avenue, Raleigh, North Carolina 27603.
- (3) "Foster Parent" means anyone other than that child's parent(s) or legal custodian(s) who is providing full time care for a child who is in the custody of a North Carolina county department of social services.
- (4) "Homeless Children" means the definition in section 725(2) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(2), which is hereby incorporated by reference and includes subsequent amendments and editions.
- (5) "Local Purchasing Agency" means the local agency responsible for administering the state's subsidized child care program.
- (6) "Owner" means any person with a five percent or greater equity interest in a child care center, or family child care home as defined in G.S. 110-86(3)b.
- (7) "Private Agency" means a private, for profit or non-profit, non-governmental entity.
- (8) "Provider" means the owner of a child care center, or family child care home.
- (9) "Recipient" means the parent or responsible adult approved for subsidized child care services pursuant to Section .1000 of this Chapter.
- (10) "Subsidized Child Care Assistance Program" means the administrative, programmatic, and fiscal activities related to the use of public funds to pay for child care services for families.

*History Note: Authority G.S. 143B-153(2a); Eff. February 1, 1986; Amended Eff. June 1, 2016; December 1, 2011; April 1, 2001; February 1, 1996.*

**10A NCAC 10 .0905 SUPPORT TO EMPLOYMENT: TRAINING FOR EMPLOYMENT**

(a) Child care services shall be provided to support employment of the recipient.

(b) Child care services shall be provided to support training leading to employment of the recipient.

(c) Where a recipient remains in the home and is capable of providing care for the child, child care services shall not be provided as a support for employment or training. Where the local purchasing agency determines that the recipient is incapable of providing care for the child, and child care services shall be provided for the needs of the child and to maintain family stability. The reasons for this determination shall be documented in the client's record and may include the following:

- (1) illness;
- (2) disability;
- (3) complications related to pregnancy;
- (4) hospitalization;
- (5) substance abuse treatment; or
- (6) that the recipient is elderly and incapable of caring for the child.

(d) Child care services may be provided when recipient is engaged in gainful employment on either a full-time or part-time basis.

(e) Where the recipient is temporarily absent from employment, training, or educational program with arrangements to continue the same employment, training, or educational program, child care services shall continue for at least 90 days. Where an absence from work, training, or educational program extends beyond 90 days, the local purchasing agency shall determine on the basis of individual circumstances whether child care shall continue beyond that time period. Where child care is continued beyond 90 days, the reasons for such extension shall be documented in the client's record and may include the following:

- (1) the recipient is on maternity leave and intends to return to work;
- (2) the recipient has been temporarily laid off and the employer has indicated that employment will resume within a month; or
- (3) the recipient works in a high demand field and is likely to find new employment within a month.

(f) Where a recipient is unemployed but is seeking employment, child care services shall be provided for at least 90 days if the recipient is already receiving subsidized child care services. Continuation of the service may be extended if the agency determines such extension is warranted, provided the reason for the extension is documented in the client's record and may include the following:

- (1) the likelihood of obtaining employment based upon prior job search activities;
- (2) the recipient has a job interview scheduled in the near future; or
- (3) the recipient is waiting to hear the results of a recent job interview.

(g) Where a recipient no longer attends a training or educational program, child care services shall continue to be provided for at least 90 days after the recipient stops attending the training or educational program to permit the recipient to seek employment

or resume attendance at a training or educational program if the recipient is already receiving subsidized child care services. Continuation of the service may be extended if the agency determines such extension as warranted, provided the reason for the extension is documented in the client's record and may include the following:

- (1) recommendations from teaching staff at educational institutions;
- (2) the individual needs and abilities of the recipient;
- (3) whether the recipient has developed career goals; or
- (4) whether the recipient has developed a personal plan for completing training.

(h) For purposes of this Rule, training leading to employment shall include the following:

- (1) continuation of high school within the school system;
- (2) basic education or a high school education or its equivalent in community colleges or technical institutes; and
- (3) post secondary education or skills training, up to a maximum of two years enrollment.

*History Note: Authority G.S. 143B-153; Eff. July 1, 1983; Amended Eff. June 1, 2016; April 1, 2001; March 1, 1996; July 1, 1990.*

**10A NCAC 10 .1007 REQUIREMENTS FOR DETERMINATION AND REDETERMINATION OF ELIGIBILITY**

(a) The Division shall establish the requirements for application and eligibility determination and redetermination for child care services. Eligibility shall be determined initially in accordance with 10A NCAC 10 .0900 and .1000, and annually thereafter unless a change occurs that impacts eligibility. Recipients who are employed or in school and whose income is at or below the federal income limit of 85 percent of State Median Income shall not have these activities disrupted during the 12 month eligibility period.

(b) If the Local Purchasing Agency, upon redetermination, determines that the family exceeds the State's income eligibility limits, the family shall continue to receive subsidized child care services for 90 days if their income is at or below the federal income limit of 85 percent of State Median Income.

(c) Annual federal income limits are determined in accordance with the U.S. Federal Poverty Guidelines issued by the U.S. Department of Health and Human Services, is incorporated by reference and includes subsequent amendments and editions. A copy of these guidelines may be found at <http://aspe.hhs.gov/poverty/index.cfm>.

*History Note: Authority G.S. 143B-153; Eff. July 1, 1983; Amended Eff. June 1, 2016; April 1, 2001.*

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**10A NCAC 15 .1701 ADDITIONAL REQUIREMENTS FOR LICENSEES POSSESSING CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL**

(a) Licensees possessing an aggregate category 1 or category 2 quantity of radioactive material, as defined in 10 CFR 37.5, shall comply with the requirements for the physical protection program listed in 10 CFR Part 37, which is hereby incorporated by reference, including any subsequent amendments and editions, except as follows:

- (1) 10 CFR 37.1;
- (2) 10 CFR 37.3;
- (3) 10 CFR 37.7;
- (4) 10 CFR 37.9;
- (5) 10 CFR 37.11(a) and (b);
- (6) 10 CFR 37.13;
- (7) 10 CFR 37.71;
- (8) 10 CFR 37.77(f);
- (9) 10 CFR 37.105;
- (10) 10 CFR 37.107; and
- (11) 10 CFR 37.109.

(b) In lieu of the address given in 10 CFR 37.27(c), licensees shall submit fingerprint cards or records to Director, Division of Facilities and Security, U.S. NRC, 11545 Rockville Pike, Rockville, Maryland 20852-2738, ATTN: Criminal History Program, Mail Stop T-03B46M.

(c) Licensee required reports of events or notifications in 10 CFR 37.41, 37.45, 37.57, 37.77(a) through (d), 37.81, shall use the Agency contact information in Rule .0111 of this Chapter.

(d) A licensee transferring a category 1 or category 2 quantity of radioactive material to a licensee of the U.S. Nuclear Regulatory Commission (NRC) or to an Agreement State of the NRC shall meet the license verification provisions listed in Rule .0343 of this Chapter.

(e) The Code of Federal Regulations incorporated by this Rule may be obtained from the U.S. Government Publishing Office, P.O. Box 979050 St. Louis, MO 63197-9000 for sixty-four dollars (\$64.00), and are available free of charge at <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>.

*History Note: Authority G.S. 104E-7; Eff. June 1, 2016.*

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**10A NCAC 71P .0101 SUPERVISION**

The Department of Health and Human Services, Division of Aging and Adult Services, Adult Services Section, is responsible for supervising the administration of the State/County Special Assistance Program. The section is located at 693 Palmer Drive, 2101 Mail Service Center, Raleigh, North Carolina, 27699-2101. The office is open during regular business hours.

*History Note: Authority G.S. 108A-40; 143B-153; Eff. January 1, 1983; Amended Eff. June 1, 2016.*

**10A NCAC 71P .0102 DEFINITIONS**

For purposes of this Chapter are the following definitions:

- (1) "Adult Care Facility" for purposes of this Subchapter shall mean group residential care facilities for persons who cannot remain in their own homes and who reside in facilities licensed by the Department of Health and Human Services defined in the following statutes and rules:
  - (a) Adult Care Homes - G.S. 131D-2.1-10, 10A NCAC 13F .0200, and 10A NCAC 13G .0200;
  - (b) Facilities for persons with mental illness and developmental disabilities - G.S. 122C-21, 10A NCAC 27G .5601(c)(1) and (3);
  - (c) For persons aged less than 18 who are legally blind, facilities licensed pursuant to 10A NCAC 27G .2101.
  - (d) Combination Homes in Nursing Facilities - G.S. 131E-101(1) and (1a);
  - (e) Combination Facilities in Hospitals - 10A NCAC 13B .1902(6); and
  - (f) Hospice Residential Care Facilities - G.S. 131E-201(5a).
- (2) "Adult Care Facility Rate" shall mean the maximum monthly rate for residents in an Adult Care Facility as established by the General Assembly.
- (3) "Authorized Representative" shall mean a person who is legally authorized or designated in writing by the applicant or recipient to act on his or her behalf.
- (4) "Budget Unit" shall mean, for the purposes of the State/County Special Assistance for the Certain Disabled Program, a spouse or Essential Person who resides with the recipient and whose income, combined with the income of the recipient, is considered in determining the monthly payment.
- (5) "Case Manager" for the State/County Special Assistance In-Home Program shall mean the social work staff member of the County Department who conducts the functional assessment and determines the actual payment amount, pursuant to G.S. 108A-47.1 and to Rule .0306 of this Subchapter.
- (6) "Caseworker" shall mean the staff member of the County Department who evaluates the applicant's eligibility for State/County Special Assistance, processes the application, and reviews the case for continuing eligibility pursuant to the rules in this Subchapter.
- (7) "Change in Situation" shall mean the changes in an applicant's or recipient's circumstances as set forth in 20 C.F.R. 416.708 that could affect his or her eligibility or payment amount.
- (8) "Countable Monthly Income" shall mean the amount of monthly income after applying all allowable deductions pursuant to 20 C.F.R. 416.1102-1104.

- (9) "County Board" shall mean the county board of social services as set forth in G.S. 108A-1 and G.S. 108A-9. Program payments to meet the recipient's needs.
- (10) "County Department" shall mean the county department of social services as set forth in G.S. 108A-12, G.S. 108A-14(a)(3), G.S. 108A-14(b), and G.S. 108A-15.1. *History Note: Authority G.S. 108A-40; 143B-153; Eff. January 1, 1983; Amended Eff. June 1, 2016; June 1, 1990; February 1, 1986.*
- (11) "Division of Aging and Adult Services" shall mean the Division of Aging as defined in G.S. 143B-181.1. **10A NCAC 71P .0103 STATE/COUNTY SPECIAL ASSISTANCE PROGRAM PROCEDURES**  
The following general procedures shall be applicable to the State/County Special Assistance Program:
- (12) "Essential Person" shall mean, for the purposes of the State/County Special Assistance for the Certain Disabled Program, a person who is not a spouse and who is living in the recipient's home, rendering services without which the recipient would not be able to remain in his or her home.
- (13) "Maintenance Amount" shall mean the Adult Care Facility Rate plus the Personal Needs Allowance.
- (14) "Personal Needs Allowance" shall mean, for the purposes of this Subchapter, the monthly sum of money that a recipient of the State/County Special Assistance Program may retain from his or her personal income for clothing and other personal needs and expenses as described in 42 C.F.R. 435.832(c)(1). The monthly Personal Needs Allowance for the State/County Special Assistance Program is established by the General Assembly.
- (15) "State/County Special Assistance Program" is authorized and established by G.S. 108A-25(a)(2) and G.S. 108A-40 through G.S. 108A-47.1. The State/County Special Assistance Program provides to eligible individuals an Optional State Supplementary payment to the federal Supplemental Security Income Program (SSI), pursuant to 42 U.S.C. 1382e and 20 C.F.R. 416.2001.
- (16) "State/County Special Assistance for the Certain Disabled Program" is authorized and established by G.S. 108A-41(d), G.S. 108A-42(b), and G.S. 108A-45 for persons in an in-home living arrangement who meet the eligibility criteria set forth in Rule .0805 of this Subchapter.
- (17) "State/County Special Assistance In-Home Program" is authorized and established by G.S. 108A-47.1 for persons living in an in-home living arrangement who meet the eligibility criteria in Rules .0803 and .0804 of this Subchapter. For purposes of this Subchapter, the State/County Special Assistance Program shall also include the State/County Special Assistance In-Home Program unless otherwise noted.
- (18) "Substitute Payee" shall mean an Authorized Representative who is responsible for receiving and disbursing State/County Special Assistance
- (1) Notice and hearing rules set forth in 10A NCAC 67A .0200 shall apply to the State/County Special Assistance Program.
- (2) Confidentiality rules set forth in 10A NCAC 69 shall apply to the State/County Special Assistance Program.
- History Note: Authority G.S. 108A-40; 143B-153; Eff. January 1, 1983; Amended Eff. June 1, 2016.*
- 10A NCAC 71P .0201 MAXIMUM RATES**  
The County Department may negotiate rates lower than the maximum rates with operators of Adult Care Facilities. Maximum rates are established by the General Assembly and are available on the Department of Health and Human Services website at [www.dhhs.nc.gov](http://www.dhhs.nc.gov) and in each County Department.
- History Note: Authority G.S. 108A-40; 143B-153; Eff. January 1, 1983; Amended Eff. June 1, 2016; February 1, 1986.*
- 10A NCAC 71P .0202 LICENSED FACILITIES**  
(a) Adult Care Facilities that accept State/County Special Assistance Program payments from recipients residing in such facilities as set forth in G.S. 108A-41(a) and Rule .0102(1) of this Subchapter shall have signed a civil rights compliance statement and have submitted it to the Division of Aging and Adult Services pursuant to 42 U.S.C. 2000d and 45 C.F.R. 80.2.  
(b) Adult Care Facilities shall be licensed by the Department of Health and Human Services.  
(c) This Rule does not apply to the State/County Special Assistance In-Home Program or to the State/County Special Assistance for the Certain Disabled Program.
- History Note: Authority G.S. 108A-40; 108A-41; 143B-153; Eff. January 1, 1983; Amended Eff. June 1, 2016.*
- 10A NCAC 71P .0301 MINIMUM PAYMENT**  
The minimum State/County Special Assistance Program payment is one dollar (\$1.00).
- History Note: Authority G.S. 108A-40; 143B-153; Eff. January 1, 1983; Amended Eff. June 1, 2016.*

**10A NCAC 71P .0302 RECIPIENT IN AN ADULT CARE FACILITY**

The monthly State/County Special Assistance Program payment computation shall comply with 42 C.F.R. 435.232(b)(2). The payment shall be computed by:

- (1) Determining the Maintenance Amount, as defined in Rule .0102(13) of this Subchapter;
- (2) Subtracting the recipient's Countable Monthly Income from the Maintenance Amount; and
- (3) Rounding the difference to the nearest dollar.

*History Note: Authority G.S. 108A-40; 108A-41; 143B-153; 42 C.F.R. 435.232(b)(2); Eff. January 1, 1983; Amended Eff. June 1, 2016.*

**10A NCAC 71P .0303 RECIPIENT IN DOMICILIARY CARE WITH SPOUSE AT HOME  
10A NCAC 71P .0304 RECIPIENT/DOMICILIARY CARE: SPOUSE/NOT RECEIVING ASSIST.**

*History Note: Authority G.S. 143B-153; Eff. January 1, 1983; Repealed Eff. June 1, 2016.*

**10A NCAC 71P .0306 RECIPIENT IN AN IN-HOME LIVING ARRANGEMENT**

(a) The State/County Special Assistance In-Home Program maximum payment for recipients living in an in-home living arrangement and not in an Adult Care Facility shall be computed by:

- (1) determining the Maintenance Amount as set forth in Rule .0102(13) of this Subchapter;
- (2) subtracting the recipient's Countable Monthly Income from the Maintenance Amount; and
- (3) rounding the difference to the nearest dollar.

(b) The County Department Case Manager shall determine the actual State/County Special Assistance In-Home Program payment by conducting a comprehensive functional assessment pursuant to G.S. 108A-47.1(a) and shall include the areas related to health and safety as set forth in 10A NCAC 71A .0208. The State/County Special Assistance In-Home Program payment may be authorized up to the maximum determined in Paragraph (a) of this Rule.

*History Note: Authority G.S. 108A-47; 108A-47.1; 143B-153; Eff. June 1, 2016.*

**10A NCAC 71P .0401 MINIMUM PAYMENT  
10A NCAC 71P .0402 RECIPIENT/DOMICILIARY CARE: SPOUSE/CHILDREN RECEIVING AFDC  
10A NCAC 71P .0403 RECIPIENT/DOMICILIARY CARE: SPOUSE/CHILDREN RECV'G AFDC-MA  
10A NCAC 71P .0404 RECIPIENT/DOMICILIARY CARE: SPOUSE/RECV'G MEDICAL ASSIST.  
10A NCAC 71P .0405 RECIPIENT/SPOUSE BOTH RECEIVING SPECIAL ASSISTANCE  
10A NCAC 71P .0406 RECIPIENT/DOMICILIARY CARE: SPOUSE: NURSING/INTERMED. FAC.**

*History Note: Authority G.S. 143B-153; Eff. January 1, 1983; Repealed Eff. June 1, 2016.*

**10A NCAC 71P .0501 SUBSTITUTE PAYEE**

- (a) The recipient shall be payee for his or her own State/County Special Assistance Program payment unless the recipient or his or her Authorized Representative designates an Authorized Representative to serve as a Substitute Payee.
- (b) The administrator or a staff member of an Adult Care Facility shall not act as Substitute Payee for State/County Special Assistance Program payments for recipients who reside at the Adult Care Facility that employs such administrator or staff member, as set forth in 10A NCAC 13F .1103.
- (c) The director of the County Department may invoke the procedures set forth in G.S. 108A-37 when he or she determines that a recipient is unwilling or unable to manage his or her State/County Special Assistance Program payments to the extent that deprivation or hazard to himself or herself or others results.
- (d) State/County Special Assistance Program payments shall not be issued to persons or entities designated in G.S. 108A-47.

*History Note: Authority G.S. 108A-25; 108A-37; 108A-40; 108A-47; 143B-153; Eff. January 1, 1983; Amended Eff. June 1, 2016.*

**10A NCAC 71P .0502 PAYMENT AUTHORIZATION**

- (a) State/County Special Assistance Program payments for any recipient shall not be authorized prior to the month of application.
- (b) If SSI approval is pending at the time of application, the State/County Special Assistance Program payment may be authorized retroactive to the month SSI was approved if the recipient was in an Adult Care Facility and had applied for the State/County Special Assistance Program during the month that such assistance was approved.
- (c) If a recipient enters an Adult Care Facility or meets the North Carolina residency requirement for the State/County Special Assistance Program after the first day of the month and all other eligibility criteria are met, the recipient shall be eligible only for a partial payment for that month from the date of entry or the date the recipient meets the residency requirement to the end of the month. The payment shall be computed without considering income.
- (d) If a recipient's level of care is determined to no longer be Adult Care Facility level and a bed is not readily available under the Medicaid Program, the State/County Special Assistance Program payments shall continue until a bed at the appropriate level of care is available for the recipient.

*History Note: Authority G.S. 108A-40; 108A-41(b); 143B-153; Eff. January 1, 1983; Amended Eff. July 1, 1988; Temporary Amendment Eff. October 28, 1997; Amended Eff. June 1, 2016; April 1, 1999.*

**10A NCAC 71P .0504 CORRECTION OF OVERPAYMENTS**

(a) An overpayment caused by an error by a Department of Health and Human Services staff member in interpreting program regulations shall be charged to the State.

(b) If an overpayment is caused by failure of the recipient or his or her Authorized Representative to report a Change in Situation as set forth in Rule .0602(b)(5)(C) of this Subchapter, and if fraud is not suspected, the County Department shall direct the recipient to refund the overpayment.

(1) If the recipient refuses to refund the overpayment, the State/County Special Assistance Program monthly payment may be reduced up to 10 percent if he or she has:

- (A) disregarded earned income determined pursuant to 20 U.S.C 416.1112; or
- (B) countable resources, as defined in Rule .0904 of this Subchapter, greater than the amount of the overpayment.

(2) If the recipient has no disregarded earned income or excess resources, the recipient shall be asked to agree in writing to repay the amount of the overpayment to the State and County Department if he or she acquires income or resources greater than the amount of the overpayment while he or she is a recipient of the State/County Special Assistance Program.

(c) An overpayment caused by an error by a County Department staff member shall be charged to the County Department.

*History Note: Authority G.S. 108A-40; 143B-153; Eff. January 1, 1983; Amended Eff. June 1, 2016.*

**10A NCAC 71P .0505 ISSUANCE OF PAYMENTS**

(a) The County Department shall authorize State/County Special Assistance Program payments based on the eligibility determination decision of the Caseworker.

(b) All payments shall be issued by the electronic method requested by the recipient or Substitute Payee.

(c) Payments may be replaced up to 12 months after initial issuance.

*History Note: Authority G.S. 108A-40; 108A-43; 143B-153; Eff. January 1, 1983; Amended Eff. June 1, 2016.*

**10A NCAC 71P .0506 RECEIPT AND USE OF CHECKS**

*History Note: Authority G.S. 143B-153; Eff. January 1, 1983; Repealed Eff. June 1, 2016.*

**10A NCAC 71P .0507 LOST: STOLEN AND FORGED CHECKS**

(a) If a recipient reports that a State/County Special Assistance paper check has been lost or stolen before he or she has endorsed it, the County Department shall have the recipient sign an affidavit

that he or she did not receive the check. Within 10 calendar days after the check is reported lost or stolen, the County Department shall request a replacement check from the State Department of Health and Human Services, Office of the Controller.

(1) If the check has not been paid, the State shall issue a replacement payment and issue a stop payment for the original check.

(2) If the check has been paid, the State shall send to the County Department a photocopy of the endorsed check and a Forgery Affidavit. The County Department shall compare, or shall arrange for comparison by experts in the field of document examination, the endorsement to other known signatures of the payee.

(A) If forgery is suspected, the County Department shall within 24 months submit to the State the completed and signed Forgery Affidavit. The State shall issue a replacement payment upon receipt of the Forgery Affidavit.

(B) If the County Department determines that the payee endorsed and cashed the check, it shall notify the State and the State shall not issue a replacement payment.

(b) If a recipient reports that a State/County Special Assistance Program check has been lost or stolen after he or she has endorsed it, the County Department shall request a replacement check from the State. If the check has not been paid by the State Treasurer, a replacement check shall be issued. If the check has been paid, a replacement check shall not be issued.

(c) This Rule shall not apply to State/County Special Assistance Program payments that are issued electronically.

*History Note: Authority G.S. 143B-153; 108A-40; Eff. January 1, 1983; Amended Eff. June 1, 2016; May 1, 1988.*

**10A NCAC 71P .0508 FRAUD**

(a) Definitions: Fraud and Misrepresentation.

(1) For the purposes of this Subchapter, an applicant or recipient engages in fraud when he or she willfully and knowingly with the intent to deceive:

- (A) makes a false statement or misrepresentation;
- (B) fails to disclose a material fact; or
- (C) does not report any Change in Situation that affects the amount of the State/County Special Assistance Program payment; and as a result obtains or continues to receive a payment.

(2) Misrepresentation:

(A) Intentional misrepresentation: An applicant or recipient engages in intentional misrepresentation when he or she gives incorrect or misleading information in response to either oral

or written questions which the applicant or recipient knows is incorrect, misleading, or incomplete.

- (B) Unintentional misrepresentation: An applicant or recipient engages in unintentional misrepresentation when he or she gives incomplete, incorrect, or misleading information because he or she does not understand the eligibility requirements or his or her responsibility to provide the County Department with required information and there is no proof that the applicant or recipient acted willfully and knowingly to obtain more State/County Special Assistance Program payments than those to which he or she was entitled.

(b) Fraud Prevention.

- (1) When interviewing an applicant or recipient as set forth in Rules .0601 and .0602 of this Subchapter, the Caseworker shall:

- (A) Obtain the correct social security number for the applicant or recipient;
- (B) explain the obligation of the applicant, recipient, or Authorized Representative to report any Change in Situation within five calendar days after they occur;
- (C) inform the applicant, recipient, or Authorized Representative of the consequences of failing to report a Change in Situation, stressing the penalties for fraud and misrepresentation;
- (D) provide the applicant, recipient, or Authorized Representative with a copy of the pamphlet entitled Public Assistance Fraud, available at all County Departments, and explain to the applicant, recipient, or Authorized Representative the meaning of fraud as described in this Rule;
- (E) inform the applicant, recipient, or Authorized Representative how to report a Change in Situation; and
- (F) ask the recipient or Authorized Representative about any Change in Situation since the application or last review.

- (2) Documentation and Verification. The Caseworker shall verify and document in detail the information given during the interview.

(c) Detection. The Caseworker shall check online verification systems as designated and made available by the State to verify personal eligibility requirements of the applicant or recipient. If information that could affect an applicant's or recipient's eligibility or payment amount is received from any source, the County Department shall investigate.

(d) Investigation. County Department responsibilities.

- (1) When a County Department discovers evidence that an applicant or recipient obtained State/County Special Assistance Program payments to which he or she was not entitled or received an overpayment, the Caseworker shall assess whether the County Department determined eligibility and documented eligibility information according to the rules set forth in this Subchapter. The County Department shall obtain and document all evidence necessary to determine whether the applicant or recipient intended to defraud and whether the overpayment was due to the applicant's or recipient's intentional or unintentional misrepresentation.
- (2) The County Department director or his or her designee shall review each case after receiving the Caseworker's evaluation. If there is sufficient evidence to suspect fraud, the director shall refer the case for a decision to the County Board or make the decision if the County Board has designated that he or she do so.
- (3) If the director of the County Department determines that the case should go before the County Board, a summary shall be prepared which contains:
  - (A) the name of the applicant or recipient and his or her date of birth and social security number;
  - (B) a description of the suspected fraudulent act;
  - (C) a description of the evidence substantiating the applicant's or recipient's intent to defraud;
  - (D) a description of the evidence substantiating the amount of the overpayment; and
  - (E) background information, such as the applicant's or recipient's current situation, educational background, and competency.

(e) County Board of Social Services Responsibilities.

- (1) The County Board or its designee shall review the suspected fraud case to determine if there is a basis for suspected fraud and determine the appropriate course of action to take. While fraud may be suspected, the County Board may decide that the applicant's or recipient's circumstances preclude prosecution and/or repayment. The County Board shall determine if the applicant or recipient:
  - (A) willfully and knowingly misstated or provided incorrect or misleading information in response to oral or written questions;
  - (B) willfully and knowingly failed to report a Change in Situation affecting eligibility for the State/County Special

- Assistance Program or the amount of payment; or
- (C) willfully and knowingly failed to report the receipt of payments to which the recipient knew he or she was not entitled.
- (2) If the County Board determines that an applicant or recipient engaged in intentional misrepresentation, it shall direct the County Department to pursue one or more of the following:
- (A) Administrative action:
- (i) the recipient's State/County Special Assistance Program payment shall be reduced up to 10 percent of the payment;
- (ii) the recipient's voluntary agreement that his or her State/County Special Assistance Program payment may be reduced; or
- (iii) the recipient will voluntarily return the State/County Special Assistance Program overpayment in part or in full;
- (B) Civil court action;
- (C) Criminal court action;
- (D) Take no action for unusual or hardship circumstances, as set forth in 20 C.F.R. 404.508(a) and 20 C.F.R. 416.553(a), in which a payment reduction would deprive the recipient of necessary income for:
- (i) fixed living expenses, such as paying for food and shelter including payment to the Adult Care Facility;
- (ii) medical, hospitalization, and other such expenses;
- (iii) expenses for the support of others for whom the individual is legally responsible; or
- (iv) other expenses which are reasonable as part of the recipient's standard of living.
- (f) County Department Follow-Up.
- (1) Administration action:
- (A) Involuntary payment reduction. Payment reduction shall be required only if the recipient has disregarded earned income determined as set forth in 20 C.F.R. 416.1112 or resources greater than the overpayment amount. The amount of the payment reduction shall not exceed the amount available as disregarded earned income or resources greater than the overpayment amount. If the recipient has no resources, the County Board shall direct the County Department to require the recipient to sign a statement that he or she will repay the overpayment if he or she acquires resources in the future, pursuant to Rule .0504(b) of this Subchapter.
- (B) Voluntary State/County Special Assistance Program payment reduction and voluntary recipient refund. The amount of the voluntary payment reduction shall not exceed the amount available as disregarded earned income or resources greater than the overpayment amount.
- (2) Criminal court action. The County Department shall assist the prosecutor by:
- (A) providing a clear and concise summary of the suspected fraud case;
- (B) compiling information gathered during the investigation;
- (C) explaining the specific eligibility factors involved in the case;
- (D) explaining in detail how the overpayment amount was computed and the time requirements on the County Department's actions, such as the notice requirement as set forth in Rule .0705 of this Subchapter and the five calendar day Change in Situation reporting requirement as set forth in Rule .0602(5)(c) of this Subchapter; and
- (E) if necessary, appearing as a witness.
- (3) Regardless what the County Board or its designee decides or what action is taken by the court, the County Department shall continue to provide State/County Special Assistance Program payments. The applicant or recipient shall be notified in writing within one business day of any action taken in the case. If the applicant or recipient remains eligible, the State/County Special Assistance Program payment shall not be terminated solely because fraud is suspected.
- (4) If the County Board or its designee suspects fraud, the County Department's findings and action shall be reported to the Adult Services Section of the Division of Aging and Adult Services.
- (5) The County Department shall retain all State/County Special Assistance Program documentation, evidence, or summaries in accordance with the Medicaid Program retention requirements found in the Record Retention and Disposition Schedule for Grants published by the Controller's Office of the

Department of Health and Human Services on the website at <http://www.ncdhhs.gov/control>.

*History Note: Authority G.S. 108A 25.3; 108A-40; 143B-153; Eff. January 1, 1983; Amended Eff. June 1, 2016; June 1, 1990.*

**10A NCAC 71P .0601 ACCEPTANCE OF APPLICATION**

A County Department shall accept an application for the State/County Special Assistance Program as set forth in this Rule.

- (1) An applicant shall be allowed to apply on the same day the applicant appears at any County Department.
- (2) The applicant shall be informed, orally and in writing, that:
  - (a) he or she may apply on the same day he or she appears at any County Department;
  - (b) a decision shall be made concerning his or her application within the time standards set forth in Rule .0604 of this Subchapter; and
  - (c) the applicant shall receive a written decision from the County Department concerning the application.
- (3) The County Department in the applicant's county of residence shall be responsible for processing the application. For the purpose of submitting an application, the applicant or his or her Authorized Representative may appear at the County Department where he or she currently resides in an Adult Care Facility or at another County Department that is conveniently located for the Authorized Representative. The applicant shall not be required to travel to the county he or she resided in prior to entering an Adult Care Facility.
- (4) The date of the application shall be the date the signed application is received by the County Department; however, if the applicant is a patient of a State mental health facility listed in G.S. 122C-181, the date of application shall be the date the referral from the mental health facility is received by the County Department.
- (5) If an applicant requests to apply for the State/County Special Assistance Program by mail or electronic submission to the County Department, the letter or electronic submission shall be considered a request to apply. A follow-up contact or electronic response shall be sent within three business days after the request is received by the County Department. The follow-up letter or electronic response shall request that the applicant come to the County Department for an interview or contact the County Department so that other arrangements can be made. The County Department's response to the applicant requesting the

State/County Special Assistance Program shall specify that if the County Department does not hear from the applicant within 15 calendar days of the date of the follow-up letter or electronic response, the County Department shall deem the request for the State/County Special Assistance Program application to have been withdrawn.

- (6) If an applicant requests to apply for the State County Special Assistance Program by telephone or electronic submission, the applicant or his or her Authorized Representative shall be advised that he or she shall apply in person at the County Department at any time during regular business hours. If the applicant requests a specific time, an application interview appointment shall be scheduled.
- (7) The application form shall:
  - (a) consist of questions specifically related to eligibility pursuant to 20 C.F.R. 416.2001(a); 416.2001(b), 416.202, Rules .0804, .0805, and Section .0900 of this Subchapter; and
  - (b) contain the applicant's rights and responsibilities set forth in Rule .0602(4) and .0602(5).
  - (c) require a signature of the applicant or his or her Authorized Representative that he or she has provided truthful information and that he or she understands his or her rights and responsibilities.
- (8) A blank application form shall be available for public review at each County Department.
- (9) An application for the State/County Special Assistance In-Home Program shall require a comprehensive functional assessment to determine whether the monthly payment amount will be sufficient to both meet the needs of the recipient in the home and help prevent placement in an Adult Care Facility. The comprehensive functional assessment shall be conducted by the Case Manager and shall include the areas related to health and safety as set forth in 10A NCAC 71A .0208.

*History Note: Authority G.S. 108A-40; 108A-43; 108A-47.1; 143B-153; Eff. January 1, 1983; Amended Eff. June 1, 2016.*

**10A NCAC 71P .0602 INITIAL APPLICATION**

- (a) The Caseworker shall explain that eligibility for the State/County Special Assistance Program provides:
- (1) a cash payment; and
  - (2) Medicaid as set forth in 42 C.F.R. 435.232 and 10A NCAC 23D .0102(2). Neither 42 U.S.C. 1382e, 20 C.F.R. 416.2001, 42 C.F.R. 435.232,

nor 10A NCAC 23D .0102(2) shall apply to the State/County Special Assistance In-Home Program nor to the State/County Special Assistance for the Certain Disabled Program.

(b) The Caseworker shall explain the eligibility requirements for the State/County Special Assistance Program and the applicant's rights and responsibilities. The Caseworker shall inform the applicant of the following:

- (1) The applicant shall provide the name of collateral sources of information such as landlords, employers, and others who can substantiate or verify the applicant's eligibility information.
- (2) It is the County Department's responsibility to use collateral sources to substantiate or verify information necessary to establish eligibility. Collateral sources of information include knowledgeable individuals, business organizations, public records, and documentary evidence. If the applicant does not wish the County Department to contact such collateral sources, he or she may withdraw the application. If the applicant denies permission for the County Department to contact such collateral sources and does not withdraw his or her application, the application shall be denied.
- (3) The County Department staff shall verify the applicant's residence.
- (4) The applicant has the right to:
  - (A) receive the State/County Special Assistance Program payments if he or she is found eligible for such assistance;
  - (B) be protected against discrimination on the ground of race, color, or national origin by Title VI of the Civil Rights Act of 1964: if the applicant believes he or she was a victim of such discrimination, he or she may file a civil rights complaint in writing to the United States Department of Health and Human Services, Director, Office for Civil Rights, Room 506-F, 200 Independence Avenue, S.W., Washington, D.C. 20201 or by calling (202) 619-0403 (voice) or (202) 619-3257 (TTY). Further information can be found on the U.S. Department of Health and Human Services website "How to File a Civil Rights Complaint" at: <http://www.hhs.gov/civil-rights/filing-a-complaint/complaint-process>;
  - (C) designate a Substitute Payee as set forth in Rule .0501 of this Subchapter;
  - (D) have any person or his or her Authorized Representative participate

in the application process and receive notices;

- (E) have any information given to the County Department kept in confidence;
  - (F) appeal, if:
    - (i) his or her State/County Special Assistance Program application is denied;
    - (ii) the applicant believes that the payment is incorrect based on the county's interpretation of State regulations; or
    - (iii) if the applicant's request for a review of his or her eligibility decision was delayed more than 30 calendar days;
  - (G) reapply at any time, if found ineligible; and
  - (H) withdraw the application at any time or withdraw from the State/County Special Assistance Program at any time.
- (5) The applicant's responsibilities. The applicant or Authorized Representative shall:
- (A) provide the County Department with the collateral sources from which the County Department can locate and obtain information needed to determine eligibility, including furnishing his or her social security number;
  - (B) not provide false statements or withhold information that relates to the applicant's eligibility;
  - (C) report to the County Department any Change in Situation, within five calendar days of such change, that may affect his or her eligibility for the State/County Special Assistance Program payment;
  - (D) cooperate with the County Department in support of any right of subrogation the State may have pursuant to State or federal law; and
  - (E) report within five business days to the County Department the receipt of a payment which the recipient knows to be erroneous, such as two payments for the same month or a payment in the wrong amount. If the recipient does not report such payments, he or she may be required to repay any overpayment.
- (c) The application for the State/County Special Assistance Program shall include:
- (1) the applicant's full name;
  - (2) the applicant's address;

- (3) the signature of the applicant or his or her Authorized Representative. The signature shall assure that he or she understands his or her rights and responsibilities as set forth in Rule .0602 of this Subchapter; and
- (4) sufficient information as set forth in Rule .0601(7) of this Subchapter in order for the Caseworker to determine eligibility for the State/County Special Assistance Program. For the State/County Special Assistance In-Home Program, the application shall also include the results of the comprehensive functional assessment that shall include the areas set forth in 10A NCAC 71A .0208.

*History Note: Authority G.S. 108A-40; 108A-41(b); 143B-153; Eff. January 1, 1983; Temporary Amendment Eff. October 28, 1997; Amended Eff. June 1, 2016; April 1, 1999.*

**10A NCAC 71P .0603 ELIGIBILITY DETERMINATION PROCESS**

The following steps shall be followed by the County Department in determining eligibility for the State/County Special Assistance Program:

- (1) each eligibility factor as set forth in Rules .0804 and .0805 of this Subchapter shall be reviewed;
- (2) the Caseworker shall verify the applicant's residence in a licensed Adult Care Facility or the Case Manager shall verify the applicant's residence in an in-home living arrangement;
- (3) the applicant shall be asked whether he or she receives SSI benefits. If the applicant's income is less than the Federal Benefit Rate for SSI pursuant to 20 C.F.R. 416.1101, the individual shall also apply for SSI benefits in order to be eligible for the State/County Special Assistance Program. If he or she has not applied for SSI prior to his or her application for the State County Special Assistance Program, he or she shall be asked to apply. The State/County Special Assistance Program application shall not be approved or denied until a decision on the SSI application is received; and
- (4) for applicants of the State/County Special Assistance In-Home Program, the Case Manager shall conduct a comprehensive functional assessment that shall include the areas set forth in 10A NCAC 71A .0208. This assessment shall determine whether the State/County Special Assistance In-Home Program payment and case management services provided by the Case Manager will be sufficient to meet the needs of the recipient in the home and help prevent placement in an Adult Care Facility. The applicant shall agree to accept case management to be approved for the State/County Special Assistance In-Home

Program. The case management services shall be consistent with Individual and Family Adjustment Services pursuant to 10A NCAC 71R .0910(a).

*History Note: Authority G.S. 108A-40; 108A-41; 143B-153; Eff. January 1, 1983; Temporary Amendment Eff. January 1, 2000; Amended Eff. June 1, 2016; July 17, 2000.*

**10A NCAC 71P .0604 TIME STANDARD**

(a) Unless otherwise provided in this Rule, complete applications as set forth in Rule .0602(b) and .0602(c) of this Subchapter shall be processed and a notice approving or denying the application stating the effective date of the payment shall be mailed:

- (1) within 45 calendar days from the date the application form is signed for persons aged 65 and older; and
- (2) within 60 calendar days from the date the application form is signed for persons aged less than 65.

(b) The time standard defined in Paragraph (a) of this Rule shall apply unless a decision for SSI eligibility or disability determination is pending from the Social Security Administration. In the case of a pending SSI application or disability decision, the decision regarding the State/County Special Assistance Program application may be delayed for no more than 12 months.

(c) If the applicant's eligibility cannot be determined by the beginning of the 12th month after the date of application, the applicant shall be notified that his or her application will be denied unless the SSI decision is received by the end of the 12th month after the date of application.

*History Note: Authority G.S. 108A-40; 108A-79; 143B-153; Eff. January 1, 1983; Amended Eff. June 1, 2016; June 1, 1990.*

**10A NCAC 71P .0608 NOTICE TO APPLICANT**

The director of the County Department or his or her designee shall notify the applicant or his or her Authorized Representative or any designated person, in writing of the disposition of the application. The notification for approval must include the effective date of eligibility for the State/County Special Assistance Program.

*History Note: Authority G.S. 108A-40; 108A-79; 143B-153; Eff. June 1, 2016.*

**10A NCAC 71P .0701 TIME AND CONTENT**

All eligibility factors as set forth in Rules .0804 and .0805 of this Subchapter that are subject to change shall be reviewed at least once every 12 months, before the recipient receives the 13th State/County Special Assistance Program payment. The eligibility factors subject to change include:

- (1) place of residence;
- (2) level of care;
- (3) income;
- (4) resources; and
- (5) change in household composition.

The Caseworker shall also evaluate the effect on eligibility of any Change in Situation reported by the recipient, his or her Authorized Representative, or made known to the Caseworker by another method.

*History Note: Authority G.S. 108A-40; 143B-153; Eff. January 1, 1983; Amended Eff. June 1, 2016.*

**10A NCAC 71P .0702 VERIFICATION OF FACILITY RESIDENCE**

The Caseworker shall verify the Adult Care Facility residence for each recipient in all cases due for a review each month. This Rule shall not apply to recipients eligible for the State/County Special Assistance for the Certain Disabled Program and State/County Special Assistance In-Home Program.

*History Note: Authority G.S. 108A-40; 108A-41; 143B-153; Eff. January 1, 1983; Amended Eff. June 1, 2016.*

**10A NCAC 71P .0704 RE-EVALUATION**

*History Note: Authority G.S. 143B-153; S.L. 1999-237; Temporary Adoption Eff. January 1, 2000; Eff. July 17, 2000; Repealed Eff. June 1, 2016.*

**10A NCAC 71P .0705 NOTICE TO RECIPIENT OF INTENDED ACTION**

The director of the County Department or his or her designee shall notify the recipient and his or her Authorized Representative or any designated person, in writing of any intended action to terminate or modify the recipient's State/County Special Assistance Program payment, as follows:

- (1) Notice shall be sent no later than 10 business days before the proposed action becomes effective, as authorized by 108A-79(b).
- (2) Notwithstanding the requirements of Item (1) of this Rule, an action to modify or terminate the payment shall be effective immediately, as authorized by G.S. 108A-79(b), 10A NCAC 67A .0202, and 42 CFR 431.213(a) through 42 CFR 431.213(f), in the following circumstances:
  - (a) the County Department terminates the State/County Special Assistance Program payment based on verification of the death of the recipient;
  - (b) the recipient is admitted to a public institution and no longer qualifies for assistance;
  - (c) the recipient signs and dates a written request to have the State/County Special Assistance Program terminated or reduced;

- (d) the recipient is placed in skilled nursing care, intermediate care, or long-term hospitalization;
- (e) the recipient's whereabouts are unknown and agency mail has been returned by the post office indicating no known forwarding address; or
- (f) the modification is beneficial to the recipient.

- (3) All notices of action shall contain information set forth in G.S. 108A-79(c).

*History Note: Authority G.S. 108A-40; 108A-79; 143B-153; Eff. June 1, 2016.*

**10A NCAC 71P .0801 AA-SA: GROUP I  
10A NCAC 71P .0802 AD-SA: GROUP I  
10A NCAC 71P .0803 SAA**

*History Note: Authority G.S. 108A-41(b); 143B-153; Eff. January 1, 1983; Temporary Amendment Eff. October 28, 1997; Amended Eff. April 1, 1999; Repealed Eff. June 1, 2016.*

**10A NCAC 71P .0804 PERSONS WHO ARE ELIGIBLE FOR THE STATE/COUNTY ASSISTANCE PROGRAM**

The State/County Special Assistance Program shall be provided only for persons who:

- (1) meet one of the following age or disability requirements:
  - (a) are aged 65 or older;
  - (b) are aged less than 65 and are disabled or legally blind, pursuant to G.S. 108A-42(a) and the Social Security Act 42 U.S.C. 1382c.; or
  - (c) are aged less than 18 and legally blind.
- (2) reside in duly licensed Adult Care Facilities or reside in an in-home living arrangement if eligible for the State/County Special Assistance In-Home Program;
- (3) receive SSI or are financially ineligible for SSI solely due to excess income;
- (4) are in need of the level of care provided in licensed Adult Care Facilities;
- (5) are not inmates of public institutions;
- (6) reside in North Carolina voluntarily with the intent to remain and meet the North Carolina residency requirement for the State/County Special Assistance Program pursuant to Rule .0903 of the Subchapter;
- (7) are U.S. citizens or qualified aliens as set forth in Rule .0902(a)(2) in this Subchapter;
- (8) meet income requirements as set forth in Rule .0905 of this Subchapter; and
- (9) meet resource requirements as set forth in Rule .0904 of this Subchapter.

*History Note:* Authority G.S. 108A-40; 108A-41(b); 108A-42; 143B-153;  
 Eff. January 1, 1983;  
 Temporary Amendment Eff. October 28, 1997;  
 Amended Eff. June 1, 2016; April 1, 1999.

**10A NCAC 71P .0805 STATE/COUNTY SPECIAL ASSISTANCE FOR THE CERTAIN DISABLED PROGRAM**

The State/County Special Assistance for the Certain Disabled Program shall be provided only for persons who are:

- (1) ineligible for SSI and are not receiving SSI;
- (2) aged 18 or older and less than 65;
- (3) in need of the level of care provided in licensed Adult Care Facilities;
- (4) not inmates of public institutions;
- (5) residing in North Carolina voluntarily with the intent to remain and meet the North Carolina residency requirement for the State/County Special Assistance Program;
- (6) U.S. citizens or qualified aliens as set forth in Rule .0902(a)(2) in this Subchapter; and
- (7) not receiving Medicaid for the same month as they would receive State/County Special Assistance for the Certain Disabled Program.

*History Note:* Authority G.S. 108A-25; 108A-40; 108A-41(b); 108A-41(d); 143B-153;  
 Eff. January 1, 1983;  
 Amended Eff. November 2, 1992; February 1, 1986;  
 Temporary Amendment Eff. October 28, 1997;  
 Amended Eff. June 1, 2016; April 1, 1999.

**10A NCAC 71P .0902 UNITED STATES CITIZENSHIP**

- (a) Eligibility Requirement. A recipient shall be:
- (1) A citizen of the United States; or
  - (2) An alien lawfully admitted for permanent residence or an alien residing in the United States under color of law;
- as set forth in 20 C.F.R. .416.1600 through .1618.
- (b) Verification. The Caseworker shall require documentary evidence from the applicant or recipient to verify citizenship or alien status.

*History Note:* Authority G.S. 108A-40; 143B-153;  
 Eff. January 1, 1983;  
 Amended Eff. June 1, 2016; June 1, 1990.

**10A NCAC 71P .0903 RESIDENCE**

- (a) State Residence Eligibility Requirement. An individual shall meet the requirements in G.S. 108A-41(b)(3) to be eligible for the State/County Special Assistance Program.
- An individual who moves to another state and intends to remain there shall not be eligible for the State/County Special Assistance Program.
- (b) County Residence Eligibility Requirement:
- (1) An individual shall be a resident of the county in which he or she lived in an in-home living

arrangement prior to entering an Adult Care Facility.

- (2) If a disabled adult child as defined in 20 C.F.R. 404.350 has remained in a facility such as an Adult Care Facility, he or she remains a resident of the county and state in which his or her parent(s) resided immediately prior to him or her reaching age 18. If he or she is an adult and is entering an Adult Care Facility and it is not possible to trace his or her county of residence as a minor, he or she may establish residence based on his or her intent to remain regardless of his or her parent's current legal residence.

(c) Temporary Absence.

- (1) An applicant or recipient shall not receive the State/County Special Assistance Program payments for those days he or she is not living in the Adult Care Facility unless his or her absence is not expected to exceed 30 calendar days. This Subparagraph (c)(1) shall not apply to recipients of the State/County Special Assistance In-Home Program or State/County Special Assistance for the Certain Disabled Program.

- (2) Temporary absence from the State or county of residence with subsequent return or intent to return does not make a recipient of the State/County Special Assistance for Certain Disabled Program in an in-home living arrangement ineligible for such assistance.

(d) Verification. The Caseworker shall accept the applicant's or recipient's statement regarding residence unless the Caseworker has information that conflicts with the applicant's or recipient's statement. If there is conflicting information, documentary evidence from the applicant or recipient shall be required.

(e) If a recipient of the State/County Special Assistance for Certain Disabled Program visits another county within the State or another state for a period exceeding three months, the Caseworker in the responsible county shall verify the following:

- (1) the recipient's intent to return;
- (2) the reason for the continuing absence; and
- (3) the continuing maintenance of a home in the responsible county.

*History Note:* Authority G.S. 108A-40; 108A-41; 108A-41(b); 143B-153; 42 U.S.C. 1382e(c)(1);  
 Eff. January 1, 1983;  
 Amended Eff. June 1, 1990;  
 Temporary Amendment Eff. October 28, 1997;  
 Amended Eff. June 1, 2016; April 1, 1999.

**10A NCAC 71P .0904 RESOURCES**

(a) Eligibility shall be determined using the resource rules governing the SSI Program found in Title XVI of the Social Security Act as codified in 42 U.S.C. 1382b, which is hereby incorporated by reference including all subsequent amendments and editions. This law can be accessed free of charge through the federal Social Security website at [www.ssa.gov](http://www.ssa.gov).

(b) Mental Competence: When an applicant's or recipient's competence is in question and there is no Authorized Representative, resources shall be counted according to 10A NCAC 23E .0202(b) through .0202(i).

*History Note:* Authority G.S. 108A-40; 108A-41; 108A-46; 143B-153;

*Eff. January 1, 1983;*

*Amended Eff. June 1, 2016; February 1, 1996; July 1, 1994; March 1, 1991; June 1, 1990.*

**10A NCAC 71P .0905 INCOME**

Eligibility Requirement. Eligibility shall be determined using the income rules governing the SSI Program found in Title XVI of the Social Security Act as codified in 42 U.S.C. 1382a, which is hereby incorporated by reference including all subsequent amendments and editions. This law can be accessed free of charge through the federal Social Security website at [www.ssa.gov](http://www.ssa.gov).

*History Note:* Authority G.S. 108A-26; 108A-40; 108A-41; 143B-153;

*Eff. January 1, 1983;*

*Amended Eff. June 1, 2016; February 1, 1996; July 1, 1994; March 1, 1991; June 1, 1990.*

**10A NCAC 71P .0906 EVALUATION**

*History Note:* Authority G.S. 143B-153; S.L. 1999-237; Temporary Adoption Eff. January 1, 2000;

*Eff. July 17, 2000;*

*Repealed Eff. June 1, 2016.*

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**TITLE 17 – DEPARTMENT OF REVENUE**

**17 NCAC 07B .4710 BOOKBINDERS**

*History Note:* Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;

*Eff. February 1, 1976;*

*Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991;*

*Repealed Eff. June 1, 2016.*

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**TITLE 21 – OCCUPATIONAL LICENSION BOARDS AND COMMISSIONS**

**CHAPTER 57 – APPRAISAL BOARD**

**21 NCAC 57A .0211 APPLICANTS CERTIFIED IN ANOTHER STATE**

(a) Applicants for certification who are not residents of North Carolina shall file an application as stated in Rule .0101 of this Subchapter. The application may be found on the Board's website at [www.ncappraisalboard.org](http://www.ncappraisalboard.org). The application requires the name, contact information, educational background of the applicant, an experience log when required for licensure or certification,

answers to questions regarding character (regarding both disciplinary matters and criminal offenses), and a sworn statement that the information in the application is correct. In addition, nonresident applicants shall also consent to service of process in this State and file an affidavit of residency with the application. If the applicant is licensed by the appraiser licensing board of the applicant's resident state, the applicant shall also file with the application a letter of good standing from the appraiser licensing board of the resident state that was issued by that licensing board no later than 30 days prior to the date application is made in this State.

(b) Applicants for certification who are residents of North Carolina and who are certified in another state shall file an application as stated in Rule .0101 of this Subchapter. The application may be found on the Board's website at [www.ncappraisalboard.org](http://www.ncappraisalboard.org). The applicant shall file a letter of good standing from the other state that that was issued by that licensing board no later than 30 days prior to the date application is made in this State.

(c) Applicants for registration or certification shall obtain a criminal records check that complies with the requirements of Rule .0202(e) of this Subchapter. This records check shall have been performed within 60 days of the date the completed application for registration or certification is received by the Board. Applicants shall pay the reporting service for the cost of these reports.

(d) An appraiser whose certification is suspended in North Carolina shall not apply for certification in this State under this Rule while the certification is suspended. An appraiser whose certification was revoked in North Carolina shall not apply for certification in this State under this Rule for five years after the date of revocation.

*History Note:* Authority G.S. 93E-1-9(a) and (b); 93E-1-10; 12 U.S.C. 3351(a);

*Eff. March 1, 2007;*

*Amended Eff. July 1, 2016; January 1, 2013; September 1, 2008; January 1, 2008.*

**21 NCAC 57A .0501 APPRAISAL STANDARDS**

(a) Every registered trainee and licensed and certified real estate appraiser shall, in performing the acts and services of a registered trainee or licensed or certified real estate appraiser, comply with the following provisions of the "Uniform Standards of Professional Appraisal Practice" (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation, all of which are incorporated by reference including subsequent amendments and editions:

- (1) Definitions;
- (2) Preamble;
- (3) Ethics Rule;
- (4) Record Keeping Rule;
- (5) Competency Rule;
- (6) Scope of Work Rule;
- (7) Jurisdictional Exception Rule; and
- (8) Standards Rules 1, 2 and 3.

(b) A copy of USPAP may be obtained from the Appraisal Foundation at <https://www.appraisalfoundation.org>. The cost for a copy of the Standards ranges from sixty five dollars (\$65.00) to

ninety nine dollars (\$99.00), depending upon whether a hard copy or a digital version is purchased.

*History Note: Authority G.S. 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2016; January 1, 2013; January 1, 2008; July 1, 2005; August 1, 2002; April 1, 1999.*

**21 NCAC 57A .0601 EXPERIENCE CREDIT TO UPGRADE**

As required by Rule .0201 of this Subchapter, applicants for licensure or residential certification shall possess 2,500 hours of appraisal experience and applicants for general certification shall possess 3,000 hours of appraisal experience as defined in this Section. All experience shall have been obtained by performing or reviewing appraisals using appraisal methods and processes that are employed by real estate appraisers and shall comply with the edition of the USPAP in effect at the time of the appraisal, in addition to meeting the applicable requirements set forth in this Section.

*History Note: Authority G.S. 93E-1-10; Eff. July 1, 2016.*

**21 NCAC 57A .0602 ACCEPTABLE EXPERIENCE – RESIDENTIAL CATEGORY**

Appraising the following types of properties qualifies as residential appraisal experience:

- (a) residential single-family;
- (b) residential multi-family of 2 – 4 units;
- (c) residential vacant lot (1 – 4 family property); and
- (d) farm properties consisting of less than 100 acres and a homestead.

*History Note: Authority G.S. 93E-1-10; Eff. July 1, 2016.*

**21 NCAC 57A .0603 ACCEPTABLE EXPERIENCE – GENERAL CATEGORY**

Appraising the following types of properties qualifies as general appraisal experience:

- (1) land such as farms of 100 acres or more in size, undeveloped tracts, residential multi-family sites other than those listed in Rule .0602 of this Section, commercial sites, industrial sites, or land in transition;
- (2) residential multi-family properties (5 or more units) such as apartments, condominiums, town-houses, or mobile home parks;
- (3) commercial single-tenant properties such as office buildings, retail stores, restaurants, service stations, banks, or day care centers;
- (4) commercial multi-tenant properties such as office buildings, hotels, or shopping centers;
- (5) industrial properties such as warehouses or manufacturing plants; and

- (6) institutional properties such as assisted living facilities, nursing homes, hospitals, schools, churches, or government buildings.

*History Note Authority G.S. 93E-1-10; Eff. July 1, 2016.*

**21 NCAC 57A .0604 TYPES OF APPRAISAL EXPERIENCE**

(a) An applicant may receive experience credit for standard appraisals, supervising appraiser's reviews, review appraisals, and condemnation appraisals.

(b) If the applicant performed at least 75 percent of the work associated with an appraisal, including a field inspection and preparation of the appraisal report, full credit shall be given for that appraisal. Except as provided in Paragraphs (d) and (e) of this Rule, no credit shall be awarded if the applicant performed less than 75 percent of the work on an appraisal.

(c) A "standard appraisal" means the process of developing an appraisal in accordance with Standard Rule 1 of USPAP and preparing a written appraisal report or file memorandum describing the appraisal and reporting the estimate of value.

(d) A "supervising appraiser's review" means the process of reviewing an appraisal report prepared by an affiliated appraiser and signing the appraisal report, including signing as "review appraiser" on a Uniform Residential Appraisal Report form. It shall not include signing a report that a real estate appraiser trainee has prepared.

(e) A "review appraisal" means the process of reviewing an appraisal report prepared by another appraiser and preparing a separate written appraisal report or file memorandum setting forth the results of the review process. No more than 50 percent of an applicant's appraisal experience credit shall be from preparing review appraisals.

(f) A "condemnation appraisal" means an appraisal of real property for eminent domain proceedings where a partial taking is involved and the appraiser must develop both a "before taking" and an "after taking" value.

(g) A "demonstration appraisal" means an appraisal performed without a client. No more than 25 percent of the applicant's experience shall be from preparing demonstration appraisals. If a trainee performs a demonstration appraisal, the trainee's supervisor shall sign the appraisal in order for the trainee to receive experience credit for it.

*History Note: Authority G.S. 93E-1-10; Eff. July 1, 2016.*

**21 NCAC 57A .0605 REPORTING APPRAISAL EXPERIENCE**

(a) Applicants shall use the Appraisal Board's Appraisal Experience Log to report appraisal experience. The log is available on the Board's website at <http://www.ncappraisalboard.org/forms-html/forms.htm>.

(b) The Log shall contain the following:

- (1) the applicant's name and signature;
- (2) the supervisor's name and signature;
- (3) the supervisor's certificate number;
- (4) the date the supervisor signed the log;

- (5) the subject property address;
- (6) the date the appraisal report was signed;
- (7) the report type such as an appraisal report, a restricted appraisal report, or the type of reporting form used;
- (8) the client's name;
- (9) the applicant's file number for the appraisal assignment, if any;
- (10) the number of hours requested for appraisal experience;
- (11) whether the supervisory appraiser accompanied the applicant on the inspection of the subject property; and
- (12) a description of the work performed by the applicant and his or her supervisor on each assignment.

(c) Applicants shall retain copies of all appraisals and their associated work files in accordance with the Record Keeping Rule of USPAP to support all appraisal experience reported on the log.

*History Note: Authority G.S. 93E-1-6.1; 93E-1-10; Eff. July 1, 2016.*

**21 NCAC 57B .0303 COURSE COMPLETION STANDARDS**

- (a) Academic standards for course completion shall assure that students receiving a passing grade possess knowledge and understanding of the subject areas prescribed for the course. A student's grade shall be based on his or her performance on examinations, graded homework, and class work assignments.
- (b) Course completion requirements shall include a comprehensive final examination that accounts for at least 50 percent of a student's grade for the course. Take-home or open-book final examinations shall be prohibited. Schools and course sponsors may, within 90 days of the course ending date, allow a student one opportunity to make up any missed course examination or to retake any failed course examination without repeating the course; however, any make up examination shall be comparable to the initial examination with regard to the number of questions and overall difficulty, and at least 75 percent of the questions in the make up examination shall be different from those used in the initial examination.
- (c) The final examination shall be proctored. The proctor shall:
  - (1) require photographic identification from the applicant, such as a driver's license or a passport;
  - (2) not allow a student to bring a personal items such as a backpack, purse, briefcase, or device that would enable the student to access the internet during the examination; and
  - (3) be the school or course sponsor director, an employee of the school or course sponsor, or the instructor for the course. If a director, employee, or instructor is not available to proctor the examination, the school or course sponsor shall employ an official to serve as a proctor. Officials that may serve as proctors include a public librarian, notary public, attorney, police officer, or teacher. Proctors

shall not be a family member or friend of a student unless that person is the director, an employee, or an instructor of the school or the course sponsor.

- (d) The attendance required for satisfactory course completion shall be 90 percent of all scheduled classroom hours for the course.
- (e) The instructor may offer additional hours of instruction so that students may make up lost hours of instruction.
- (f) Students who are taking a qualifying course, other than the 15 hour National USPAP course, for continuing education credit may sit for the final course examination, but they shall not be required to pass the examination in order to receive continuing education credit. Students who take and pass the examination, and who comply with the provisions of this Rule shall be given a course completion certificate. Students who do not take and pass the examination but who otherwise comply with the provisions of this Rule shall be given a certificate of attendance. The requirements set forth in a conditional dismissal, consent order, or order of the Board after a hearing shall not be modified by the provisions of this Paragraph.

*History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2016; July 1, 2014; July 1, 2010; September 1, 2008; July 1, 2005; August 1, 2002.*

**21 NCAC 57B .0304 COURSE SCHEDULING**

- (a) All courses shall have fixed beginning and ending dates, and schools and course sponsors shall not utilize a scheduling system that allows students to enroll late for a course and then complete their course work in a subsequently scheduled course. Late enrollment shall be permitted only if the enrolling student satisfies the attendance requirements set forth in Paragraphs (d) and (e) of Rule .0303 of this Section.
- (b) Courses shall be scheduled in a manner that provides for class meetings of up to eight classroom hours in any given day.
- (c) A classroom hour consists of 50 minutes of classroom instruction. Classroom breaks at the rate of 10 minutes per classroom hour shall be scheduled and taken at reasonable times; however, instructors shall not use accumulated, unused break time to end the class early.
- (d) Instruction shall be given for the minimum hours specified in Rules .0101, .0102, and .0103 of this Section.
- (e) All courses, except those taught on-line via the Internet, shall have a minimum of five students enrolled in order for the course to be held.

*History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2016; July 1, 2010; January 1, 2008; July 1, 2005; August 1, 2002.*

**21 NCAC 57B .0614 INSTRUCTORS FOR THE TRAINEE/SUPERVISOR COURSE REQUIRED BY G.S. 93E-1-6.1**

- (a) Instructors for the trainee supervision course set forth in G.S. 93E-1-6.1 shall be real estate appraisers who have been certified residential or certified general appraisers for at least three years.

(b) Instructors shall not have received any disciplinary action regarding their appraisal certificate from the State of North Carolina or any other state within the previous three years. In addition, instructors shall not have been convicted of or pleaded guilty to any criminal act. "Criminal act" shall not include speeding tickets or traffic infractions.

(c) All applicants for instructor of the trainee supervision course shall obtain a criminal records check. This records check must have been performed within 60 days of the date the completed application for approval as an instructor is received by the Board. Applicants shall pay the vendor directly for the cost of these reports. The records check shall comply with the provisions of 21 NCAC 57A .0202(e).

(d) Persons who wish to teach the trainee supervision course shall be approved by the Board before they may teach this course. Such approval of a trainee supervision course instructor authorizes the instructor to teach the course for any approved course sponsor.

(e) Applicants who wish to become instructors for the trainee supervision course shall attend an educational workshop sponsored by the Board before they may be approved. Applicants may check the Board's website for information regarding the date and location of the workshop. The website may be accessed at [www.ncappraisalboard.org](http://www.ncappraisalboard.org).

(f) Approval of trainee supervision course instructors granted on or after July 1 shall expire on June 30 of the following year.

*History Note: Authority G.S. 93E-1-6.1; 93E-1-8(c); 93E-1-10;*

*Eff. July 1, 2014;*

*Amended Eff. July 1, 2016.*

**21 NCAC 57D .0309 COMPLAINTS AGAINST APPRAISERS**

(a) If an appraisal management company believes that a real estate appraiser licensed in this State has violated applicable law or the Uniform Standards of Professional Appraisal Practice or has engaged in unethical conduct, it shall file a complaint with the Board. If the complaint relates to an appraisal, it shall be filed within 90 days of the date the appraisal is submitted to the appraisal management company. The complaint form may be found on the Board's website at [www.ncappraisalboard.org](http://www.ncappraisalboard.org).

(b) The complaint shall state the name and contact information for the person at the appraisal management company who should be contacted during the investigation into the complaint. This person shall have knowledge of the basis for the complaint and shall be able to produce records required by the investigation.

*History Note: Authority G.S. 93E-2-3; 93E-2-4(c);*

*Eff. January 1, 2011;*

*Amended Eff. July 1, 2016.*

**21 NCAC 57D .0403 CRIMINAL BACKGROUND CHECKS**

(a) A criminal background check for the purpose of this Rule shall meet the requirements of 21 NCAC 57A .0202(e).

(b) If an appraisal management company requests a background check from an appraiser and that appraiser has had a criminal background check performed within the preceding twelve months, it shall be the responsibility of the appraiser to provide a complete copy of that background check to the appraisal management company.

(c) If an appraisal management company's client requires a background check that is more comprehensive than the one required under G.S. 93E-1-6(c1) and codified in 21 NCAC 57A .0202(e), nothing in this Rule prohibits the client from obtaining that background check as long as the appraiser is not required to pay for that background check.

(d) An appraisal management company may obtain more than one background check on an appraiser in a 12 month period as long as the appraiser is not required to pay for that additional background check.

(e) An appraiser who alters, amends, or otherwise changes the results of a criminal background check submitted to an appraisal management company or a lender or who knowingly submits a background check that has been altered shall be subject to discipline pursuant to G.S. 93E-1-12.

*History Note: Authority G.S. 93E-2-3; 93E-2-4(h);*

*Eff. July 1, 2016.*

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**RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission July 21, 2016 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  
Jay Hemphill  
Jeffrey A. Poley

**Appointed by House**  
Garth Dunklin (Chair)  
Stephanie Simpson (2<sup>nd</sup> Vice Chair)  
Anna Baird Choi  
Jeanette Doran  
Danny Earl Britt, Jr.

**COMMISSION COUNSEL**

Abigail Hammond	(919)431-3076
Amber Cronk May	(919)431-3074
Amanda Reeder	(919)431-3079
Jason Thomas	(919)431-3081

**RULES REVIEW COMMISSION MEETING DATES**

July 21, 2016	August 18, 2016
September 15, 2016	October 19, 2016

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**AGENDA**

**RULES REVIEW COMMISSION  
THURSDAY, JULY 21, 2016 10:00 A.M.  
1711 New Hope Church Rd., Raleigh, NC 27609**

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
  - A. Property Tax Commission – 17 NCAC 11 .0216, .0217 (Hammond)
  - B. Board of Barber Examiners - 21 NCAC 06B .0101, .0103, .0105 .0301, .0302, .0305, .0308, .0503, .0505; 06C .0202, .0203, .0501, .0909; 06F .0110, .0116; 06G .0106; 06H .0102; 06I .0101, .0105; 06J .0101; 06K .0104; 06L .0118, .0119; 06N .0103, .0104, .0106, .0108, .0110; 06O .0120; 06Q .0101, .0103, .0104 (Reeder)
- IV. Review of Log of Filings (Permanent Rules) for rules filed May 23, 2016 through June 20, 2016
  - Sheriffs Education and Training Standards Commission (Thomas)
  - Environmental Management Commission (Hammond)
  - Parks and Recreation Authority(Thomas)
  - Department of Revenue (Hammond)
  - Board of Dental Examiners (May)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review
  - Review of Reports
    - 1. 04 NCAC 01 – Department of Commerce (Reeder)
    - 2. 19A NCAC 02 - Department of Transportation (Hammond)
- VII. Commission Business
  - C. Legislative update
    - Next meeting: Thursday, August 18, 2016

**Commission Review**  
*Log of Permanent Rule Filings*  
 May 23, 2016 through June 20, 2016

**SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION**

The rules in Subchapter 10B are from the N.C. Sheriffs' Education and Training Standards Commission. These rules govern the commission organization and procedure (.0100); enforcement rules (.0200); minimum standards for employment as a justice officer (deputy or jailer) (.0300); certification of justice officers (.0400); standards and accreditation for justice officers schools, training programs, and the instructors (.0500-.0900); certificate and awards programs for sheriffs, deputies, justice officers, jailers, reserve officers, and telecommunicators (.1000-.1700); in-service training (.2000); and firearms in-service training and re-qualification (.2100).

Detention Officer Certification Course 12 NCAC 10B .0601  
 Amend/\*

**ENVIRONMENTAL MANAGEMENT COMMISSION**

The rules in Subchapter 2B pertain to surface water standards and monitoring including procedures for assignment of water quality standards (.0100); the standards used to classify the waters of the state (.0200); stream classifications (.0300); effluent limitations (.0400); monitoring and reporting requirements (.0500); and water quality management plans (.0600).

Cape Fear River Basin 15A NCAC 02B .0311  
 Amend/\*

**PARKS AND RECREATION AUTHORITY**

The rules in Subchapter 12K cover the allocation and awarding of grants for qualified local governmental units for local park and recreation purposes.

Funding Cycle 15A NCAC 12K .0103  
 Amend/\*

**REVENUE, DEPARTMENT OF**

The rules in Subchapter 6C concern the withholding of individual income taxes including withholding requirements (.0100), and the regulation of reporting and paying of income tax withheld (.0200).

Supplemental Wage Payments 17 NCAC 06C .0117  
 Amend/\*

**DENTAL EXAMINERS, BOARD OF**

The rules in Chapter 16 are from the Board of Dental Examiners.

The rules in Subchapter 16G concern dental hygienists.

Functions Which May Be Delegated 21 NCAC 16G .0101  
 Amend/\*

Procedures Prohibited 21 NCAC 16G .0103  
 Amend/\*

The rules in Subchapter 16H concern dental assistants including classification and training (.0100); and permitted functions of dental assistant (.0200).

<u>Dental Assistant I</u> Amend/*	21	NCAC	16H	.0102
<u>Approved Education and Training Programs</u> Amend/*	21	NCAC	16H	.0104
<u>Permitted Functions of Dental Assistant II</u> Amend/*	21	NCAC	16H	.0203

The rules in Subchapter 16I concern the annual renewal of the dental hygienist license.

<u>Certificate Displayed</u> Amend/*	21	NCAC	16I	.0109
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The rules in Subchapter 16R concern continuing education requirements of dentists (.0100 and .0200).

<u>Renewal Certificate Must Be Displayed</u> Amend/*	21	NCAC	16R	.0110
<u>Continuing Education Required</u> Amend/*	21	NCAC	16R	.0201

The rules in Subchapter 16V concern unprofessional conduct.

<u>Definition: Unprofessional Conduct by a Dentist</u> Amend/*	21	NCAC	16V	.0101
<u>Definition: Unprofessional Conduct by a Dental Hygienist</u> Amend/*	21	NCAC	16V	.0102

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**CONTESTED CASE DECISIONS**

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*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.*

**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	A. B. Elkins II
Don Overby	Selina Brooks
J. Randall May	Phil Berger, Jr.
J. Randolph Ward	

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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>DEPARTMENT OF JUSTICE</u></b>			
James Philip Davenport v. Sheriffs' Education and Training Standards Commission	15 DOJ 07442	04/19/16	31:01 NCR 67
Kevin Michael Weber v. Sheriffs' Education and Training Standards Commission	15 DOJ 08610	04/22/16	31:01 NCR 71
<b><u>STATE BOARD OF EDUCATION</u></b>			
Laura Kerrigan v. Department of Public Instruction	15 EDC 03061	09/21/15	31:01 NCR 76
TPS Publishing Inc. v. State Board of Education	15 EDC 06344	04/29/16	31:01 NCR 89
<b><u>DEPARTMENT OF INSURANCE</u></b>			
Department of Insurance v. Andre Day	15 INS 07291	04/26/16	31:01 NCR 104

FILED  
OFFICE OF ADMINISTRATIVE HEARINGS  
04/19/2016 11:06 AM

STATE OF NORTH CAROLINA  
COUNTY OF JOHNSTON

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 DOJ 07442

JAMES PHILIP DAVENPORT, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 N.C. SHERIFFS' EDUCATION )  
 AND TRAINING STANDARDS )  
 COMMISSION, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

**PROPOSAL FOR DECISION**

On January 12, 2016, Administrative Law Judge Melissa Owens Lassiter heard this case in Fayetteville, North Carolina after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), the designation of an administrative law judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes. Pursuant to the undersigned's request, Respondent filed a draft Proposal for Decision with the Office of Administrative Hearings on April 18, 2016.

**APPEARANCES**

Petitioner: Pro se  
Respondent: Matthew L. Boyatt, Assistant Attorney General  
N.C. Department of Justice  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

**ISSUE**

Whether Petitioner's application for certification is subject to denial based upon Petitioner having been denied certification by the North Carolina Criminal Justice Education and Training Standards Commission?

**FINDINGS OF FACT**

1. Both parties are properly before the Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the

Petitioner received by mail the Notification of Probable Cause to Deny Justice Officer Certification letter mailed by Respondent North Carolina Sheriffs' Education and Training Standards Commission on September 24, 2015. (Respondent's Exhibit 1)

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Respondent Commission" or "Sheriffs' Commission") has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.

3. 12 NCAC 10B .0204(c)(5) provides the Sheriffs' Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified officer:

- (5) has been denied certification or had such certification suspended or revoked by the North Carolina Criminal Justice Education and Training Standards Commission....

4. Petitioner has extensive law enforcement experience prior to applying for certification through the Sheriffs' Commission. Petitioner was a detective for the Baltimore County Police Department in the State of Maryland. Petitioner retired from that agency in good standing after 20 years' service. Petitioner also worked as an investigator for the Department of State in Pennsylvania for approximately 4 years.

5. Petitioner completed Basic Law Enforcement Training in 2007 at Johnston Community College in Smithfield, North Carolina. Petitioner applied for and obtained justice officer certification from the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "CJ Commission") on February 22, 2013. See Respondent's Exhibit 3. Petitioner worked for the North Carolina General Assembly Police and later the Rocky Mount Police department.

6. Petitioner is currently an applicant for justice officer certification through the Sheriffs' Commission. Petitioner has not previously held certification through the Sheriffs' Commission. Petitioner is currently employed at the Wayne County Sheriff's Office and is the lead bailiff at that agency.

7. Petitioner testified at the administrative hearing, and does not dispute that he previously applied for certification through the CJ Commission, and that the CJ Commission denied his certification for a period of five (5) years for material misrepresentation in violation of rule 12 NCAC 09A .0204(b)(6), as set out in greater detail in the Final Agency Decision introduced into evidence in this case. See Respondent's Exhibit 3.

8. However, pursuant to the CJ Commission's Final Agency Decision, the denial of Petitioner's application for certification for a period of five (5) years was stayed, and Petitioner was issued certification by the CJ Commission on the condition that he not

violate any federal or state laws, and that he remain in compliance with the rules established by the CJ Commission.

9. Petitioner has remained in compliance with the CJ Commission's Final Agency Decision since being issued certification by that Commission. Petitioner has not been charged with committing any criminal offense and has remained in compliance with the rules established by the CJ Commission.

10. The Sheriff's Commission has the authority to deny Petitioner's application for certification pursuant to 12 NCAC 10B .0204(c)(5) based on the undisputed fact that Petitioner's application for certification was denied by the CJ Commission for material misrepresentation. However, mitigating circumstances exist in this case to warrant a lesser sanction than denial of Petitioner's application for certification through the Sheriffs' Commission. Issuance of certification with a probationary period is warranted in light of Petitioner having been issued certification by the CJ Commission and also based upon Petitioner's extensive experience in law enforcement and his commitment to the profession.

**CONCLUSIONS OF LAW**

1. The parties are properly before the undersigned Administrative Law Judge, and jurisdiction and venue are proper.

2. 12 NCAC 10B .0204(c)(5) provides the Sheriffs' Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified officer:

- (5) has been denied certification or had such certification suspended or revoked by the North Carolina Criminal Justice Education and Training Standards Commission....

3. Petitioner applied for certification through the CJ Commission and his application for certification was denied for no less than five (5) years based upon material misrepresentation in violation of rule 12 NCAC 09A .0204(b)(6). Respondent's Exhibit 3.

4. Respondent's proposed denial of Petitioner's application for justice officer certification is supported by substantial evidence. However, pursuant to 12 NCAC 10B .0204, the Sheriffs' Commission has the discretion to impose a lesser sanction in lieu of denying Petitioner's application for certification. The undersigned recommends that Respondent issue Petitioner certification and place Petitioner on a two (2) year probationary period, during which time Petitioner shall not violate any federal or state law and shall remain in compliance with the rules established by the Sheriffs' Commission and the CJ Commission. At the end of this probationary period, Petitioner's certification shall remain in full force and effect provided he is in compliance with the rules established by the Respondent Commission and the CJ Commission.

**PROPOSAL FOR DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends Respondent issue a justice officer certification to Petitioner, and place Petitioner on a two (2) year probationary period, during which time Petitioner shall not violate any federal or state law and shall remain in compliance with the rules established by the Sheriffs' Commission and the CJ Commission. Petitioner's certification shall remain in full force and effect at the conclusion of this probationary period, provided Petitioner remains in compliance with the rules established by the Respondent Commission and the CJ Commission.

**NOTICE**

The Agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed findings of fact and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e). The agency that will make the final decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

This the 19th day of April, 2016.



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Melissa Owens Lassiter  
Administrative Law Judge

FILED  
OFFICE OF ADMINISTRATIVE HEARINGS  
04/22/2016 12:26 PM

STATE OF NORTH CAROLINA		IN THE OFFICE OF
COUNTY OF PITT		ADMINISTRATIVE HEARINGS
		15 DOJ 08610
KEVIN MICHAEL WEBER,		
	)	
Petitioner,	)	
	)	
v.	)	PROPOSAL FOR DECISION
	)	SUMMARY JUDGMENT FOR
NORTH CAROLINA SHERIFFS'	)	PETITIONER
EDUCATION AND TRAINING	)	
STANDARDS COMMISSION,	)	
	)	
Respondent.	)	
_____	)	

Petitioner is an applicant for justice officer certification through the Pitt County Sheriff's Office. This law enforcement certification case arises out of action by Respondent whereby on September 24, 2015, Respondent issued a Notification of Probable Cause to Deny Justice Officer Certification letter to Petitioner via certified mail.

**APPEARANCES**

Petitioner: Kevin Michael Weber, Pro Se

Respondent: Matthew L. Boyatt, Assistant Attorney General  
Attorney for Respondent  
N.C. Department of Justice  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

**ISSUE**

Has Petitioner been convicted of a combination of 4 or more Class A or Class B misdemeanors?

**FINDINGS OF FACT**

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by mail the proposed Denial of Justice Officer's Certification letter, mailed by Respondent Sheriffs' Commission on September 24, 2015.

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or "Sheriffs' Commission") has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.

3. The proposed denial of Petitioner's application for justice officer certification is based on six (6) misdemeanor worthless check convictions which appeared on Petitioner's criminal record at the time of Respondent's September 24, 2015, Notification of Probable Cause to Deny Justice Officer Certification.

4. 12 NCAC 10B .0204(d)(5) states the Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant has committed or been convicted of:

(5) any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103 (10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103 (10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

5. At the time Respondent issued its September 24, 2015, written notification, Petitioner stood convicted of the following misdemeanor offenses:

- i. Class A misdemeanor - Simple Worthless Check, 2004 CR 050420;
- ii. Class A misdemeanor – Simple Worthless Check, 2004 CR 050421;
- iii. Class A misdemeanor – Simple Worthless Check, 2004 CR 050422;
- iv. Class B misdemeanor – Simple Worthless Check, 2004 CR 050423;
- v. Class B misdemeanor – Simple Worthless Check, 2004 CR 050424; and
- vi. Class B misdemeanor – Simple Worthless Check, 2004 CR 050425.

6. Petitioner filed a request for an administrative hearing on November 16, 2015. The basis of Petitioner's request for an administrative hearing was that Petitioner was in the process of having certain criminal convictions removed from his criminal record. Each party filed its Prehearing Statement pursuant to the Court's December 7, 2015, Order For Prehearing Statements.

7. On December 4, 2015, the district court set aside Petitioner's worthless check convictions in the following three (3) cases: 2004 CR 050420; 2004 CR 050421; and 2004 CR 050422. (See attachment A)

8. On that same date, the Pitt County District Attorney dismissed 2004 CR 050420; 2004 CR 050421; and 2004 CR 050422. (See attachment A)

9. At the time of the proposed denial of Petitioner's application for justice officer certification on September 24, 2015, Petitioner stood convicted of 4 or more misdemeanor offenses in violation of 12 NCAC 10B .0204 (d) (5), as set out above in subparagraph 5 in greater detail.

11. However, because case numbers 2004 CR 050420; 2004 CR 050421; and 2004 CR 050422 were recently set aside and subsequently dismissed by the Pitt County District Attorney's Office, Petitioner no longer stands convicted of 4 misdemeanor offenses pursuant to 12 NCAC 10B .0204 (d)(5). Therefore, there is no genuine issue of material fact for hearing in this dispute, and Petitioner is entitled to summary judgment as a matter of law. In entering this Order Granting Summary Judgment to Petitioner, the undersigned is making no findings of fact and conclusions of law as to whether Petitioner has "committed" the offenses which were set aside.

**CONCLUSIONS OF LAW**

1. The parties are properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper.

2. Pursuant to 12 NCAC 10B .0204(d)(5), the Commission may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the applicant for certification or certified officer has committed or been convicted of:

(5) any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

3. Pursuant to 12 NCAC 10B .0103(2), "convicted" or "conviction" means and includes, for purposes of that Chapter, the entry of (a) a plea of guilty; (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or (c) a plea of no contest, nolo contendere, or the equivalent.

4. Pursuant to 12 NCAC 10B .0205(3)(d), when the Commission denies the certification of a justice officer, the period of sanction shall be for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist,

where the cause of sanction is commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(5).

5. At the time Respondent issued its proposed denial of Petitioner's application for justice officer certification on September 24, 2015, Petitioner stood convicted of the following six (6) worthless check offenses:

- i. Class A misdemeanor - Simple Worthless Check, 2004 CR 050420;
- ii. Class A misdemeanor – Simple Worthless Check, 2004 CR 050421;
- iii. Class A misdemeanor – Simple Worthless Check, 2004 CR 050422;
- iv. Class B misdemeanor – Simple Worthless Check, 2004 CR 050423;
- v. Class B misdemeanor – Simple Worthless Check, 2004 CR 050424; and
- vi. Class B misdemeanor – Simple Worthless Check, 2004 CR 050425.

6. On December 4, 2015, the following three (3) of Petitioner's worthless check convictions were set aside and subsequently dismissed by the Pitt County District Attorney: 2004 CR 050420; 2004 CR 050421; and 2004 CR 050422.

7. Petitioner no longer stands convicted of a combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103 (10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103 (10)(b) as a Class B misdemeanor. Therefore, there is no genuine issue of material fact for hearing in this dispute, and Petitioner is entitled to summary judgment as a matter of law. The undersigned is making no findings of fact or conclusions of law as to whether Petitioner committed any of the worthless check offenses that have been set aside.

**PROPOSAL FOR DECISION**

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned recommends the Respondent take no action to deny Petitioner's application for certification based on the worthless check convictions that were set aside and dismissed after Petitioner submitted his application for certification through the Commission. This proposal shall in no way affect the Commission's ability to consider the possible commission of any of the above-referenced offenses that were set aside.

**NOTICE**

The Agency making the Final Decision in this contested case is required to give each party an opportunity to file Exceptions to this Proposal for Decision, to submit

Proposed Findings of Fact and to present oral and written arguments to the Agency.  
N.C.G.S. § 150B-40(e).

The Agency that will make the Final Decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

This the 22nd day of April, 2016.

A handwritten signature in black ink, appearing to read "D. Overby", is written above a solid horizontal line.

Donald W Overby  
Administrative Law Judge

NORTH CAROLINA

OFFICE OF ADMINISTRATIVE HEARINGS

WAKE COUNTY

15 EDC 3061

LAURA KERRIGAN )

Petitioner )

v )

NORTH CAROLINA DEPARTMENT )  
OF PUBLIC INSTRUCTION )

Respondent )

FINAL DECISION

Office of  
Administrative Hearings  
2015 SEP 21 AM 10:06

Filed

This matter coming on to be heard and being heard August 26, 2015, in the Office of Administrative Hearings, and the Petitioner appeared pro se in this matter, while the Respondent was represented by Assistant Attorney General Ms. Tiffany Y. Lucas, and based upon the evidence presented and the arguments of the parties, the undersigned makes the following findings of fact:

1. The Petitioner is a citizen and resident of Wake County, North Carolina, and is employed by the Wake County Public School System as a social studies teacher at Cary High School.
2. The State Board of Education is empowered by statute to "determine and fix the salary for each grade and type of license which it authorizes." N.C. Gen. Stat. § 115C-296(a).
3. Respondent utilizes an internal policy, TCP-A-006, entitled "Policies related to experience/degree credit for salary purpose" to determine the salary for public school employees based on certain credit for non-teaching work experience. (Respondent's Exhibit 1).
4. There is no rule in the North Carolina Administrative Code which has been promulgated to determine the salary and creditable non-teaching work experience for public school employees.
5. The State Board of Education, however, has published policies which it holds out to the public as having the same force and effect as rules promulgated pursuant to the North Carolina Administrative Code.
6. TCP-A-006 is one such policy.

7. Pursuant to this policy, credit for non-teaching work experience can be applied to a teacher's total licensure experience rating on the recommendation of the ... NC LEA which has employed the individual in a professional position." TCP-A-006, Section 6.20 (Resp. Ex. 1).

8. To receive credit for prior non-teaching work experience, said work experience must be "relevant non-teaching work experience."

9. "Relevant non-teaching work experience" is professional work experience, in either the public or private sector, which is "directly related to an individual's area of licensure and work assignment. TCP-A-006, Section 6.20 (Resp. Ex. 1).

10. Such experience must also be at least half-time, completed after the applicant has reached 18 years of age, not an on-the-job training assignment, and paid and documented. TCP-A-006, Section 6.20 (Resp. Ex. 1).

11. Petitioner was initially licensed as a social studies teacher in 2010, and her current license will expire in 2019.

12. Petitioner is licensed in "Secondary Social Studies and Middle Grades Social Studies." (Resp. Ex. 6).

13. Petitioner is also a nationally certified teacher through the National Board for Professional Teaching Standards.

14. Petitioner received her Bachelor's Degree from North Carolina State University in 1989, and a law degree from William and Mary in 1992.

15. From December 9, 1997 through January 31, 2009, Petitioner served as Head Coach for the North Carolina State University (NCSU) women's soccer program.

16. Petitioner is seeking non-teaching work experience credit for her work at NCSU during this time period. Details regarding her duties and obligations at the university are set forth more fully below.

17. On October 21, 2013, the Wake County Public School System, through Licensure Administrator Ms. Pat McCarthy, submitted a request to the Respondent to obtain eleven years of credit towards Petitioner's license based upon her experience at NCSU.

18. Ms. McCarthy's request was submitted on a form entitled, "LEA Recommendation for Nonteaching Experience Credit." (Resp. Ex. 4, p8).

19. In making the request, Ms. McCarthy certified that Petitioner's work experience as Head Coach for the NCSU women's soccer program was "directly related to [her] area of licensure and work assignment." (Resp. Ex. 4, p8).

20. Ms. McCarthy also certified that she calculated the years for which credit was sought "using the Department of Public Instruction, Licensure Section's experience formula." (Resp. Ex. 4, p8).

21. As Head Coach at NCSU, Petitioner was responsible for off-season training, on-the-field practice sessions, game preparation, and game performance ordinarily associated with running and managing an athletic team.

22. Petitioner's employment-related duties and obligations, however, included additional responsibilities that reflect the business of collegiate athletics, including, but not limited to, the following:

- a. Responsible for the program's operating budget;
- b. Responsible for the program's scholarship budget;
- c. Supervising and managing the program's assistant coaches and staff;
- d. Making personnel, financial, and facilities related recommendations for the program;
- e. Implementing risk management strategies;
- f. Engaging in public relations activities to promote NCSU and the soccer program;
- g. Engaging in fundraising activities for the program and university;
- h. Hosting youth summer camps, which she had to market, promote, and staff. In addition, Petitioner was solely responsible for budgetary operations of these camps; and
- i. Ensuring compliance with NCAA, ACC, and NCSU policies and procedures.

(Petitioner's Exhibit 1, p2).

23. While employed at NCSU, the Athletic Director asked Petitioner to serve as a Sexual Harassment Resolution Officer and as Director of the Gender Equity Committee.

24. These assignments were a direct result of her employment as women's soccer coach and part of her official duties at NCSU.

25. Petitioner was appointed by and reported directly to the Athletic Director in her capacity as Gender Equity Director.

26. Petitioner was the Athletic Department representative in her capacity as Sexual Harassment Resolution Officer, reporting directly to the Athletic Director.

27. The official job description of the Head Women's Soccer Coach at NCSU includes the catch-all phrase, "other duties as required." (Pet. Ex. 1, p2).

28. A supervisor or employer can impose additional responsibilities upon an employee that are not included in a job description, but are nonetheless part of that individual's official duties.

29. As a Sexual Harassment Resolution Officer, Petitioner investigated sexual harassment claims and issued written opinions and reports concerning those investigations. She also served “as a liaison for sexual harassment education and prevention programs” for the athletic department. (Pet. Ex. 1, p2).

30. As Director of the Gender Equity Committee, Petitioner investigated, monitored, and recommended actions needed by NCSU to ensure compliance with federal law and regulations, NCAA rules and regulations, and Title IX requirements. Petitioner’s responsibility as director of this committee included reporting requirements and policy development. (Pet. Ex. 1, p2).

31. Former Associate Director of Athletics at NCSU, Mr. Barry Joyce, was Petitioner’s direct supervisor and served with her on the Gender Equity Committee.

32. Mr. Joyce testified that Petitioner worked in excess of 40 hours per week fulfilling her duties associated with being the women’s soccer coach at NCSU; he estimated that her administrative duties occupied 95% of her time. Only 5% of her work was on the field with student-athletes.

33. Mr. Joyce also stated that Petitioner’s work at NCSU involved making informed financial decisions for effective management of the university’s resources, using risk management strategies, and understanding the role of market factors in economic decision making.

34. Ms. Kerrigan also had to understand the civil and criminal justice systems in her work with the Gender Equity Committee and as a Sexual Harassment Resolution Officer.

35. According to Mr. Joyce, Petitioner’s role on the Gender Equity Committee was “essential for the function of the [athletic] department.”

36. The individual who succeeded Petitioner at NCSU had the same duties and responsibilities as the Petitioner.

37. Following her employment at NCSU, Petitioner began teaching social studies at Cary High School.

38. As a licensed social studies teacher, Petitioner taught courses at Cary High School in Civics and Economics and Law and Justice, among others.

39. As a former attorney, Petitioner had previously been credited with four years of non-teaching experience from 1993-1997 as a law clerk and attorney directly related to her licensure. (Resp. Ex. 8, p1). Petitioner is not seeking credit as an attorney in this matter.

40. As a social studies teacher, the classes which the Petitioner teaches can and have changed from semester to semester, and year to year.

41. Ms. Keisha Rock, Assistant Principal at Cary High School, is Petitioner's direct supervisor and evaluator. She has supervised the Petitioner for five years.

42. Ms. Rock knows the Essential Standards for the Social Studies course of study and participates in hiring decisions at Cary High School.

43. Ms. Rock reviewed the non-teaching experience supporting documentation matrix provided to Respondent, detailing the nexus between Petitioner's work experience and the "Common Core/Essential Standards course of study[.]" (Pet. Ex. 1, p3).

44. According to Ms. Rock, it would be advantageous to hire someone with prior experience creating and managing a budget, monitoring income and expenditures, running a soccer camp business to teach Civics and Economics, and that this knowledge is useful in trying to educate others.

45. Ms. Rock stated that creating and managing of budgets, monitoring income and expenditures, running a soccer camp business are all directly related to teaching Civics and Economics, and the essential standards in the curriculum.

46. Petitioner's experience with the Gender Equity Committee is directly related to the Civics and Economics curriculum and the Law and Justice curriculum, especially as it relates to the 14<sup>th</sup> Amendment, Equal Protection, and civil liability, according to Ms. Rock.

47. Work experience with practical implications of the 14<sup>th</sup> Amendment and Equal Protection requirements is directly related to teaching Civics and Economics, and Law and Justice, and the essential standards in the curriculum.

48. Petitioner's experience in investigating sexual harassment complaints and preparing reports from those investigations is directly related to the Civics and Economics curriculum and the Law and Justice curriculum, especially as it relates to the 14<sup>th</sup> Amendment, Equal Protection, and civil and criminal liability, according to Ms. Rock.

49. Work experience in investigating and reporting on sexual harassment complaints is directly related to teaching Civics and Economics, and Law and Justice, and the essential standards in the curriculum.

50. Specifically, Petitioner established that her experience directly related to the essential standards set forth below:

- a. CE. PFL.1 - Analyze the concepts and factors that enable individuals to make informed financial decisions for effective resource management.
- b. CE. PFL.2 - Understand how risk management strategies empower and protect consumers.
- c. CE. E. 1 - Understand economies, markets and the role economic factors play in making economic decisions (Supply, demand, market equilibrium, competition, production).

- d. EC. C&G. 3 - Analyze the legal system within the United States in terms of development, execution, and protection of citizenship rights at all levels of government.
- e. L&J 2.03 - Examine issues and problems confronting the civil and criminal justice systems.
- f. L&J 2.04 - Assess the effectiveness of the state and federal judicial systems in resolving issues and problems.  
(Pet. Ex. 1, pp3-4).

51. Ms. Rock described Petitioner's classroom as very engaging due to Ms. Kerrigan's use of real-world examples, and her past experiences allow Petitioner to connect with her students.

52. On April 1, 2014, Respondent's Licensure Specialist, Christy Lane, notified the Wake County Public School System that the request for non-teaching experience credit had been denied because Petitioner's experience was "not directly related to social studies." (Resp. Ex. 3).

53. Petitioner and the Wake County Public School System appealed the Respondent's denial.

54. The Graduate Pay and Non-Teaching Appeals Panel met on February 20, 2015, to hear Petitioner's appeal of the denial.

55. In a 6-0 vote, the panel determined that Petitioner's experience as the Head Coach for NCSU's women's soccer program was not directly related her social studies license and her assignment at Cary High School.

56. Respondent presented no evidence in the form of minutes, notes, or benchmark requirements for credit regarding the Petitioner's matter, only an agenda that established the 6-0 decision.

57. Ms. Karoline Fisher, Regional Director for the Catawba Region Alternative Licensing Center, was a member of the appeals panel and works with current and lateral entry teachers on issues associated with licensure.

58. Ms. Fisher admitted that Ms. Kerrigan's experience at NCSU was directly related to her licensure in social studies teacher and her assignment as a civics and economics teacher, in "a small percentage."

59. Despite this acknowledgement, Ms. Fisher stated that she was tasked with determining if the duties performed by the teacher on a daily basis are similar in content to what is being taught in the classroom on a daily basis.

60. Ms. Fisher also stated that she was looking for what was done on a daily basis in the job and whether it was directly relevant to what was done on a daily basis in the classroom.

61. Neither of these are the tests set forth in the Respondent's policy.
62. Further, Ms. Fisher testified that "just because someone may have a little bit of experience that may fall under one of those small areas, does not mean that it's directly relevant to the comprehensive umbrella of social studies."
63. Ms. Fisher testified that Petitioner's duties at NCSU did not relate to "Comprehensive Social Studies."
64. There is no rule in the North Carolina Administrative Code which defines "Comprehensive Social Studies."
65. Respondent has not pointed to any statute, policy, or any other purported authority which defines the term "Comprehensive Social Studies."
66. Ms. Fisher stated that, to her, comprehensive social studies included "History, Geography, Economics, Political Science, Anthropology, there's a lot more to it."
67. The test, as set forth in the Respondent's policy, is whether the non-teaching work experience is "directly related to an individual's area of licensure ...." (Resp. Ex. 1).
68. Petitioner is licensed in "Secondary Social Studies and Middle Grades Social Studies." (Resp. Ex. 6)
69. While "social studies" may include various disciplines or subject areas, such as history, geography, economics, political science, anthropology, etc., Respondent's policy does not set forth a requirement that an applicant for non-teaching experience credit have directly related experience in all possible disciplines or subject areas.
70. Ms. Fisher and the appeals panel, however, were of the opinion that, while some of her experience at NCSU was directly related to licensure in social studies, overall the Petitioner's experience "[d]id not embrace the total umbrella of social studies."
71. When cross-examined by the Petitioner regarding what type of experience might meet Ms. Fisher's various standards of "directly relevant" to "Comprehensive Social Studies", Ms. Fisher stated that work as "a museum curator" would meet Respondent's policy as it relates to social studies.
72. Ms. Fisher's opinion of what is "directly relevant" defies common sense; such a restrictive application would preclude individuals with unique and valuable experiences from receiving credit for the same.
73. It borders on bad faith to utilize such a restrictive application of the purported criteria and standard.

74. Such a result lends itself to driving away uniquely qualified individuals from the field of education.

75. In addition, Ms. Fisher testified that the review panel could not determine if the Petitioner spent more than 20 hours per week in her duties with the Gender Equity Committee and as Sexual Harassment Officer.

76. This distinction was not necessary, however, as these were included in Petitioner's duties as Head Coach for the women's soccer program because they were assigned to her by the Athletic Director.

77. Respondent presented no evidence that any of the appeals-panel members had prior social studies teaching experience, any particularized social studies curriculum knowledge, or had ever conducted an observation of a social studies class being taught at any level.

78. Nothing in the Respondent's policy requires Petitioner to prove her prior non-teaching experience meets an arbitrarily determined percentage to qualify as directly related to her licensure.

79. Petitioner's impressive credentials and experience are clearly set forth in the request for credit and supporting documentation.

80. There is no evidence or allegation that Petitioner acted in bad faith in describing her responsibilities and obligations at NCSU.

81. There is no evidence or allegation that Wake County Public School System acted in bad faith in recommending Petitioner for non-teaching work experience.

82. There is no evidence or allegation that Pat McCarthy acted in bad faith in submitting paperwork on behalf of the Petitioner and Wake County Public School System.

83. Petitioner taught Civics and Economics, Advanced Placement Economics, and Law and Justice, among other classes.

84. Petitioner's non-teaching work experience as the Head Coach of the women's soccer program and NCSU is directly related to her social studies licensure and her assignment as a teacher at Cary High School.

Based upon the foregoing findings of fact, the undersigned concludes the following as a matter of law:

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter herein.
2. Both parties were properly noticed for hearing.

3. The State Board of Education has the power to “regulate the grade [and] salary ... of teachers.” *Guthrie v. Taylor*, 279 N.C. 703, 709 (1971). Specifically, as it relates to this matter, the State Board has a duty “to certify and regulate the grade and salary of teachers and other school employees.” N.C. Gen. Stat. § 115C-12(9)(a); *Guthrie* at 711.

4. Petitioner has the burden of proving the claims alleged in the Petition by a preponderance of the evidence.

5. Petitioner alleged that Respondent deprived her of property and acted erroneously when the appeals panel decided that she was not entitled to credit towards her social studies licensure for her work as head women’s soccer coach at NCSU.

6. Petitioner has met her burden of proof.

7. Petitioner’s non-teaching work experience with the operating budget of the NCSU women’s soccer program is directly related to her social studies licensure and her assignment at Cary High School.

8. Petitioner’s non-teaching work experience with the scholarship budget of the NCSU women’s soccer program is directly related to her social studies licensure and her assignment at Cary High School.

9. Petitioner’s non-teaching work experience with Supervising and managing a staff of assistant coaches with the NCSU women’s soccer program is directly related to her social studies licensure and her assignment at Cary High School.

10. Petitioner’s non-teaching work experience making personnel, financial, and facilities related recommendations with the NCSU women’s soccer program is directly related to her social studies licensure and her assignment at Cary High School.

11. Petitioner’s non-teaching work experience implementing risk management strategies with the NCSU women’s soccer program is directly related to her social studies licensure and her assignment at Cary High School.

12. Petitioner’s non-teaching work experience in public relations activities promoting NCSU and the soccer program is directly related to her social studies licensure and her assignment at Cary High School.

13. Petitioner’s non-teaching work experience in fundraising with the NCSU women’s soccer program is directly related to her social studies licensure and her assignment at Cary High School.

14. Petitioner’s non-teaching work experience hosting youth summer camps, which she had to market, promote, and staff while with the NCSU women’s soccer program is directly related to her social studies licensure and her assignment at Cary High School.

15. Petitioner's non-teaching work experience with the camp budget while with NCSU women's soccer program is directly related to her social studies licensure and her assignment at Cary High School.

16. Petitioner's non-teaching work experience ensuring compliance with NCAA, ACC, and NCSU policies and procedures while with the NCSU women's soccer program is directly related to her social studies licensure and her assignment at Cary High School.

17. Petitioner's non-teaching work experience with the Gender Equity Committee while with the NCSU women's soccer program is directly related to her social studies licensure and her assignment at Cary High School.

18. Petitioner's non-teaching work experience as a Sexual Harassment Officer while with the NCSU women's soccer program is directly related to her social studies licensure and her assignment at Cary High School.

18. Respondent acted erroneously pursuant to N.C. Gen. Stat. § 150B-23(a)(2), in failing to give credit towards Petitioner's social studies licensure for her work as head women's soccer coach at NCSU because the Respondent, through the appeals panel:

- a. Misapplied relevant review criteria.
- b. Applied varying criteria in reviewing Petitioner's background.
- c. Utilized standards that are not set forth in the department's own policy.
- d. Ignored the certifications and recommendations of the LEA.
- e. Failed to utilize any specialized or particularized knowledge in rendering its decision.
- f. Failed to give due consideration to the Petitioner's actual job functions, duties, and responsibilities with the NCSU women's soccer program.
- g. Acknowledged in this hearing that the Petitioner's actual job functions, duties, and responsibilities are directly related to her licensure and assignment, implementing an arbitrary percentage requirement that is not included in the policy, and for which a percentage was not defined.
- h. Disregarded the essential standards for Civics and Economics, Civics and Government, and Law and Justice in analyzing Petitioner's actual job functions, duties, and responsibilities in reaching its conclusion.

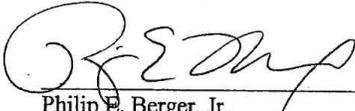
Based upon the foregoing findings of fact and conclusions of law, the Petitioner's request is granted, and she shall be credited with 11 years of service towards her licensure in Secondary Social Studies and Middle Grades Social Studies for her experience as Head Coach for the women's soccer program at North Carolina State University.

**NOTICE**

**This is a Final Decision** on the issue of the state tax refund, and issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' Rule 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 21<sup>st</sup> day of September, 2015.



Philip E. Berger, Jr.  
Administrative Law Judge

FILED

STATE OF NORTH CAROLINA <sup>2015 OCT 14 PM 4:28</sup> IN THE OFFICE OF  
 COUNTY OF WAKE OFFICE OF ADMINISTRATIVE HEARINGS  
 ADMIN HEARINGS 15EDC03061

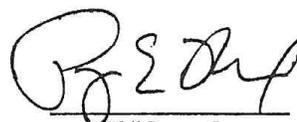
Laura Kerrigan Petitioner  v.  Department Of Public Instruction Respondent	<p align="center"><b>ORDER                  AMENDING DECISION</b></p>
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Pursuant to 26 NCAC 3.0129, for the purpose of correcting a clerical error, IT IS HEREBY ORDERED that the Notice in the above-captioned Decision, issued from this Office on September 21, 2015 is amended as follows:

**NOTICE**

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' Rule 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 14th day of October, 2015.



Phil Berger Jr.  
Administrative Law Judge

FILED  
OFFICE OF ADMINISTRATIVE HEARINGS  
04/29/2016 2:47 PM

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
NO. 15 EDC 06344

TPS PUBLISHING INC  
v.  
NC STATE BOARD OF EDUCATION

Petitioner,  
Respondents

FINAL DECISION

THIS MATTER came on to be heard before the undersigned Administrative Law Judge, Donald W. Overby, on February 3 and 4, 2016, at the Office of Administrative Hearings in Raleigh, North Carolina.

**APPEARANCES**

For the Petitioner: Andrew Norris  
TPS Publishing Inc.  
24307 Magic Mtn Parkway #62  
Valencia, CA 91355

For the Respondent: Tiffany Lucas  
Assistant Attorney General  
NC Department of Justice  
PO Box 629  
Raleigh, NC 27602

**APPLICABLE STATUTES**

N.C. Gen. Stat. § 115C-85 *et seq*; N.C. Gen. Stat. § 150B-23; 16 N.C.A.C. 6D.0205, .0206, .0207.

**ISSUE**

Did the State Board of Education act erroneously and/or fail to use proper procedure in determining that Petitioner's textbook for Grade 7 Science was not recommended for approval for

inclusion on the North Carolina public schools' approved state textbook list, and thereby deprive Petitioner of property.

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge (ALJ) makes the following Findings of Fact. In making these findings of fact, the ALJ has weighed all the evidence and has assessed the credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case.

**FINDINGS OF FACT**

1. North Carolina has a well-established process for adopting textbooks for use in the public schools. For more than 40 years, the General Statutes have set forth very specific mandates and guidelines for the adoption of textbooks, which adoption is under the general jurisdiction of the State Board of Education. N.C. Gen. Stat. § 115C-85 *et seq.*

2. The State Board of Education is charged with adopting standards for each subject taught in the public schools. Textbooks must align with those adopted standards. Soon after a set of standards is adopted for a new subject, the State Board of Education must engage in the selection of textbooks that align with those standards. N.C. Gen. Stat. § 115C-85

3. The applicable statutes provide for a Textbook Commission to ensure impartiality with regard to textbook selection. The Textbook Commission is a 23-member commission that is responsible for evaluating textbooks and recommending to the State Board of Education which textbooks should be included on the state textbook list. The members must represent various

segments of the education community and are appointed for four-year terms by the Governor.  
N.C. Gen. Stat. § 115C-87 & 88

4. Textbook Commission members receive training by members of the Department of Public Instruction (“DPI”) who are well-versed in standards, curriculum, the bidding process, and the overall needs of the education community. The State Board of Education further defines a comprehensive, detailed process for requesting bids, ensuring that there are no conflicts of interest, ensuring that publishers comply with requirements, adhering to stringent timelines, and providing the most impartial review of textbooks possible. *See* N.C. Gen. Stat. § 115C-89.

5. In addition to Textbook Commission members, the Commission appoints textbook evaluation advisors (“advisors”) who are assigned the task of reviewing in depth every textbook that is submitted for bid. N.C. Gen. Stat. § 115C-88; 16 NCAC 6D .0206

6. In the fall of 2014, there was some reorganization at the Department of Public Instruction which brought changes to the textbook adoption cycle. Among the changes for the 2015-2016 cycle was shortened time lines compared to previous years, in order to allow the teacher’s to receive the books in a more timely fashion. Another change was a switch to using “Google forms.” In implementing these and other changes, there were some problems and “glitches” in the process. One glitch was a mathematical error in an automatic calculation. None of the identified problems or glitches were fatal to the integrity of the process, and none affected the outcome of this consideration.

7. For the 2015-2016 textbook adoption cycle, the content area focus was K-12 Science. As part of the adoption cycle, on or about November 17, 2014, there was a Textbook Commission planning meeting at which Textbook Commissioners were provided initial training for the upcoming adoption cycle. (Respondent’s Ex. 6, p. 5)

8. On or about December 5, 2014, textbook publishers were invited by DPI to submit textbooks/programs on a bid proposal form in response to the *2015 Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina* (“*Invitation to Submit*”) developed by the agency and approved by the State Board of Education. (Respondent’s Ex. 6, p. 5)

9. TPS Publishing was one of several textbook publishers that received the invitation from DPI.

10. The *Invitation to Submit* issued by DPI and sent to TPS Publishing and other textbook publishers included a page entitled “Tentative Schedule for 2015-2016 Adoption Process.” Among other things, the page with the tentative schedule set forth that all publishers that would be submitting bids in response to the *Invitation to Submit* were encouraged to attend a preliminary publishers’ meeting that was scheduled for January 23, 2015. (Respondent’s Ex. 6, p. 5)

11. The deadline for textbook publishers to submit bid submissions was initially February 17, 2015, which was extended to February 23, 2015, due to weather-related concerns. (Respondent’s Ex.(s) 6 & 8)

12. On or about January 23, 2015, DPI hosted a preliminary publishers meeting at which publishers received additional information and explanation about the 2015-2016 adoption process. Publishers were given the opportunity to ask questions about the process – including about the instructions and information provided in the *Invitation to Submit* – prior to submitting their bid proposal forms and bid submission samples and correlations.

13. Also on or about January 23, 2015, the members of the Textbook Commission attended a meeting at which they were trained on K-12 Science content standards by curriculum consultants at DPI. Also, prior to conducting the review and evaluation of textbooks, members of

the Textbook Commission also received comprehensive training on the textbook selection and adoption process including specific training on the evaluation rubrics to be used in evaluating the textbook materials submitted by publishers for consideration by the Textbook Commission, the legal requirements for being a Textbook Commission member, and the ethics requirements imposed on all State commission or board members. (Petitioner's Ex. 6)

14. Following the February 23, 2015 deadline for textbook publishers to submit sealed bid proposals, the bids were opened in the Purchasing and Contracts Office at DPI. (Respondent's Ex. 8) A Bid ID Number was then assigned to each textbook or set of textbook materials identified by the publishers on the bid proposal forms.

15. Thereafter, the Textbook Commission began the process of hiring and assigning advisors to review and evaluate textbooks. In hiring advisors to review and evaluate textbooks, the Textbook Commission took into account the credentials of the prospective advisors, the total number of textbooks identified on the bid proposal forms submitted by the textbook publishers, the number of textbooks that had been designated for a particular grade or course as set forth on the bid proposal forms submitted by textbook publishers, as well as the content area expertise of the Textbook Commission members.

16. As part of the 2015-2016 textbook adoption cycle, TPS Publishing responded to the *Invitation to Submit* by submitting a response that included a bid proposal form which identified the following sets of textbook materials to be considered for adoption by the State Board of Education for use at grade levels kindergarten through eight: 1) Grade K Creative Science Curriculum PBL Toolbox with STEM Literacy and Arts (Bid No. 5079); 2) Grade 1 Creative Science Curriculum PBL Toolbox with STEM Literacy and Arts (Bid No. 5080); 3) Grade 2 Creative Science Curriculum PBL Toolbox with STEM Literacy and Arts (Bid No. 5081); 4)

Grade 3 Creative Science Curriculum PBL Toolbox with STEM Literacy and Arts (Bid No. 5082); 5) Grade 4 Creative Science Curriculum PBL Toolbox with STEM Literacy and Arts (Bid No. 5083); 6) Grade 5 Creative Science Curriculum PBL Toolbox with STEM Literacy and Arts (Bid No. 5084); 7) Grade 6 Creative Science Curriculum PBL Toolbox with STEM Literacy and Arts (Bid No. 5085); 8) Grade 7 Creative Science Curriculum PBL Toolbox with STEM Literacy and Arts (Bid No. 5086); and, 9) Grade 8 Creative Science Curriculum PBL Toolbox with STEM Literacy and Arts (Bid No. 5087).

17. After it submitted its sealed bid proposal, TPS Publishing timely submitted its textbook sample materials for review by the Textbook Commission and the advisors.

18. Thereafter, the advisors assigned to review the textbook materials submitted by publishers thoroughly considered those materials. At issue in this dispute are TPS Publishing's Grade 7 Science textbook materials, which textbook materials were assigned Bid ID No. 5086.

19. Relative to the textbook materials at issue in this contested case, the advisors and Textbook Commission members considered and evaluated the materials against the standards adopted in North Carolina for grade 7 Science. The advisors that reviewed the materials were certified in the content area of science. In addition, the advisors and Textbook Commission members that reviewed and evaluated science textbook materials as part of the 2015-2016 textbook selection and adoption cycle were trained by Beverly Vance, K-12 Science Section Chief, or by her staff regarding the evaluation instrument to be used in evaluating textbook submissions.

20. With respect to the Grade 7 textbook materials submitted under Bid ID No. 5086, five advisors reviewed and evaluated the materials. Three of the five evaluators voted not to recommend the materials for inclusion on the State- approved list. Three of the five advisors determined that the textbook materials did not sufficiently cover at least 80% of the Essential

Standards and the Clarifying Objectives for Grade 7 Science, which was required in order to be recommended for use. The advisors' findings and concerns regarding the materials were documented on the evaluation instruments that they completed. The findings reported by the advisors clearly show that Bid No. 5086 was very close to receiving a positive recommendation; however, even though the vote was very close, the decision to not recommend was upheld. (Respondent's Ex.(s) 11 & 12)

21. Textbook Commission members, too, reviewed the materials submitted by TPS Publishing. Several of the Textbook Commission members commented upon the failure of the textbook materials submitted under Bid ID No. 5086 to sufficiently cover at least 80% of the standards and objectives adopted by the State Board of Education for Grade 7 Science. (*See e.g.* Respondent's Ex. 15, pp. 83, 118, 159)

22. The omission of one of the Textbook Commission member's report from the packet of materials presented to the State Board of Education at its May 2015 meeting does not demonstrate a failure to follow proper procedure as contemplated in § 150B-23. Substantial evidence was presented at the hearing that each Textbook Commission member and advisor who reviewed and evaluated the materials at issue in this dispute completed a report for those materials. (Respondent's Ex.(s) 11, 15, 18-22) Substantial evidence was presented at the hearing that the evaluation reports prepared by the Textbook Commission members were made available to the SBE by the submission of those signed reports by the Textbook Commission members to DPI staff in April 2015, approximately two weeks before the SBE's May 2015 meeting. There was no evidence presented at the hearing that the evaluation reports prepared by the Textbook Commission members were not filed with the State Board of Education, only that one Textbook Commission member's report was not included in the packet of materials that were presented by Dr. Novey to the SBE at the May 6, 2015 meeting.

23. Following their review of the textbook materials, the advisors and Textbook Commission members discussed the merits and deficiencies of the textbooks that had been submitted for consideration. After discussion and debriefing with the evaluators and after deliberating, a quorum of the Textbook Commission met to vote on whether to recommend the textbook materials associated with Bid ID No. 5086 to the State Board of Education for inclusion on the “approved” textbooks list. (Respondent’s Ex. 13) With respect to those textbook materials, the Textbook Commission voted 13-1 not to recommend the materials for adoption. Of the nine bids submitted by TPS Publishing, only one bid was recommended and the other eight were not recommended for approval at this stage. (Respondent’s Ex. 13 and Respondent’s Exhibit 21)

24. All textbook publishers for whom the Textbook Commission voted to not recommend textbook materials for adoption were notified of the Textbook Commission’s decision and given the opportunity to participate in a “reconsideration” process as set forth in the *Invitation to Submit*. (Respondent’s Ex. 6, p. 16)

25. TPS Publishing, which had been notified that multiple textbook materials that it had submitted were not going to be recommended to the State Board of Education for adoption, participated in the reconsideration process. At the reconsideration process, a representative of TPS Publishing was given an opportunity to make a brief presentation to the Textbook Commission. The presentation was to last no more than twenty minutes. At the conclusion of the reconsideration process, the Textbook Commission voted again and all but one of TPS Publishing’s textbook materials that the Textbook Commission had initially voted not to recommend for adoption, were moved to the “recommended” list. It is not unusual to have significant vote changes after the reconsideration reviews. (See Respondent’s Ex. 15, p. 9 and Respondent’s Ex. 16, pp. 20-22)

26. TPS Publishing participated in the reconsideration process with respect to the textbooks materials associated with Bid ID No. 5086 – the textbooks at issue in this contested case. At the conclusion of the presentation to the Textbook Commission, a vote was taken on those materials. After reconsideration, the Textbook Commission voted 7-6 not to recommend the Bid ID No. 5086 textbook materials for adoption. Dr. Dan Novey, the Chairman of the Textbook Commission, stated that this was the only time during his service on the commission that there was a tie in the vote of the commissioners and that tie was decided by the Chairman’s vote. (Respondent’s Ex. 14)

27. On or around April 16, 2015, the Textbook Commission compiled a final list of recommended textbooks/instructional materials for Science K-12 for adoption by the State Board of Education. Those recommendations were then submitted to the State Board of Education as required by law. (Respondent’s Ex. 15)

28. At its regularly scheduled meeting in May 2015, the State Board of Education heard a presentation by Dr. Novey, Chairman of the Textbook Commission, concerning the 2015-2016 textbook selection and adoption cycle, and the SBE was presented with the list of recommended titles for its consideration. At the conclusion of the presentation and after discussion by the State Board of Education, the SBE voted in open session to approve the list of textbooks and instructional materials recommended by the Textbook Commission. Textbook publishers were notified directly in writing if any of their textbook materials did not make it on to the list of recommended materials on or around June 19, 2015. (Respondents’ Ex. 17)

29. A benefit of a textbook being on the State’s “adopted” list is that it is an endorsement by the State that the textbook was vetted by content area specialists in the field and education professionals who ultimately concluded that the textbook was appropriate for teaching the Standard Course of Study for the particular subject and grade for which it was offered;

however, for the materials at issue here, that did not happen. The Respondent in this case found that the textbook materials at issue did not sufficiently align with the standards for science in grade 7, and as such, could not endorse them by putting them on the “approved” list.

30. It must be noted that the Textbook Commission’s decision to non-recommend TPS Publishing’s grade 7 Science textbooks for adoption and the State Board of Education’s decision not to adopt those textbooks do not preclude TPS Publishing from selling the textbooks at issue to schools and school districts in the state. Schools and school districts are free to purchase materials that are not on the State-approved list, and they are free to do so with State dollars.

31. TPS Publishing filed a Petition for Contested Case Hearing in the Office of Administrative Hearings, challenging the Textbook Commission’s decision not to recommend its Grade 7 science textbook materials for adoption, and the State Board of Education’s decision not to adopt those materials. The Petition alleges that the State Board of Education deprived Petitioner of property and that the State Board of Education acted erroneously and failed to use proper procedure.

**CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent the Findings of Fact contain conclusions of law, or that the Conclusions of Law are findings of fact, they should be so considered without regard to their given labels.

2. The relevant inquiry for the undersigned is to determine the applicability of N.C. Gen. Stat. § 150B-23 to the facts herein.

3. The Petitioner bears the burden of proof by a greater weight or preponderance of the evidence of showing that by not including Petitioner’s Grade 7 Science textbook materials on the approved list, the Agency has substantially prejudiced its rights and that the agency’s decision

was erroneous in one or more of the ways enumerated in N.C. Gen. Stat. § N.C. Gen. Stat. § 150B-23. *Surgical Care Affiliates, LLC v. N.C. Dep't of Health & Human Servs., Div. of Health Serv. Regulation, Certificate of Need Section*, 762 S.E.2d 468, 474-75 (N.C. Ct. App. 2014), *review denied*, 768 S.E.2d 564 (N.C. 2015).

4. [A]gency action is considered 'arbitrary and capricious' only if it indicates a 'lack of fair and careful consideration' and fails 'to indicate 'any course of reasoning and the exercise of judgment.'" *Watson v. N.C. Real Estate Com'n*, 87 N.C. App. 637, 649, 362 S.E.2d 294, 301 (1987), quoting *State ex rel. Comm'r of Insurance v. North Carolina Rate Bureau*, 300 N.C. 381, 420, 269 S.E.2d 547, 573 (1980).

5. An administrative law judge shall decide a contested case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency. N.C. Gen. Stat. § 150B-34(a).

6. Respondent is entitled to a presumption that it acted in good faith in not adopting the science textbook materials at issue for inclusion on the State-approved list. In accordance with *Painter v. Wake County Bd of Ed.*, 217 S.E.2d 650, 288 N.C. 165 (1975), absent evidence to the contrary, it will be presumed that "public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law. Every reasonable intentment will be made in support of the presumption." *See also Huntley v. Potter*, 122 S.E.2d 681, 255 N.C. 619.

7. The burden is upon the party asserting the contrary to overcome the presumption by competent and substantial evidence. "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Rusher v. Tomlinson*, 119 N.C. App. 458, 465, 459 S.E. 2d 285, 289 (1995), *aff'd*, 343 N.C. 119, 468 S.E.2d 57 (1996); *Comm'r of Ins. V. Fire Ins. Rating Bureau*, 292 N.C. 70, 80, 231 S.E.2d 882, 888 (1977). "It is

more than a scintilla or a permissible inference.” *Lackey v. Dept. of Human Resources*, 306 N.C. 231, 238, 293 S.E.2d 171, 177 (1982).

8. N.C. Gen. Stat. § 115C-85 *et seq.* expressly authorizes the State Board of Education to select and adopt textbooks needed for instructional purposes at each instructional level on all subject matters required by law to be taught in elementary and secondary schools of North Carolina. The State Board of Education is also authorized by statute to prescribe criteria against which proposed textbooks shall be evaluated.

9. Textbook publishers were invited by DPI to submit textbooks materials on a bid proposal form in response to the *2015 Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina*, which *Invitation to Submit* had previously been approved by the State Board of Education. The evaluation instrument to be used by the evaluators of the textbook materials submitted by textbook publishers was included in the *Invitation to Submit*.

10. For the textbook materials at issue in this contested case, the advisors and Textbook Commission members considered and evaluated the materials against the standards adopted in North Carolina for grade 7 Science. The advisors that reviewed the materials were certified in the content area of science. The advisors and Textbook Commission members that reviewed and evaluated math textbook materials as part of the 2015-2016 textbook selection and adoption cycle were properly trained.

11. Although the vote was very close, the majority of the advisors and Textbook Commission members that reviewed the textbook materials associated with Bid ID No. 5086 found substantive deficiencies in the materials, and concluded that the materials did not sufficiently conform to the Standard Course of Study and approved objectives for the specific grade and course for which they were offered.

12. Although Petitioner did demonstrate that there were mathematical miscalculations reflected on the evaluation documents completed by the advisors who reviewed and evaluated the textbook materials, when the advisors’ evaluation documents are considered in their totality along

with all of the information and data provided by the advisors to the Textbook Commission members, the weight of the evidence supports the finding that three of the five advisors who evaluated the materials determined that the materials did not sufficiently cover 80% of the Essential Standards and Clarifying Objectives for Grade 7 Science. Accordingly, the miscalculations identified by the Petitioner and reflected in the evaluation documents did not substantively affect the outcome of the case.

13. In implementing changes for this textbook review cycle, there were problems and glitches identified in the process; however, the procedure and process set out in both statute and rule were followed. Although a “perfect” system was not in place for this review, none of the identified problems were fatal to the integrity of the process, and none have affected the outcome of this consideration.

14. The problems identified by Petitioner would have been the same problems for every publisher who submitted bids. Petitioner was not treated any differently.

15. TPS Publishing’s contention that the Respondent failed to use proper procedure in evaluating the textbook materials at issue in this dispute is not persuasive.

16. The omission of one of the Textbook Commission member’s report from the materials presented to the State Board of Education at its May 2015 meeting does not demonstrate a failure to follow proper procedure as contemplated in § 150B-23. There was no evidence presented at the hearing that the evaluation reports prepared by the Textbook Commissioner members were not filed with the State Board of Education, only that one Textbook Commission member’s report was not included in the packet of materials that were presented by Dr. Novey to the SBE at the May 6, 2015 meeting.

17. Likewise, Petitioner’s contention that the fact that there was a considerable change in the numbers of approved textbooks offered by TPS Publishing after the reconsideration is reflective of procedural error is not persuasive and not supported by the evidence.

18. In light of the substantial evidence presented at the hearing regarding the Respondent's compliance with N.C. Gen. Stat. §§ 115C-88 & 89 and NCAC 16 NCAC 6D .0207, the undersigned concludes as a matter of law that the Petitioner has failed to carry its burden of proving that the Respondent acted erroneously or did not follow proper procedure in its consideration of the Petitioner's textbook materials at issue in this dispute.

19. Respondent's actions were not arbitrary or capricious. Respondent did not act erroneously, exceed its authority or jurisdiction, fail to use proper procedure, or fail to act as required by law or rule.

20. Petitioner has failed to carry the burden of proof assigned to it by law, and the Petitioner's claims should be denied.

**BASED UPON** the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following:

**FINAL DECISION**

As the Textbook Commission and the State Board of Education exercised their authority lawfully and with due deliberation, the decision to not adopt Petitioner's Grade 7 Science textbook materials for inclusion on the State Board of Education's "approved" list, must be, and hereby is, **AFFIRMED.**

**NOTICE**

**This is a Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within**

**30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 29th day of April, 2016.



Donald W Overby  
Administrative Law Judge

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OFFICE OF ADMINISTRATIVE HEARINGS  
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STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 INS 07291

NC Department of Insurance Petitioner,  v.  Andre Day Respondent.	<b>PROPOSED DECISION</b>
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This cause coming on to be heard and being heard January 4, 2016 in the Office of Administrative Hearings, and it appearing to the undersigned that the Petitioner is represented by Special Deputy Attorney General David W. Boone and Assistant Attorney General Anne Goco Kirby, and the Respondent is represented by attorney Mark L. Bibbs. Based upon the evidence presented, the undersigned makes the following findings of fact by a preponderance of the evidence:

1. The Petitioner has the authority and responsibility to enforce North Carolina's insurance laws, and to regulate and license bail bondsmen and runners.
2. Respondent holds an active surety bondsman's license which was first issued by the North Carolina Department of Insurance on August 25, 2000.
3. Respondent holds an active professional bondsman's license which was first issued by the North Carolina Department of Insurance on July 1, 1999.
4. At all relevant times herein, Respondent was licensed by Petitioner and acting under that license.
5. On November 4, 2014, Respondent pled guilty in Greene County, North Carolina, Superior Court to one count of Misdemeanor Obstruction of Justice and one count of Misdemeanor Uttering of a False Document. (Resp. Ex. 4, pp. 45-54)
6. Evidence showed that Respondent posted a \$500.00 Appearance Bond for Sabrina Nicole Ezell on August 14, 2010, in Greene County case number 09 CR 701970. (Resp. Ex. 6, p. 27)

7. Ezell failed to appear for her September 3, 2010 court date, and an Order for Arrest was issued. (Resp. Ex. 6, p. 33)
8. Ezell was served with the Order for Arrest on May 17, 2012. (Resp. Ex. 6, p. 34)
9. On September 3, 2010, a Bond Forfeiture Notice was issued and served by mail on Respondent and Ezell. Said notice stated that a motion to set aside the forfeiture must be filed by January 31, 2011, or the forfeiture will become a final judgment. (Resp. Ex. 6, p. 37)
10. Respondent filed a Motion to Set Aside Forfeiture in the Ezell case on January 31, 2011, alleging that he had surrendered Ezell to the Halifax County Jail on January 28, 2011. (Resp. Ex. 6, pp. 39-41)
11. Respondent had not surrendered Ezell to the Halifax County Jail.
12. Respondent knew at the time he made this allegation in the Motion to Set Aside Forfeiture that said allegation was false.
13. Respondent testified at this hearing that when he filed the Motion to Set Aside he had “a lead” that Defendant Ezell was coming back into town in the next couple of days. (T., p. 70)
14. The District Attorney and/or the school board attorney may object to a motion to set aside in writing, and the Clerk is required to enter an order setting aside the forfeiture if neither have done so within 20 days of service of the motion.
15. Neither the District Attorney nor the school board attorney filed a written objection to Respondent’s Motion to Set Aside Forfeiture in the Ezell matter.
16. On February 24, 2011, the forfeiture was set aside in the Ezell matter, relieving the Petitioner of his monetary obligation.
17. On May 24, 2011, a Warrant for Arrest was issued and served on Respondent for Felony Attempting to Obtain Property by False Pretense and Felony Obstructing Justice for his actions in filing the Motion to Set Aside Forfeiture in the Ezell matter. (Resp. Ex. 4, p. 1)
18. Respondent was indicted by the Greene County Grand Jury for the same charges on December 16, 2013. (Resp. Ex. 4, p. 30)
19. Pursuant to a plea arrangement, Respondent pled guilty and was convicted of Common Law Uttering and Obstruction of Justice on November 4, 2014. (Resp. Ex. 4, p. 45-48)
20. Upon his conviction, Respondent was placed on supervised probation and ordered to pay a fine and the court costs. Upon payment of the monetary conditions of probation, Respondent was transferred to unsupervised probation. (Resp. Ex. 4, p. 51-56)

21. Bail bondsmen fall under purview of the Petitioner's Agent Services Division.

22. Ms. Angela Hatchell serves in the Petitioner's Agent Services Division, and she investigated this matter for the Petitioner.

23. Agent Services was aware of the charges against Respondent as early as May, 2011, but did not pursue action against the Respondent until the criminal charges were resolved.

24. Respondent notified Petitioner of his conviction in November, 2014.

25. On December 1, 2014, Agent Services sent a letter to Respondent which requested that he attend an informal conference with the Department. (Resp. Ex. 7)

26. Petitioner's standard practice is to schedule and hold such a conference to discuss the convictions and the circumstances surrounding the same.

27. Mr. Eric Lautzenheiser, a Complaint Analyst for the Petitioner, attended the conference with Respondent on December 22, 2014.

28. Ms. Hatchell then determined that the matter should be referred for an administrative hearing to determine if Respondent's license should be suspended or revoked because the Respondent's actions concerned behavior that occurred in the course of his business as a bail bondsman, involved dishonesty, and demonstrated untrustworthiness.

29. Respondent claims that his completion and presentation of the Surrender of Defendant by Surety form for Ezell to the Halifax County Jail was an inadvertent mistake. Respondent further claims that he did not realize the mistake until he returned to his office to make copies. (T., p. 65)

30. Respondent utilized the purported surrender of Ezell as the underlying basis for his Motion to Set Aside.

31. Respondent is neither credible nor believable in his assertion that he mistakenly presented Ezell's surrender documentation to the Halifax County Jail.

32. Even if Ezell's surrender documentation was mistakenly obtained, Respondent knowingly filed a Motion to Set Aside that was based upon fraudulent information, along with the surrender documentation that he knew was not correct.

Based upon the foregoing findings of fact, the undersigned concludes as a matter of law:

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter herein.

2. The parties were properly served with the Notice of Hearing in this matter.

3. Any finding of fact that also constitutes a conclusion of law is hereby adopted as a conclusion of law, and any conclusion of law that also constitutes a finding of fact is hereby adopted as a finding of fact.

4. Respondent was convicted of Obstruction of Justice and Common Law Uttering for actions which occurred in the course of his business as a bail bondsman.

5. Respondent knowingly prepared and obtained a false Surrender of Defendant by Surety form. Respondent used the Surrender of Defendant by Surety form, and the false information contained therein, as the underlying basis for a Motion to Set Aside Bond Forfeiture. Respondent knowingly prepared, filed, and served the Motion to Set Aside a Bond Forfeiture with the intent to deceive the State of North Carolina.

6. Respondent knowingly prepared, filed and served the Motion to Set Aside a Bond Forfeiture with the intent to deceive the Greene County School Board.

7. Respondent's represented to the State of North Carolina and the Greene County School Board that Ezell was in the custody of the Halifax county jail, that Respondent had surrendered Ezell, and that he was thus entitled to have forfeiture set aside under N.C.G.S. § 15A-544.5(b)(3).

8. The Respondent's false Motion to Set Aside and attached Surrender Form had the capacity to deceive, and did in fact deceive the State of North Carolina and the Greene County School Board.

9. N.C.G.S. § 58-71-82 provides that "[i]f an individual holds a professional bondsman's license or a runner's license and a surety bondsman's license simultaneously, they are considered one license for the purpose of disciplinary actions involving suspension, revocation, or nonrenewal under this Article..."

10. N.C.G.S. § 58-71-80(a) provides that the Commissioner has the authority to "deny, place on probation, suspend, revoke, or refuse to renew any license issued under this Article" for enumerated conduct. In the Notice of Administrative Hearing, the Department alleged that grounds exist to suspend or revoke Respondent's licenses under N.C.G.S. § 58-71-80(a)(2), (5), (6), and (8).

11. N.C.G.S. § 58-71-80(a)(2) authorizes the Commissioner to revoke, suspend or refuse to renew any license issued under Article 71 for "conviction of any misdemeanor committed in the course of dealings under the license issued by the Commissioner." Respondent's November 4, 2014 convictions for misdemeanor common law uttering and obstruction of justice are convictions for misdemeanors committed in the course of dealings under his licenses and warrant revocation of Respondent's licenses.

12. N.C.G.S. § 58-71-80(a)(5) authorizes the Commissioner to revoke, suspend or refuse to renew any license issued under Article 71 for "conducting fraudulent, coercive, or dishonest

practices in the conduct of business or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or any other jurisdiction.”

13. Respondent engaged in a fraudulent and dishonest practice in the conduct of his business and demonstrated incompetence and untrustworthiness in the conduct of business within the meaning of N.C.G.S. § 58-71-80(a)(5) when he knowingly prepared and obtained a fraudulent and false Surrender of Defendant by Surety form in the Sabrina Ezell case.

14. Respondent engaged in a fraudulent or dishonest practice in the conduct of business and demonstrated incompetence and untrustworthiness in the conduct of business within the meaning of N.C.G.S. § 58-71-80(a)(5) when he knowingly prepared, filed, and served a fraudulent and false Motion to Set Aside Forfeiture using the Surrender of Defendant by Surety form as the underlying basis for the same in the Sabrina Ezell case.

15. N.C.G.S. § 58-71-80(a)(6) authorizes the Commissioner to revoke, suspend or refuse to renew any license issued under Article 71 for “conviction of a crime involving dishonesty, breach of trust, or moral turpitude.”

16. Respondent’s conviction of Obstruction of Justice is a conviction of a crime involving dishonesty, breach of trust, and moral turpitude.

17. Similarly, Respondent’s conviction of Common Law Uttering is a conviction of a crime involving dishonesty, breach of trust, and moral turpitude.

18. N.C.G.S. § 58-71-80(a)(8) authorizes the Commissioner to revoke, suspend or refuse to renew any license issued under Article 71 if “in the judgment of the Commissioner, the licensee has in the conduct of the licensee’s affairs under the license, demonstrated incompetency, financial irresponsibility, or untrustworthiness ....”

19. Respondent has demonstrated incompetency and untrustworthiness in the conduct of his affairs under his licenses within the meaning of N.C.G.S. § 58-71-80(a)(8) when he knowingly prepared and obtained the Surrender of Defendant by Surety form in the Sabrina Ezell case.

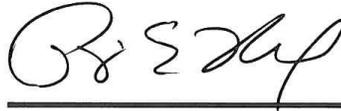
20. Respondent has demonstrated incompetency and untrustworthiness in the conduct of his affairs under his licenses within the meaning of N.C.G.S. § 58-71-80(a)(8) when he knowingly prepared, filed, and served a fraudulent and false Motion to Set Aside Forfeiture using the Surrender of Defendant by Surety form as the underlying basis for the same in the Sabrina Ezell case.

**RECOMMENDED DECISION**

The North Carolina Department of Insurance will make the Final Decision in this matter. The undersigned recommends, based upon the foregoing findings of fact and conclusions of law,

that the North Carolina Department of Insurance enter a Final Decision permanently revoking Respondent's bondsman licenses.

This the 26th day of April, 2016.

A handwritten signature in black ink, appearing to read "P. E. Berger Jr.", written over a horizontal line.

Philip E Berger Jr.  
Administrative Law Judge