

NORTH CAROLINA REGISTER

VOLUME 31 • ISSUE 12 • Pages 1222 - 1280

December 15, 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.

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

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116 West Jones Street

Raleigh, North Carolina 27603-8005

(919) 807-4700

(919) 733-0640 FAX

Contact: Anca Grozav, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919) 807-4740

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osbmruleanalysis@osbm.nc.gov

(919) 807-4757

NC Association of County Commissioners

215 North Dawson Street

Raleigh, North Carolina 27603

(919) 715-2893

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Sarah Collins

scollins@nclm.org

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Raleigh, North Carolina 27611

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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 th 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
30:15	02/01/16	01/08/16	02/16/16	04/01/16	04/20/16	06/01/16	01/2017	10/28/16
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
30:18	03/15/16	02/23/16	03/30/16	05/16/16	05/20/16	07/01/16	01/2017	12/10/16
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
30:22	05/16/16	04/25/16	05/31/16	07/15/16	07/20/16	09/01/16	01/2017	02/10/17
30:23	06/01/16	05/10/16	06/16/16	08/01/16	08/22/16	10/01/16	01/2017	02/26/17
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
31:01	07/01/16	06/10/16	07/16/16	08/30/16	09/20/16	11/01/16	01/2017	03/28/17
31:02	07/15/16	06/23/16	07/30/16	09/13/16	09/20/16	11/01/16	01/2017	04/11/17
31:03	08/01/16	07/11/16	08/16/16	09/30/16	10/20/16	12/01/16	01/2017	04/28/17
31:04	08/15/16	07/25/16	08/30/16	10/14/16	10/20/16	12/01/16	01/2017	05/12/17
31:05	09/01/16	08/11/16	09/16/16	10/31/16	11/21/16	01/01/17	01/2017	05/29/17
31:06	09/15/16	08/24/16	09/30/16	11/14/16	11/21/16	01/01/17	01/2017	06/12/17
31:07	10/03/16	09/12/16	10/18/16	12/02/16	12/20/16	02/01/17	05/2018	06/30/17
31:08	10/17/16	09/26/16	11/01/16	12/16/16	12/20/16	02/01/17	05/2018	07/14/17
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
31:11	12/01/16	11/07/16	12/16/16	01/30/17	02/20/17	04/01/17	05/2018	08/28/17
31:12	12/15/16	11/22/16	12/30/16	02/13/17	02/20/17	04/01/17	05/2018	09/11/17

This publication is printed on permanent, acid-free paper in compliance with G.S. 125-11.13

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 of rules



State of North Carolina

PAT McCrORY

GOVERNOR

November 10, 2016

EXECUTIVE ORDER NO. 114

NOTICE OF TERMINATION OF EXECUTIVE ORDER 113

WHEREAS, I issued Executive Order No. 113, on November 2, 2016, that declared a state of emergency in the State of North Carolina because of a disruption in the delivery of petroleum products including gasoline due to the explosion and shutdown of the Colonial fuel pipeline in the State of Alabama; and

WHEREAS, with the concurrence of the Council of State, my order also waived the gasoline truck tank and vapor system requirements of 15A NCAC 02D.0932(c),

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

Pursuant to N.C.G.S. § 166A-19.20(c) the state of emergency that was declared by Executive Order 113 is terminated immediately.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 10th day of November in the year of our Lord two thousand and sixteen.


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State





State of North Carolina

PAT McCRORY

GOVERNOR

November 10, 2016

EXECUTIVE ORDER NO. 115

DECLARATION OF A STATE OF EMERGENCY BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

WHEREAS, there are at least twenty active wildfires in several western North Carolina counties; and

WHEREAS, the North Carolina Forest Service has issued a burning ban on all open burning and cancelled burning permits in twenty-five counties in the western part of the state; and

WHEREAS, Macon County, North Carolina, the Town of Franklin in Macon County, and the Town of Lake Lure in Rutherford County have declared states of emergency; and

WHEREAS, there have been evacuations ordered in Clay, Graham, Macon, Swain and Rutherford Counties.

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

Section 1.

I hereby declare, pursuant to N.C.G.S. § 166A-19.20, that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists in the State of North Carolina due to the active wildfires in the western portion of the state.

The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) is the following counties: Alexander, Avery, Buncombe, Burke, Caldwell, Catawba, Cherokee, Clay, Cleveland, Gaston, Graham, Haywood, Henderson, Jackson, Lincoln, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga and Yancey.

Section 2.

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

Section 3.

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

Section 4.

Further, Secretary Perry, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in G.S. § 143B-602.

Section 5.

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

Section 6.

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

Section 7.

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

Section 8.

Pursuant to N.C.G.S. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C.G.S. §§ 75-37 and 75-38 in the declared emergency area.

Section 9.

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

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 10th day of November in the year of our Lord two thousand and sixteen.


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State



NORTH CAROLINA RATE BUREAU

PUBLIC NOTICE

Notice is hereby given pursuant to North Carolina General Statute 58-36-120 that on or about November 30, 2016, the North Carolina Rate Bureau filed for an increase in rates and for territory definition changes as to residential Dwelling insurance policies under its jurisdiction. Public notice of the Filing is being given in two newspapers with statewide distribution, and information is being posted on the websites of the North Carolina Rate Bureau and the North Carolina Department of Insurance. The Commissioner of Insurance may or may not schedule and conduct a hearing with respect to the Filing. The Filing relates only to residential Dwelling insurance policies under the jurisdiction of the North Carolina Rate Bureau and does not affect Homeowners or Mobile Homeowners insurance policies or rates not part of the Dwelling Policy Program.

Pursuant to the authority in G.S. 150B-21.17(a)(6) and 26 NCAC 02C .0307, the Codifier of Rules has approved the Department of Insurance's request to publish the following notice in the NC Register.



For Immediate Release
Dec. 1, 2016

Contact: Colin Day
919-807-6011

Insurance Companies Request Rate Hike for Dwelling Policies

Public Comment period runs from Dec. 2 through Dec. 30

RALEIGH— The North Carolina Department of Insurance received a Dwelling Insurance rate filing from the N.C. Rate Bureau on Wednesday, Nov. 30. The N.C. Rate Bureau, which is not part of the Department of Insurance and represents all companies writing property insurance in the state, has requested a statewide average rate increase of +19.6 percent, varying by territory, with a requested effective date of July 1, 2017. This filing includes a requested decrease of -16.6% for Fire policies and an increase of +37.3% for Extended Coverage (wind) policies, for a total statewide average increase of +19.6%.

Dwelling insurance policies are not homeowners insurance policies; dwelling policies are offered to non-owner occupied residences including rental properties, investment properties and other properties that are not occupied full-time by the property owner.

The Rate Bureau has also requested revisions to the current geographic rating territories. The proposed territory revisions are the same territory definitions applicable to homeowners' policies.

The filing will be reviewed by Department of Insurance experts to determine what, if any, rate adjustments are warranted. If NCDOI and the N.C. Rate Bureau do not initially agree on the proposed rate changes, a public hearing will be called in which both parties would present their cases for or against rate adjustments.

The North Carolina Department of Insurance will not rule on this filing until 2017.

The filing is available for public review on the Department of Insurance website (<http://www.ncdoi.com/PC/Default.aspx>) and the SERFF Filing Access (<https://filingaccess.serff.com/sfa/home/NC>). Enter the SERFF Tracking Number NCRI-130822384.

Opportunity for Public Comment

For people who would like to weigh in on the rate requests in person, there will be a public comment session on Tuesday, December 20, 2016, 10:30 a.m. to 4 p.m. in the Jim Long Hearing Room of the Dobbs Building, 430 N. Salisbury St., Raleigh.

Written public comments will be accepted from December 2 through December 30, 2016. Written comments should be mailed to: NCDOI, Attn: Bob Mack, Property & Casualty Division, 1201 Mail Service Center, Raleigh, NC 27699-1201; or emailed to 2016DwellingInsurance@ncdoi.gov.

—NCDOI—

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 01 – DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Department of Administration intends to readopt without substantive changes the rule cited as 01 NCAC 04A .0201.

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

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://ncadmin.nc.gov>

Proposed Effective Date: April 1, 2017

Public Hearing:

Date: December 30, 2016

Time: 10:00 a.m.

Location: Department of Administration, (DOA Conference Room-5th Floor, Suite 5106), 116 W. Jones Street, Raleigh, NC 27609

Reason for Proposed Action: Pursuant to the periodic review and expiration of existing rules set forth in G.S. 150B-21.3A, this rule was classified as "necessary with substantive public interest." The rulemaking is to satisfy the re-adoption process. Rule is necessary and, after extensive consideration, no changes are desired or necessary at this time.

Comments may be submitted to: J. Brian Ratledge, 1301 Mail Service Center, Raleigh, NC 27699-1301, phone (919) 807-2425, email brian.ratledge@doa.nc.gov

Comment period ends: February 13, 2017

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 04 – AUXILIARY SERVICES

SUBCHAPTER 04A – STATE-OWNED PARKING LOTS

SECTION .0200 - PENALTIES

01 NCAC 04A .0201 IMPOUNDMENT AND REMOVAL (READOPTION WITHOUT SUBSTANTIVE CHANGES)

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Commerce, Division of Employment Security intends to adopt the rule cited as 04 NCAC 24B .0107, amend the rules cited as 04 NCAC 24A .0105 and 24C .0506, and repeal the rule cited as 04 NCAC 24C .0601.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://desncc.com/DES/static?page=DESRules>

Proposed Effective Date: April 1, 2017

Public Hearing:

Date: December 30, 2016

Time: 11:00 a.m.

Location: Division of Employment Security, 700 Wade Avenue, Room A-120, Raleigh, NC 27611

Reason for Proposed Action: In 2015, the North Carolina General Assembly made certain changes to Chapter 96 of the North Carolina General Statutes involving the employment security laws (N.C. Session Law 2015-238). As a result, DES was required to undergo temporary rulemaking in order to make certain conforming changes to the administrative rules. These changes included adding certain definitions (04 NCAC 24A .0105), creating a new rule regarding valid job contacts A(04

NCAC 24B .0107), and repealing certain provisions regarding post-decision relief/requests for reconsideration (04 NCAC 24C .0506 and 04 NCAC 24C .0601). DES previously underwent temporary rulemaking to make this change, but due to administrative issues did not begin the permanent rulemaking process in a timely manner. The temporary rules are set to expire on December 10, 2016. As a result, the purpose of these proposed amendments, adoption and repeals are to reinstate the changes previously implemented through the temporary rulemaking process.

Comments may be submitted to: John Hoomani, NC Division of Employment Security-Legal Services Section, PO Box 25903, Raleigh, NC 27611, fax (919) 733-8745, email des.rules@nccommerce.com

Comment period ends: February 13, 2017

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 (\geq \$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

CHAPTER 24 – EMPLOYMENT SECURITY

SUBCHAPTER 24A - GENERAL

SECTION .0100 – GENERAL

04 NCAC 24A .0105 DEFINITIONS

(a) In addition to the terms defined in G.S. 96, the following definitions apply whenever these terms are used in this Chapter:

- (1) "Additional claim" means the reopening of a valid initial claim for unemployment insurance benefits after a claimant, as defined in Item ~~(15)~~(16) of this Rule, ceased filing a weekly certification as defined in G.S. 96-14.9, for one or more weeks due to intervening employment.

The first week of eligibility filed after a claim has been reopened shall constitute a waiting period week if all eligibility requirements set forth in G.S. 96-14.9 are met.

- (2) "Agent state" means any state from which, or through which a claimant files a claim for benefits from another state.
- (3) "Adjudicator" means an employee of DES appointed to conduct an informal investigation and render a determination as required by G.S. 96-15(b).
- (4) "Appeal" means a submission by a party with statutory appeal rights requesting the Appeals Section of DES or the Board of Review to review a determination or decision that is adverse to that party.
- (5) "Appeals Referee" or "Hearing Officer" means an attorney appointed to hear or decide an appeal from a determination by an adjudicator and issues involving the rights, status, and liabilities of an employer pursuant to the provisions of G.S. 96-4(q) or 96-15(c).
- (6) "Appeals Section" means the section within DES where Appeals Referees conduct quasi-judicial administrative evidentiary hearings and make decisions in contested cases for unemployment insurance benefits. The Appeals Section also consists of support staff that assists Appeals Referees.
- ~~(7)~~ "Application for a position" means supplying the information required by an employer to place an individual in a particular position or opening. Such information may include proof of the qualifications or license required by the position or opening, employment history, and personal information, such as full name, Social Security Number or other identification number, telephone number, and current address. An application for a position may be accomplished in whatever manner acceptable to an employer, including the completion of a designated form, the provision of a written resume, or verbally.
- ~~(7)~~(8) "Authorized Representative" means an individual authorized by an employer or employing unit to act on the employer or employing unit's behalf before DES.
- ~~(8)~~(9) "Base period" means as defined in 96-1(b)(3). Calendar quarters are January through March, April through June, July through September, and October through December.
- ~~(9)~~(10) "Benefit week" means a period of seven consecutive calendar days, ending at 11:59 pm on Saturday.
- ~~(40)~~(11) "Benefit wage credits" means wages used to determine a claimant's monetary eligibility for benefits. Benefit wage credits consist of the wages a claimant received or should have received during the claimant's base period of

- employment and to include those wages that were awarded and paid to the claimant after the base period pursuant to a court order; a National Labor Relations Board determination; another adjudicative agency; or by private agreement, consent, or arbitration for loss of pay because of discharge. DES shall credit the awarded wages to the quarter in which the wages should have been paid.
- (11)(12) "Board of Review" means as defined in G.S. 96-4(b) and is the body that conducts "higher authority review" of appeals arising from the decisions of the Division, tax liability hearings, and labor disputes. The Board of Review is also referred to as the "Board" or "BOR."
- (12)(13) "Calendar Period" means the 52 week period beginning with the first day of a week in which an individual first files a valid claim for benefits and registers for work. The week begins on the first Sunday preceding the initial claim filed and ends the following year at 11:59 p.m. on Saturday.
- (13)(14) "Charging cycle" means ~~the 52 week period beginning August 1st and ending July 31st the year following the year in which the employer's account is assessed and charged for erroneous payments against its account, due to establishing a pattern of untimely and inadequate responses to Requests for Separation Information (NCUI 500AB) during the preceding reporting cycle. each calendar quarter following the prior reporting cycle, during which the employer's account is assessed and charged for erroneous unemployment insurance benefit payments resulting from untimely or inadequate responses from the employer to particular Requests for Separation Information (Form NCUI 500AB) during that charging cycle if the employer met or exceeded the adequacy threshold in the prior reporting cycle.~~
- (14)(15) "Chief Appeals Referee" includes the Chief Appeals Referee's designee, unless otherwise stated.
- (15)(16) "Claimant" means an individual who files an unemployment insurance benefits claim for payments as provided in G.S. 96-14.1.
- (16)(17) "Clear and convincing evidence" ~~is~~ means evidence indicating that the thing to be proved is highly probable or reasonably certain.
- (17)(18) "Customarily," as the term is used in G.S. 96-16, means during at least seventy-five percent of the calendar years of an observation interval.
- (18)(19) "Day" means a calendar day.
- (19)(20) "Delivery service" means an authorized designated carrier pursuant to Rule 4(j) of the North Carolina Rules of Civil Procedure and 26 U.S.C. 7502(f)(2).
- (20)(21) "DES website" means the internet address found at www.ncesc.com.
- (21)(22) "Due diligence" means the measure of carefulness, precaution, attentiveness, and good judgment as to be expected from, and exercised by a reasonable and prudent person under the particular circumstances.
- (22)(23) "Effective date of a claim" means either the benefit year beginning on the Sunday preceding the payroll week ending date if the claimant is payroll attached, or the benefit year beginning on the Sunday of the calendar week within which a claimant filed a valid claim for benefits and registered for work if the claimant is not payroll attached.
- (23)(23) "Electronic transmission" means transmission by facsimile or internet.
- (24)(25) "Equity and good conscience" means fairness as applied to a given set of circumstances.
- (25)(26) "Fault" means an error or defect of judgment or of conduct; any deviation from prudence or duty resulting from inattention, incapacity, perversity, bad faith, or mismanagement.
- (26)(27) "Good cause" means a legally sufficient reason.
- (27)(28) "In-person/telephone hearing" means an administrative hearing before the Appeals Section, Board of Review, or other designated Hearing Officer where at least one party or witness appears in-person, and another party or witness appears by telephone.
- (28)(29) "Interstate benefit payment plan" means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits may be paid to unemployed claimants absent from the state (or states) where benefit wage credits accumulated. This rule incorporates the United States Department of Labor's Interstate Benefit Payment Plan, Interstate Agreements, ET Handbook No. 392 app. B (2d ed. 1997) by reference and includes subsequent amendments and editions of the referenced material in accordance with G.S. 150B-21.6. Copies of the incorporated material are located at 700 Wade Avenue, in Raleigh, North Carolina, and can be obtained by request at no cost to the public by contacting DES as specified under 04 NCAC 24A .0201.
- (29)(30) "Interstate claimant" means a claimant who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state, or directly with the liable state. The term "interstate claimant" shall not include any claimant who customarily commutes from a residence in an agent state to work in a liable state unless the Division finds that this exclusion would create an undue hardship.
- (30)(31) "Labor dispute" means a dispute between an employer and its employees about wages,

hours, working conditions, or issues concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or condition of employment, between those who could be concerned in the controversy.

~~(31)~~(32) "Last known address" means the most recent address provided to DES by the claimant or taxpayer located in its official record, except that DES shall update addresses maintained in its official records by referring to data accumulated and maintained in the United States Postal Service (USPS) National Change of Address database that retains change of address information (NCOA Database). If the claimant or taxpayer's name and last known address in DES's official records match the claimant or taxpayer's name and previous mailing address contained in the NCOA database, the new address in the NCOA database is the taxpayer's last known address. This rule incorporates the United States Postal Service's National Change of Address Database by reference and includes subsequent amendments and editions of the referenced material in accordance with G.S. 150B-21.6. Copies of the incorporated material are located at 700 Wade Avenue, in Raleigh, North Carolina, and can be obtained by request at no cost to the public by contacting DES as specified under 04 NCAC 24A .0201.

~~(32)~~(33) "Legal representative" means a licensed attorney or a person supervised by a licensed attorney.

~~(33)~~(34) "Liable state" means any state against which a claimant files a claim for benefits through another state.

~~(34)~~(35) "Observation interval" means an interval of time including the four consecutive calendar years preceding the calendar year in which an application for a seasonal determination is made pursuant to G.S. 96-16. In the case of a newly liable employer or an employer whose operational activities have changed, the observation interval may be less than four calendar years.

~~(35)~~(36) "Party with appeal rights" means a party who has the right to appeal an unfavorable determination or decision pursuant to G.S. 96-4(q) and G.S. 96-15.

~~(36)~~(37) "Public employment office" means a local office managed and operated by the Division of Workforce Solutions (DWS) of the North Carolina Department of Commerce.

~~(37)~~(38) "Regularly recurring" means a period or periods of operational activity and shall be deemed regularly recurring if, during at least seventy-five percent of the calendar years in the observation interval, the beginning and ending

dates of the period or periods do not vary more than four weeks.

~~(38)~~(39) "Reopened claim" means the resumption of a valid initial claim following a break in filing weekly certifications during a benefit year and the break was caused by reasons other than intervening employment. The first week of eligibility following the effective date of the reopened claim shall constitute a waiting period week if all eligibility requirements set forth in G.S. 96-14.9 are met.

~~(39)~~(40) "Reporting cycle" means the 52 week period beginning August 1st and ending July 31st the following year in which the employer's account is examined and recorded for any inadequate responses to Requests for Separation Information (NCUI 500AB).

~~(40)~~(41) "State" means any of the 50 states in the United States and includes the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

~~(41)~~(42) "Wages paid" means both wages actually received by a worker, and wages "constructively paid." Wages are constructively paid when they are credited to the account of, or set apart for a worker without any substantial restriction as to the time or manner of payment or condition upon which payment is to be made, and shall be made available so that the worker may draw upon them at any time, and payment brought within the worker's control and disposition, although not then actually reduced to possession.

~~(42)~~(43) "Wages payable" means wages earned but not paid.

~~(43)~~(44) "Weekly period" means a seven day period beginning at 12:00 a.m. Sunday and ending on the following Saturday at 11:59 p.m.

~~(44)~~(45) "Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits for the week are claimed.

Authority G.S. 84; 96-1; 96-4; 96-9.2; 96-9.6; 96-14.1; 96-14.9; 96-15; 96-17; 96-20.

SUBCHAPTER 24B - BENEFITS

SECTION .0100 – CLAIMS FOR UNEMPLOYMENT INSURANCE BENEFITS

04 NCAC 24B .0107 VALID JOB CONTACTS

(a) Each claimant who has registered for work and filed a claim for unemployment insurance benefits shall actively seek work and make the minimum valid job contacts per week as required under G.S. 96-14.9(e).

(b) For job contacts conducted on an employer's or employment website:

- (1) a valid job contact is a submitted application for a position as defined in 04 NCAC 24A .0105(7);
- (2) each separate and distinct position requiring a separate application, even if with the same employer, shall count as a separate job contact; and
- (3) upon request by DES, each claimant must provide verifiable proof of their job contacts, and such proof may include the claimant's record of the name of the employer, the URL or address of the website, the job title of the position for which the claimant applied, the date of submission, and the confirmation number or email.

(c) For job contacts conducted by electronic mail (e-mail) or facsimile:

- (1) a valid job contact is a message sent to a valid e-mail address or facsimile number of an employer, or their designee, for the sole purpose of obtaining employment with that employer; and
- (2) upon request by DES, each claimant must provide verifiable proof of their job contacts, and such proof may include the claimant's record of the name of the employer, the e-mail address or facsimile number used for the contact, the name and job title of the person contacted, and the date of the contact.

(d) For job contacts conducted by telephone:

- (1) a valid job contact is a verbal conversation with an employer, or their designee, for the sole purpose of obtaining employment with that employer.
- (2) upon request by DES, each claimant must provide verifiable proof of their job contacts, and such proof may include the claimant's record of the name of the employer, the telephone number used for the contact, the name and job title of the person contacted, and the date of the contact; and
- (3) a message left on an answering service or a voice-mailbox shall not be a valid job contact for purposes of G.S. 96-14.9(e)(3).

(e) For job contacts conducted in person:

- (1) a valid job contact is a meeting with an employer, or their designee, for the sole purpose of obtaining employment with that employer;
- (2) upon request by DES, each claimant must provide verifiable proof of their job contacts, and such proof may include the claimant's record of the name of the employer, the location at which the contact occurred, the name and job title of the person with whom the claimant met, and the date of the contact; and
- (3) an in-person contact with an employer on a single day shall be considered a single contact for purposes of G.S. 96-14.9(e)(3), unless

multiple applications are submitted that day for separate and distinct positions as described in Subparagraphs (b)(1) and (2) of this Rule.

(f) The following shall be considered invalid job contacts:

- (1) Duplicative job contacts. A contact is duplicative when a claimant contacts the same employer regarding the same position or opening more than once during the same week with no change in the result of the contact. The following are examples of a change in the result of contact:
 - (A) a contact to or from an employer that occurs after an initial contact, involves scheduling an interview, and an interview is in fact scheduled; or
 - (B) a contact to an employer in response to a request for additional information.
- (2) Contact with an employer for a job that the claimant would be unable to accept if offered. A "job that a claimant would be unable to accept if offered" means a position for which the claimant lacks the necessary knowledge, ability, or skill required for that job, as stated in the job posting or as required by applicable licensing authority.

(g) Initial registration via NCWorks shall be considered a valid job contact for the week during which the registration was completed.

(h) Union members.

- (1) If a claimant customarily obtains employment through a union with a hiring hall, then weekly contact with the same shall satisfy the requirements of G.S. 96-14.9(e). Upon request by DES, each claimant shall provide verifiable proof of their job contacts, and such proof may include their union number, the address where they made contact as required by their union's reporting requirements, the name and job title of the person with whom they spoke, and the dates on which they made contact. Claimants who are members of a union with a hiring hall shall provide information about their union's reporting requirements to DES upon request.
- (2) If a claimant is a member of a non-hiring hall union, then contact with the same shall be considered a single valid job contact for the week in which it occurred. Upon request by DES, each claimant must provide verifiable proof of their job contacts, and such proof may include the claimant's record of the name of the union agent or applicable union, the address of the union or where contact was made, the name of the person with whom the claimant spoke, and the date of the contact.

(i) Longshoremen registered with their union satisfy the requirements of G.S. 96-14.9(e) by submitting on a weekly basis their union number, the address where they made contact as required by their union's reporting requirements, the name and job title of the person with whom they spoke, and the dates on which

they made contact. Longshoreman shall provide information about their union's reporting requirements to DES upon request.
(j) An application to a blind job advertisement shall be considered a valid job contact for each separate and distinct position sought or employer contacted. In addition to the requirements set forth above in this Section, the claimant shall also retain, and provide to DES upon request, a copy of the blind advertisement. A copy of the blind advertisement shall be accepted by DES in lieu of the employer name, the name of the person contacted, and the job title of the person contacted if these are unavailable.

Authority G.S. 96-4; 96-14.9.

SUBCHAPTER 24C – INITIAL APPEALS FROM DETERMINATION AND HIGHER AUTHORITY REVIEW

SECTION .0500 – HIGHER AUTHORITY REVIEW OF APPEALS DECISION

04 NCAC 24C .0506 CONTENT OF HIGHER AUTHORITY DECISION

(a) The Board of Review shall issue a written Higher Authority Decision that includes the following:

- (1) the names of the members of the Board of Review who participated in the review;
- (2) findings of fact, conclusions of law, and the decision of the Board of Review;
- (3) instructions for filing an appeal of the Higher Authority Decision to the superior court and the date the Higher Authority Decision was mailed;
- ~~(4) instructions for requesting any post decision relief or reconsideration if applicable under Rule .0601 of this Subchapter; and~~
- ~~(5)~~(4) notice that claims filed on or after June 30, 2013 shall be subject to repayment of overpayment of benefits resulting from any decision that is later reversed on appeal.

Authority G.S. 96-4; 96-11.4; 96-15.

SECTION .0600 - POST-DECISION RELIEF

04 NCAC 24C .0601 POST-DECISION RELIEF

~~(a) A written request for reconsideration or post decision relief shall:~~

- ~~(1) be in the form of a motion or petition, and shall be clearly identified as a Request for Reconsideration or a Motion or Petition for Post Decision Relief;~~
- ~~(2) identify the party seeking post decision relief;~~
- ~~(3) contain the name of each party, and the docket number of the Higher Authority Decision;~~
- ~~(4) contain a statement that a copy was mailed or personally delivered to each party to the proceedings; and~~
- ~~(5) explain the reasons why post decision relief should be granted.~~

~~(b) The written request shall be filed no later than 30 days after the Higher Authority Decision was mailed to each party, and the timeliness requirements of 04 NCAC 24A .0100 apply.~~

~~(c) The written request shall be filed with the Board of Review pursuant to 04 NCAC 24A .0104(n).~~

~~(d) Any order granting or denying a party's request for post decision relief shall contain the following notices:~~

- ~~(1) that a party has a right to petition for judicial review by appealing the original Higher Authority Decision to the superior court; and~~
- ~~(2) that claims filed on or after June 30, 2013 shall be subject to repayment of overpayment of benefits resulting from any decision that is later reversed on appeal.~~

Authority G.S. 96-4; 96-11.4; 96-15.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 13B .0840.

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

Proposed Effective Date: May 1, 2017

Public Hearing:

Date: January 13, 2017

Time: 2:30 p.m.

Location: NC Department of Environmental Quality, 217 West Jones Street, Raleigh, NC 27603, Room 1210

Reason for Proposed Action: *The rule is being amended at the Agency's request to reduce the burden on the regulated community and the agency while not increasing risk to human health and the environment. The amendment will decrease frequency of soil sampling at septage land application sites from once per year to once every other year, which reduces time and cost spent on sampling; and does not increase risk as historical sampling results do not indicate exceedances of federal standards for septage land application.*

Comments may be submitted to: Jessica Montie, 1646 Mail Service Center, Raleigh, NC 27699-1646, phone (919) 707-8247, email jessica.montie@ncdenr.gov

Comment period ends: February 13, 2017

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 (\geq \$1,000,000)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 13 – SOLID WASTE MANAGMENT

SUBCHAPTER 13B – SOLID WASTE MANAGEMENT

SECTION .0800 – SEPTAGE MANAGMENT

15A NCAC 13B .0840 SAMPLING AND ANALYSIS

(a) Monitoring or sample analysis required by this Section, and all costs involved, are the responsibility of the septage management firm, site operator, or ~~the~~ owner of the wastewater system, as appropriate. This includes all costs of ~~analysis of sampling, collection, handling, and analysis of samples, testing.~~

(b) The permit holder of a septage land application site shall arrange for ~~annual~~-representative soil samples to be taken once every two years from each field at the permitted site during the last quarter of ~~each~~ the calendar year.

(c) Soil samples shall be taken ~~annually~~-once every two years from each area designated as a separate field of a permitted septage land application site and analyzed for cation exchange capacity, pH, phosphorus, potassium, ~~calcium~~ calcium, manganese, magnesium, zinc, and copper. If the results for zinc analysis are equal to or above 30 pounds per acre or the results for copper analysis are equal to or above 35 pounds per acre, analysis for the metals listed in Rule .0835(c)(10)(B) of this Section shall be required. Analysis for other metals shall be required when zinc levels reach 30 pounds per acre or copper levels reach 35 pounds per acre. Sites permitted to receive ~~septage, septage~~ other than domestic ~~septage, septage~~ shall be sampled once every two years ~~annually~~ to determine compliance with 40 CFR 257.3-5.40 CFR 257.3-6.

(d) Domestic septage and grease septage shall be monitored in accordance with 40 CFR Part 503.16(b).

(e) Domestic treatment plant septage proposed to be land applied at a permitted septage land application site shall be sampled before the initial application, and annually thereafter, prior to being removed from a treatment facility for the following:

- (1) Metals ~~addressed-listed~~ in 40 CFR 503.13; and
- (2) Total solids, pH, ammonia, nitrates, total ~~kjeldahl-kjeldahl~~ nitrogen (TKN), biochemical

oxygen demand (BOD), chemical oxygen demand (COD), total phosphorus, potassium, ~~sodium-sodium~~, and magnesium.

(f) Industrial or commercial ~~septage, septage~~ or commercial treatment plant ~~septage, septage~~ proposed to be land applied at a permitted septage land application site, ~~site~~ shall be sampled prior to being removed from a wastewater system. Analytical results shall be submitted to the Division ~~for consideration~~ prior to the issuance of a permit or approval to land apply the septage. Analysis shall be conducted for:

- (1) Metals ~~addressed-listed~~ in 40 CFR 503.13;
- (2) Total solids, pH, ammonia, nitrates, TKN, BOD, COD, total phosphorus, potassium, ~~sodium-sodium~~, and magnesium; and
- (3) Organic chemicals, using a complete Toxicity Characteristic Leaching Procedure or other appropriate sampling, such as EPA Test numbers ~~8240-8260~~ or 8270, unless an examination of the industrial process and the material used indicates less extensive analysis is acceptable.

(g) Sample analysis required by this Section shall be performed by a laboratory certified for waste analysis. Analysis shall be conducted in accordance with 40 CFR Part 503.8. Organic chemical analysis shall be conducted according to Subparagraph (f)(3) of this Rule. Results from the North Carolina Department of Agriculture and Consumer Services laboratory ~~will~~ shall be ~~accepted, accepted where appropriate.~~

Authority G.S. 130A-291.1.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 06 – BOARD OF BARBER EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Barber Examiners intends to amend the rule cited as 21 NCAC 06L .0102.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncbarbers.com/news.html>

Proposed Effective Date: April 1, 2017

Public Hearing:

Date: January 3, 2017

Time: 10:00 a.m.

Location: 5809 Departure Drive, Suite 102, Raleigh, NC 27616

Reason for Proposed Action: *The proposed amendments would: (1) reduce the number of linear feet required from front wall to back wall in each area where a barber chair is located from 12 feet to eight feet, and (2) fix a typographical error.*

Comments may be submitted to: Dennis Seavers, 5809 Departure Drive, Suite 102, Raleigh, NC 27616, phone (919) 981-5210 x22, email dseavers@ncbarbers.com

Comment period ends: February 13, 2017

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

SUBCHAPTER 06L – BARBER SHOPS

21 NCAC 06L .0102 MEASUREMENTS OF BARBER SHOP

- (a) Each barber shop shall be a minimum of 196 square feet measured from the inside walls of the shop, not including common areas shared with other businesses or residents.
- (b) Each chair shall be located in an area where there is no less than ~~12-eight~~ linear feet from front wall to back wall, measured through the center of the chair, with the back wall being the wall or plain plane to which the backstand is affixed. There shall be a minimum of five linear feet of space between each barber chair, from center to center of each chair and there shall be no less than three linear feet from the center of any chair to any side wall. There shall be an unobstructed aisle in front of each chair of no less than four feet.
- (c) Paragraphs (a) and (b) apply to barber shops permitted on or after December 1, 1994 or that undergo modification or structural renovations on or after that date.
- (d) Barber shops permitted prior to February 1, 1976, shall be a minimum of 12 feet in width and 14 feet in length.
- (e) Barber shops permitted between February 1, 1976 and November 30, 1994 shall be a minimum of 14 feet in width and 14 feet in length.
- (f) Barber shops permitted within the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice prior to July 1, 2010 are exempt from the requirements of this Rule.

Authority G.S. 86A-15.

CHAPTER 21 – BOARD FOR THE LICENSING OF GEOLOGISTS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board for the Licensing of Geologists intends to adopt the rules cited as 21 NCAC 21 .0303, .0403-.0407 and amend the rules cited as 21 NCAC 21 .0101, .0103, .0104, .0301, .0302, .0501, .0502, .0505, .0506, .0511, .0513-.0515, .0803, .0804, .0903, .1101, and .1102.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncblg.org/about/>

Proposed Effective Date: June 1, 2017

Public Hearing:

Date: January 4, 2017

Time: 11:00 a.m.

Location: Upton Associates, 3733 Benson Drive, Raleigh, NC 27629-1225

Reason for Proposed Action: The board is updating its mailing address, including gender neutral language throughout the rules, adding a continuing education requirement for licensees, clarifying its investigative process, and creating inactive status for retired licensees.

Comments may be submitted to: Barbara U. Geiger, Board Executive Director, North Carolina Board for the Licensing of Geologists, Post Office Box 41225, Raleigh, NC 27629, fax (919) 872-1598, email ncblg@bellsouth.net

Comment period ends: February 13, 2017

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

(c) Secretary-treasurer ~~Treasurer~~:

- (1) The ~~secretary-treasurer~~, Secretary-Treasurer, with the assistance of an ~~executive-director~~ Executive Director or such other officers or employees as may be approved by the Board, shall conduct and care for all the correspondence of the Board, keep the minutes of all the meetings, keep all books and records, and ~~shall~~ sign all certificates issued. ~~He~~ The Secretary-Treasurer shall have charge, care and custody of the official documents by order of the Board. ~~He~~ The Secretary-Treasurer shall provide due notice of the time and place of all meetings of the Board to each member of the Board.
- (2) The ~~secretary-treasurer~~, Secretary-Treasurer, with the assistance of an ~~executive-director~~ Executive Director or such other officers or employees as may be approved by the Board, shall receive all moneys from applicants for annual renewal or other fees and deposit them in an authorized depository of the Board. The ~~secretary-treasurer~~ Secretary-Treasurer shall give bond to be conditioned on the faithful performance of the duties of this office and on the faithful accounting of all monies and other property as shall come into ~~his~~ this officer's hands.
- (3) The ~~secretary-treasurer~~, Secretary-Treasurer, with the assistance of an ~~executive-director~~ Executive Director or such other officers or employees as may be approved by the Board, shall provide to each applicant for a license or registration a current copy of G.S. 89E and the rules of this Chapter. Copies of the Geologists Licensing Act and the rules of this Chapter shall be provided by mail with the application packet or in electronic format on the Board's Internet website (www.ncblg.org) with the on-line application packet.

Authority G.S. 89E-4; 89E-5.

SECTION .0300 – LICENSING OF GEOLOGISTS

21 NCAC 21 .0301 REQUIREMENTS FOR LICENSING

(a) Education. In determining whether an applicant meets the minimum education requirements of the Geologists Licensing Act, the Board shall accept transcripts from colleges and universities that are accredited by a national or regional accrediting organization such as the Southern Association of Colleges and Schools. ~~The Board requires 30 hours of geological study, with 24 hours of upper level~~ The Board requires that an applicant have graduated from an accredited college or university and have a degree with a major in geology, engineering geology or geological engineering or related geological science. If the applicant does not have a degree in any of the listed majors, the applicant must have completed 30 hours of geological study or the

SECTION .0100 – STATUTORY AND ADMINISTRATIVE PROVISIONS

21 NCAC 21 .0101 AUTHORITY: NAME AND LOCATION OF BOARD

The "North Carolina Geologists Licensing Act", Chapter 89E of the General Statutes of North Carolina, establishes and authorizes the "North Carolina Board for Licensing of Geologists," hereafter called the "Board". Unless otherwise directed, all communications should be addressed to the Board at Post Office Box ~~27402, 41225~~, Raleigh, North Carolina ~~27611, 27629~~.

Authority G.S. 89E-4.

21 NCAC 21 .0103 ORGANIZATION OF THE BOARD

- (a) Meetings shall be open and public except that the Board may meet in closed sessions to prepare, approve, administer, or grade examinations; to deliberate the qualifications of an applicant for license; or to deliberate on the disposition of a proceeding to discipline a licensed geologist.
- (b) The Board shall have power to compel the attendance of witnesses, to administer oaths, and to take testimony and proofs of all matters within its jurisdiction.
- (c) The ~~chairman~~ Chair and ex-officio member shall be full voting members of the Board.

Authority G.S. 89E-4; 89E-5; 143-318.18(6).

21 NCAC 21 .0104 DUTIES OF OFFICERS

(a) ~~Chairman~~ Board Chair:

- (1) The ~~chairman~~ Chair shall ~~shall, when present,~~ preside at all ~~meetings,~~ meetings when present, appoint all committees, sign all certificates issued and perform all other duties pertaining to his office.
- (2) The Board Chair, together with the Board Counsel and Board Executive Director, shall determine if a Complaint submitted to the Board is complete and should be forwarded to an investigator. In addition, the Chair shall be responsible for evaluating the investigative report and proposing further action as authorized by Rule .0105 of this Section. Should the Chair identify a conflict of interest, the Vice-Chair shall review the Complaint. If both Chair and Vice-Chair have a conflict of interest, the Secretary-Treasurer shall review the Complaint. If none of these persons can serve, then the Chair shall designate another Board member to review the Complaint.

(b) ~~Board Vice-Chair~~ Vice-chairman. The ~~vice-chairman~~ Vice-Chair, in the absence of the Chair, ~~chairman~~, shall perform all of the duties of the Chair. ~~chairman~~. The Vice-Chair shall sign all certificates issued.

equivalent in geological science courses leading to a major in geology, of which at least 24 hours of the equivalent were upper-level courses or graduate courses in areas including: geology, geophysics, geochemistry, oceanography, paleontology, hydrology, soil science, economic geology and engineering geology.

(b) References. Five letters of reference submitted to the Board which shall satisfy the Board as to the character, reputation, responsibility, integrity and competence of the applicant. These letters of reference must be submitted by licensed ~~or qualified~~ geologists or ~~professional~~ engineers. No member of the Board shall act as a reference for any applicant for licensing. At least two of the five letters of reference must be submitted by licensed ~~or qualified~~ geologists who are familiar with the applicant's work in the field of geology.

(c) Written Examination. Except as provided in Paragraph (e) of this Rule, all applicants shall pass the written examination administered by the Board in conjunction with the National Association of State Boards of Geology (A.S.B.O.G.). The applicant shall be notified, not less than 30 days before the examination, as to the time and place of the examination. ~~A person who has failed an examination is allowed to take the examination again at the next regularly scheduled examination period. A~~ person having a record of three failures shall not be allowed to take that examination again until a written appeal is made to the Board and qualifications for examination are reviewed and reaffirmed by the Board. The applicant shall demonstrate to the Board that actions have been taken to improve the applicant's possibility of passing the exam.

(d) Experience. In determining whether an applicant meets the minimum experience requirements of the Geologists Licensing Act, the Board shall consider the total work experience record of the applicant. The Board shall look for the applicant's ability to conduct geological work in a satisfactory manner with little or no supervision.

(e) Certificate by comity. The Board shall grant a license without further examination to a person ~~holding a license who has been licensed by another jurisdiction~~ to engage in the practice of ~~geology~~ geology, ~~which license has been issued by another jurisdiction~~, when the applicant meets the following conditions:

- (1) the applicant has filed an application for license and paid the fee required by Rule .0107 of this Chapter;
- (2) the applicant has provided evidence of education and experience equal to the requirements of Paragraphs (a), (b), and (d) of this Rule as indicated in Rule .0302 of this Section;
- (3) the applicant is in good standing with the agency regulating the practice of geology in any jurisdiction in which the applicant holds a license to practice geology; and
- (4) the applicant has successfully passed a written examination deemed to be equal or equivalent to the examination required by the Board pursuant to G.S. 89E-9 and Paragraph (c) of this Rule.

Authority G.S. 89E-7; 89E-8; 89E-9; 89E-11.

21 NCAC 21 .0302 APPLICATION PROCEDURE

(a) All applicants for licensing are required to furnish with their applications the following:

- (1) A legible, official copy of their college ~~transcript(s)~~, transcript(s) and verification of graduation sent directly from the institution to the Board;
- (2) Verification of experience in the practice of geology on forms provided by the Board;
- (3) Five references as defined in Rule .0301(b) of this Section;
- (4) A notarized copy of a completed application form as prescribed by the Board; and
- (5) The application fee as prescribed in Rule .0107 of this Chapter.

(b) Applicants for reinstatement of an ~~expired—expired~~, ~~suspended~~, or ~~inactive~~ license or registration shall submit a reinstatement application and shall submit the fee as provided by Rule .0107 of this Chapter.

(c) Applicants for reinstatement of a revoked license or registration shall submit such information as is required by the Board to determine eligibility for reinstatement pursuant to G.S. 89E-21, and shall submit the fee as provided by Rule .0107 of this Chapter.

(d) Additional information required by the Board to approve or deny approval on any application shall be filed with the Board within 60 days of the applicant's receipt of notice to provide such information. This may include any of the applicant's written reports, maps, published articles or other materials the Board determines are appropriate to document the applicant's experience as a geologist. Failure to submit the supplemental information requested within the time specified by this Rule may result in the Board's rejection of the application without further notice prior to such rejection.

Authority G.S. 89E-7; 89E-8; 89E-9; 89E-11; 89E-12; 89E-21.

21 NCAC 21 .0303 INACTIVE STATUS

(a) A licensee may request inactive status by following this process:

- (1) Licensee shall submit a letter in writing to the Board before the current license has expired requesting inactive status;
- (2) At the time the letter request is submitted, the licensee must be in good standing with the Board (that is, the license has not been suspended, surrendered, or revoked);
- (3) The Board will notify the licensee that he or she has been granted inactive status or the reason the request was not granted;
- (4) Should the licensee seeking inactive status be the person identified as the North Carolina licensed geologists for a corporation registered with the Board, The Professional Corporation Act (G.S. 55B) requires that another licensee who meets the statutory requirements be identified in order to maintain the professional corporation's registration with the Board. If this

is not done before the licensee is granted inactive status, the professional corporation will be notified by the Board that its registration is suspended.

(b) A geologist or registered corporation with an inactive or suspended license shall not engage in the public practice of geology in North Carolina.

(c) A geologist with an inactive license shall no longer seal and certify documents with his or her seal.

(d) The Board will maintain a list of all inactive licensees.

(e) Any reference to an inactive geologist on a letter, title, sign, card, or devise shall list such geologist as "Retired Geologist" or "N.C. Geology License No. (inactive)."

(f) An individual who is on inactive status may convert his or her license to active status by submission of an application for reinstatement of license and payment of the reinstatement fee.

(g) In no case may an individual remain on inactive status for more than five years without permission of the Board. If an individual has been on inactive status for five years and does not request additional time to hold an inactive license, the license will be expired.

(h) Any geologist who has been granted inactive status is not required to fulfill continuing education requirements.

Authority G.S. 89E-4; 89E-5.

SECTION .0400 – CONTINUING EDUCATION

21 NCAC 21 .0403 INTRODUCTION

The following continuing education requirements are established by the Board in accordance with G.S. 89E-2 and G.S. 89E-5 to protect the life, property, health and public welfare through the regulation of the practice of geology in the State of North Carolina. Beginning July 1, 2018, each person holding an active geology license must complete 12 hours of continuing professional education relating to geology as a condition for licensure renewal.

Authority G.S. 89E-4; 89E-5.

21 NCAC 21 .0404 REQUIREMENTS

(a) Each application for renewal shall include information attested to by the licensee under penalty of perjury on a form provided by the Board establishing that the licensee has completed the minimum required contact hours of approved continuing education.

(b) Every licensee shall obtain 12 contact hours of continuing education each renewal period. If a licensee exceeds the annual requirement in any renewal period, a maximum of 12 hours may be carried forward to the next renewal period.

(c) A contact hour is defined as actual instruction time (credited to the nearest one-quarter of an hour) received in-person, or through an online class that includes interaction between the teacher and student, or through any other similar format.

(d) Selection of courses and activities that meet the requirements of this Section are the responsibility of the licensee and shall be in accordance with any continuing education Guidelines approved by the Board. The Board will provide a list posted on the Board's website of the professional societies whose courses have been

preapproved for continuing education credit. In general, continuing education credit may be earned by any of the following activities:

(1) Teaching or completing for-credit courses at any accredited university or college;

(2) Teaching or completing for-credit continuing-education courses, seminars, or workshops sponsored by professional geological societies;

(3) Teaching or completing for-credit of course work sponsored by other professional or educational organizations approved by the Board;

(4) Presenting or attending seminars, workshops, or professional or technical presentations made at conventions or conferences of professional organizations; and

(5) Licensee may receive double credits for each hour they teach. Teaching credit is valid for teaching a course or seminar for the first time only. Teaching credit does not apply to full-time faculty, as defined by the institution where a licensee is teaching.

(e) Courses offered by professional societies that have not been pre-approved by the Board may be submitted for review and approval before the licensee takes the course.

Authority G.S. 89E-4; 89E-5.

21 NCAC 21 .0405 DETERMINATION OF CREDIT

(a) The Board shall review all information provided by the licensee on the form required by the Board as part of the annual license renewal. The Board may request additional information from the licensee as required to verify the continuing education earned.

(b) The Board has final authority to determine the amount of continuing education credit earned by each licensee based on materials submitted.

Authority G.S. 89E-4; 89E-5.

21 NCAC 21 .0406 RECORDKEEPING

(a) Records substantiating the Board-approved continuing-education activities may include, but are not limited to the following:

(1) A log that shows the type of activity claimed; title or specific subject; the name of the organization that provided the continuing education; the location, duration, date, instructor's or speaker's name; credits hours earned; and other information on a form as prescribed by the Board;

(2) Copies of registration receipts and brochures identifying the continuing-education activities attended by the licensee;

(3) Attendance verification records in the form of completion certificates;

(4) Other documents that support evidence of attendance.

(b) The licensee is responsible for maintaining records that support the claimed credit hours for the Board approved continuing education activities. These records must be maintained for a period of three years and copies may be requested by the Board for audit verification purposes. The Board may approve other records that contain the information required by this Rule.

(c) The licensee shall be responsible for providing electronic copies of the records substantiating the continuing education activities for which he or she is claiming credit to the Board's Executive Director.

Authority G.S. 89E-4; 89E-5.

21 NCAC 21 .0407 EXEMPTIONS

A licensee is exempt from the annual continuing-education requirements as long as any of the following exceptions apply:

- (1) New licensees by way of examination shall be required to show proof of 12 hours of continuing education when their geology license is renewed for the second time.
- (2) New licensees by way of comity shall be required to show proof of 12 hours of continuing education the first time the license is renewed.
- (3) If currently licensed by and in good standing (license is not suspended or revoked) with the Board, a licensee who is serving in the armed forces of the United States and who is eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2 may request a waiver of the mandatory continuing-education requirements for the time period disregarded pursuant to the Internal Revenue Code 26 U.S.C. 7508 as follows:

- (a) The licensee shall notify the Board of eligibility before the current license expires. Upon such notification, the Board shall maintain the license in active status through the extension period.
- (b) If the licensee fails to notify the Board of eligibility for the extension period before the current license expires, upon receipt and acceptance of a renewal application within the extension period and presentation of proof that the licensee was eligible on the date that is the deadline for renewal, the expired license or registration shall be deemed retroactively to have not expired.
- (c) The licensee who submits a renewal application within the extension period shall not be deemed to hold a lapsed license subject to reinstatement fees.
- (d) The licensee may renew the license within the extension period despite

failing to complete the specified continuing-education requirements.

(e) A licensee shall provide proof of eligibility for the extension period when the licensee or registrant submits the renewal application.

(4) The Board may grant an exemption at a licensee's request if the Board determines that the licensee is experiencing physical disability, illness, or other extenuating circumstances that prevent the licensee from obtaining continuing-education hours. Supporting documentation must be furnished to the Board along with a written request.

(5) Licensees who list their occupation as "Inactive" on the Board-approved renewal form and who are no longer providing geological services are not required to earn continuing education credits each year. In the event such a person elects to return to active practice of geology, 12 hours of continuing education must be earned in the year prior to the licensee's return to active practice.

Authority G.S. 89E-4; 89E-5.

SECTION .0500 – DISCIPLINARY ACTION AND PROCEDURE

21 NCAC 21 .0501 FILING OF CHARGES AND DISCIPLINARY ACTIONS

(a) Any person may file a complaint against a geologist with the Board for disciplinary action against a geologist based on a charge of negligence, incompetence, dishonest practice, or other misconduct or of any in violation of G.S. 89E or of these Rules on forms provided by the Board. These forms are on the Board's website at www.ncblg.org and may be requested from the Board.

(b) The complaint shall set forth the facts upon which the complaint is based. The complainant shall affirm that the facts stated in the complaint are true, and that he or she is prepared to prove them at a hearing.

~~(b)(c)~~ Upon receipt of such charge-complaint or upon its the Board's own initiative, the Board may the Board's Executive Director, Board Chair, and counsel to the Board shall meet to determine whether the Board has jurisdiction over the complaint and whether there is good cause to proceed with an investigation.

(d) If it is determined there are grounds to proceed, the Board's professional staff shall open a case file, notify the complainant that the complaint has been received and a file opened, notify and provide a copy of the complaint to the respondent-licensee named in the complaint and request a response, and initiate an investigation of the allegations in the complaint.

(e) Based upon a review of the complaint and/or the results of the investigation, and consistent with procedures required by G.S. 150B, the Board may suspend or revoke the license or certificate of registration, may issue a reprimand as provided in Rule .0502 of this Section or may, upon a statement of the reasons therefore, dismiss the charge as unfounded or trivial, which statement shall be mailed to the geologist and the person who filed the charge. If

the Board determines that a licensee is professionally incompetent, the Board may require the licensee to demonstrate fitness to practice as allowed in G.S. 89E-19(b). In addition to issuing a reprimand or suspending or revoking a license or certificate of registration, the Board, pursuant to G.S. 89E-19, may impose a civil penalty for any violation of G.S. 89E or these Rules.

(e)(f) The Board shall notify the complainant and the respondent-licensee in any complaint filed with the Board of the disposition of the case and may publish in the Board's newsletter or other public media any final disciplinary action taken against a licensee or registrant or any legal action taken against any person found to be in violation of G.S. 89E or these Rules.

Authority G.S. 89E-5; 89E-17; 89E-19; 89E-20.

21 NCAC 21 .0502 REPRIMAND

(a) If evidence of a violation is found, but it is determined that a disciplinary hearing is not warranted, the Board may issue a reprimand to the accused party. A record of such reprimand shall be mailed to the accused party, and within 15 days after receipt of the reprimand the accused party may refuse the reprimand and request that a ~~Hearing~~-hearing be held pursuant to G.S. 150B. Such refusal and request shall be addressed to the Board and filed with the Executive Director of the Board.

(b) Upon timely filing of a notice refusing the reprimand and requesting a hearing, the Board shall determine whether the Board shall conduct the evidentiary hearing or whether it shall refer the matter to the Office of Administrative Hearings for designation of an administrative law judge to conduct the hearing. If the Board elects to conduct the hearing, the legal counsel for the Board shall thereafter prepare and file a Notice of Hearing. If the Board refers the matter to the Office of Administrative Hearings, that agency shall prepare and serve all subsequent notices related to the evidentiary hearing, including the Notice of Hearing.

(c) If the Letter of Reprimand is accepted, a copy of the reprimand shall be maintained in the office of the Board. If a party receiving a reprimand wishes merely to file a letter rebutting his or her reprimand, he or she may in writing waive his or her right to hearing and submit a letter of rebuttal to be placed in his or her file.

Authority G.S. 89E-5; 89E-19; 89E-20.

21 NCAC 21 .0505 RIGHT TO HEARING

When the Board, other than in a rulemaking or declaratory ruling proceeding, acts or proposes to act in a manner which will affect the rights, duties, or privileges of a specific identifiable person or persons, those persons have a right to an administrative hearing. When the Board proposes to act in such manner, it shall give ~~to any such person or persons~~ notice of their right to a hearing ~~by mailing by certified mail to such person to each licensee at his or her last known address a notice of the proposed action and his or her a notice of a right to a hearing.~~

Authority G.S. 89E-20; 150B-11; 150B-38.

21 NCAC 21 .0506 REQUEST FOR HEARING

(a) When an individual believes his or her rights, duties or privileges have been or may be affected by the Board's administrative action, but has not received notice of a right to an administrative hearing, he or she may file a formal request for a hearing.

(b) The formal request shall bear the notation: RE: REQUEST FOR ADMINISTRATIVE HEARING. That request should contain the following information:

- (1) name and address of the petitioner;
- (2) a concise statement of the action taken by the Board which is challenged;
- (3) a concise statement of the way in which the petitioner has been aggrieved; and
- (4) a clear and specific statement of request for a hearing.

(c) Such a request will be acknowledged promptly and, if deemed appropriate under Rule 21 NCAC 21 .0507, a hearing will be scheduled.

Authority G.S. 89E-20; 150B-11; 150B-38.

21 NCAC 21 .0511 TYPES OF INTERVENTION

(a) Intervention of Right. A petition to intervene of right, as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that Rule and his or her petition is timely.

(b) Permissive Intervention. A petition to intervene permissively as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that Rule and the Board determines that:

- (1) there is sufficient legal or factual similarity between the petitioner's claimed rights, privileges, or duties and those of the parties to the hearings; and
- (2) permitting intervention by the petitioner as a party would aid the purpose of the hearing.

Authority G.S. 89E-20; 150B-38.

21 NCAC 21 .0513 DISQUALIFICATION OF BOARD MEMBERS

(a) Self-disqualification. If for any reason a Board member determines that personal bias or other factors render him unable to participate in a contested case hearing and perform all duties in an impartial manner, he or she shall submit, in writing, to the Board, his or her disqualification and the reasons.

(b) Petition for Disqualification. If for any reason any party in a contested case believes that a Board member is personally biased or otherwise unable to participate in a contested case hearing and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the Board. The title of such affidavit should bear the notation: AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (name of case).

(c) Contents of Affidavit. The affidavit must state all facts the party deems relevant to the disqualification of the Board member.

(d) Timeliness and Effect of Affidavit. An affidavit of disqualification will be considered timely if filed ten days before

commencement of the hearing. Any other affidavit will be considered timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that the Board member may be disqualified under this Rule. Where a petition for disqualification is filed less than ten days before or during the course of a hearing, the hearing shall continue with the challenged Board member sitting. Petitioner shall have the opportunity to present evidence supporting his or her petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record. The Board, before rendering its decision, shall decide whether the evidence justifies disqualification. In the event of disqualification, the disqualified member will not participate in further deliberation or decision of the case.

(e) Procedure for Determining Disqualification:

- (1) the Board will appoint a Board member to investigate the allegations of the affidavit;
- (2) the investigator will report to the Board the findings of the investigation;
- (3) the Board shall decide whether to disqualify the challenged individual;
- (4) the person whose disqualification is to be determined will not participate in the decision but may be called upon to furnish information to the other members of the Board;
- (5) when a Board member is disqualified prior to the commencement of the hearing or after the hearing has begun, such hearing will continue with the remaining members sitting provided that the remaining members still constitute a majority of the ~~Board~~. Board; and
- (6) if three or more members of the Board are disqualified pursuant to this Rule, the Board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).

Authority G.S. 89E-20; 150B-11; 150B-38; 150B-40.

21 NCAC 21 .0514 INVESTIGATION

(a) As provided in G.S. 89E-17, ~~valid~~ complaints received by the Board which are determined to be valid and within the jurisdiction of the Board following review by the Board Chair, the Executive Director, and the Board's Counsel shall be forwarded to an investigator for further inquiry as to whether the acts or omissions alleged violate the provisions of G.S. 89E, the Board's ~~Rules code of Professional Conduct, professional conduct,~~ or any other rules of this Chapter. The Board's ~~executive director~~ Executive Director shall notify the licensee or corporate registrant of the complaint and advise the licensee or corporate registrant that:

- (1) ~~He~~ The licensee or corporate registrant has a duty to cooperate fully with the investigation by the Board; and
- (2) ~~He~~ The licensee or corporate registrant may submit a written response to the complaint.

(b) The investigator shall collect all information needed to determine whether a violation has occurred and the nature and severity of the violation. Information gathered during the course

of an investigation shall be treated by the Board as confidential information in accordance with G.S. 89E-17(c) until the Board takes disciplinary action against the licensee or ~~registrant~~; registered corporation; however, the Board cannot ensure the confidentiality of any information introduced into evidence in a hearing conducted by the Office of Administrative Hearings upon referral from the Board, because the information becomes part of the public record of that agency at the time of introduction.

(c) After collecting information relevant to the complaint, the investigator shall submit a report ~~consisting that consists~~ of the complaint, information gathered in the course of investigation, and the investigator's conclusion to a peer-review committee for evaluation. The peer-review committee shall consist of at least two ~~licensed geologists, professional geologists each of whom hold a currently valid license issued by the Board.~~ The peer reviewers and investigators may consult to discuss the investigation into the complaint and their conclusions regarding the complaint. The peer reviewers shall prepare a written evaluation that documents whether any violation of the Board's rules has occurred.

(d) The investigation report (including, but not limited to, the supporting information relevant to the complaint) and the written evaluation of the peer-review committee shall be submitted to the Executive Director of the Board to be combined with the licensee's written response to the complaint, if any, for further proceedings in accordance with Rule .0515 of this Section.

Authority G.S. 89E-5; 89E-17; 89E-20.

21 NCAC 21 .0515 DISCIPLINARY PROCEDURE

(a) Upon receipt of an investigation report and evaluation from the Board's investigator and peer review committee in accordance with Rule .0514 of this Section, the Board's Executive Director shall forward to the ~~Chairman~~ Chair of the Board (or to a member of the Board designated by the ~~Chairman~~ Chair) and the Board's counsel, the investigation report, evaluation, and the supporting documentation along with the licensee's or registrant's written response to the complaint, if any.

(b) The ~~Chairman~~ Chair (or a member of the Board designated by the ~~Chairman~~ Chair), in consultation with the Board's counsel, shall propose the disciplinary action for the violation(s) revealed by the investigation consistent with the provisions of G.S. 89E-19. The ~~Chairman~~ Chair (or a member of the Board designated by the ~~Chairman~~ Chair) may issue a summary suspension pursuant to G.S. 150B-3(c). The ~~Chairman~~ Chair or his or her designee, may also propose dismissal of the complaint.

(c) After review of the investigation report, evaluation, and supporting documentation, the Chairman shall notify the licensee or registrant of the proposed disciplinary action by certified mail sent to the last known address of the licensee or registrant as indicated by the Board's official roster. This notification shall contain a summary of the alleged facts or conduct upon which the proposed disciplinary action is based, the effective date of the proposed disciplinary action, and an explanation of the licensee's or registrant's hearing rights pursuant to G.S. 150B, Article 3A. Notification for summary suspensions shall meet the requirements of G.S. 150B-3(c).

(d) The licensee or registrant has 15 days from receipt of notification of proposed disciplinary action to file with the Board

a written request for hearing. Requests for hearing must be received at the Board's office by 5:00 p.m. on the date due. If the licensee or registrant does not file a written request for hearing with the Board, the Board shall receive the ~~Chairman's~~ Chair's recommendation on disciplinary action at its next meeting. If, after limited review of the facts of the case, a majority of the Board agrees with the ~~Chairman's~~ Chair's recommendation, the proposed disciplinary action becomes a final agency decision. If a majority of the Board does not agree with the ~~Chairman's~~ Chair's recommendation, the Board shall review of the investigator's report without supporting documentation for the purpose of proposing an appropriate disciplinary action or dismissal. The ~~Chairman-Chair~~ shall not participate in the deliberations or the voting with regard to either his or her recommendation or the Board's decision regarding a substitute disciplinary action. A new notice of proposed disciplinary action will be sent to the licensee or registrant, if necessary, in accordance with the procedure set out in Paragraph (c) of this Rule, and the licensee or registrant has 15 days from receipt of the new notice of proposed disciplinary action to file with the Board a written request for a hearing. Requests for hearing must be received at the Board's office by 5:00 p.m. on the date due.

(e) The licensee or registrant may request a settlement conference; however, neither the request for settlement conference nor the Board's agreement to enter into settlement negotiations will extend the 15-day deadline for requesting an opportunity for a hearing or any other deadlines in the hearing process. The ~~Chairman-Chair~~ (or a member of the Board designated by the ~~Chairman~~) Chair is delegated authority to negotiate a settlement; however, the settlement agreement must be approved by a majority of the members of the Board before the proposed disciplinary action will be rescinded.

(f) Upon receipt of written request for hearing, the Board may conduct an administrative hearing as authorized by G.S. 150B-38 or the Board may request the Office of Administrative Hearings to conduct the hearing as authorized by G.S. 150B-40. Hearings shall be conducted in accordance with the rules of this Chapter.

(g) A majority of the members of the Board shall render the final agency decision, in accordance with G.S. 150B-42, after a hearing on the proposed disciplinary action. The ~~Chairman-Chair~~, or if applicable the designated member, who proposed the disciplinary action after a full review of the facts available to the investigator and peer review committee shall not participate in the discussion of the contested case and shall not vote on the final decision for disciplinary action. Nothing in this Rule shall prevent members of the Board from participating in the discussion and vote on a final agency decision with regard to proposed disciplinary action if they have reviewed the investigator's report without supporting documentation solely for the purpose of determining whether probable cause existed to support the allegations of violation and for the purpose of proposing an appropriate disciplinary action.

Authority G.S. 89E-5; 89E-19; 89E-20; 150B-3; 150B-38 through 150B-42.

SECTION .0800 – RULEMAKING PROCEEDURES

21 NCAC 21 .0803 HEARINGS

PETITION FOR RULEMAKING

(a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule (the "proposed rule") by the Board shall file the petition with the Board. The first page of the petition shall clearly bear the notation: RULEMAKING PETITION RE and then state the subject area. The Petition shall contain the following information:

- (1) the text of the proposed ~~rule(s); rule(s) for adoption or amendment;~~
- (2) ~~the statutory authority for the agency to promulgate the rule(s);~~
- (3)(2) a statement of the reasons for adoption or amendment of the proposed ~~rule(s); rule(s), or the repeal of an existing rule(s);~~
- (4)(3) a statement of the effect on existing rules or orders;
- (5) ~~copies of any documents and data supporting that support the proposed rule(s);~~
- (6) ~~a statement of the effect of the proposed rule(s) on existing practices in the area involved, including which may include cost factors for persons affected by the proposed rule(s);~~
- (7) ~~a statement explaining that explains the computation of the cost factors;~~
- (8) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s); and
- (9)(4) the name(s) and address(es) of the ~~petitioner(s); petitioner(s); and~~
- (5) a request to present the petition to the Board, if desired.

(b) In its review of the proposed rule, the Board shall consider whether it has authority to adopt the rule; the effect of the proposed rule on existing rules, programs, and practices; probable costs and cost factors of the proposed rule; and the impact of the rule on the public and licensees. The petitioner may include the following information within the request:

- (1) the statutory authority for the agency to promulgate the rules(s);
- (2) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);
- (3) a statement explaining the computation of the cost factors;
- (4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s); and
- (5) documents and data supporting the proposed rule(s).

(b)(c) An original and eight copies of the petition and supporting documents shall be filed with the Board.

(e)(d) Filings that do not failing to contain the information required by this Rule shall not be accepted and accepted. ~~Incomplete filings~~ shall be returned by the ~~Chairman-Chair~~ to the person(s) making the filing.

Authority G.S. 89E-5; 150B-20.

21 NCAC 21 .0804 DISPOSITION OF PETITIONS

(a) The ~~Chairman-Chair~~ may request additional information from the petitioner(s), may contact any interested person or persons likely to be affected by the proposed rule and request comments, and may use any other appropriate method ~~for obtaining to obtain~~ additional information.

(b) When deemed complete by the ~~Chairman-Chair~~, petitions for rulemaking shall be presented to the Board for its consideration and determination at a regularly scheduled meeting of the Board within 120 days following submission of the complete petition. The ~~Chairman-Chair~~ shall determine the order and duration of discussion regarding the petition, including discussion by members of the public if any.

(c) Within 120 days following submission of the complete petition requesting rulemaking, unless the parties have agreed to an extension of time, the Board shall:

- (1) initiate rulemaking proceedings in accordance with G.S. 150B-20 and notify the person(s) who submitted the petition of the decision in writing, or
- (2) deny the petition in ~~writing, stating writing with~~ the reason(s) for the denial, and send the written denial to the person(s) who submitted the petition.

Authority G.S. 89E-5; 150B-20.

SECTION .0900 – DECLARATORY RULINGS

21 NCAC 21 .0903 DISPOSITION OF REQUESTS

(a) The Board's ~~Chairman-Chair~~ shall make a determination on the completeness of the request for declaratory ruling based on the requirements of Rule .0902 of this Section, and he or she shall make a recommendation to the Board on whether to issue or decline to issue a declaratory ruling.

(b) Before deciding the merits of the request, the Board may:

- (1) request additional written submissions from petitioner(s);
- (2) request a written response from any other person; or
- (3) hear oral argument from the petitioner and other persons on the issues raised by the request.

(c) Upon written request, the party ~~requesting that requested~~ the declaratory ruling and any other person by leave of the Board may be allowed to present oral arguments to the Board at a regularly scheduled meeting or special meeting called for the purpose of considering the request for declaratory ruling. No party may offer testimony or conduct cross-examination before the Board in a declaratory ruling proceeding.

(d) Whenever the Board determines for "good cause" that the issuance of a declaratory ruling is undesirable, the Board may refuse to issue such ruling. The Board shall notify in writing the person ~~requesting that requested the ruling, ruling of stating the~~ reasons for the refusal to issue a ruling on the request.

(e) For purposes of Paragraph (e) of this Rule, the Board will ordinarily refuse to issue a ruling on a request for declaratory ruling on finding that:

- (1) the facts are in dispute;

- (2) there has been a similar determination in a previous contested case or declaratory ruling;
- (3) the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
- (4) the factual context put forward as the subject of the declaratory ruling was specifically considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record;
- (5) no genuine controversy exists as to the application of a statute or rule to the specific factual situation presented; or
- (6) other good cause exists for declining to issue the requested ruling.

(f) A declaratory ruling is binding on the Board and on the person(s) ~~requesting that requested~~ it unless it is altered or set aside by the court. The Board may not retroactively change a declaratory ruling, but nothing in this Section prevents the Board from prospectively changing a ruling.

(g) A declaratory ruling shall be deemed to be "in effect" until:

- (1) the statute or rule interpreted by the declaratory ruling is amended, altered, or repealed;
- (2) the Board changes the declaratory ruling prospectively for good reasons;
- (3) any court sets aside the ruling in litigation between the Board and the party requesting the ruling; or
- (4) until any court of the Appellate Division of the General Court of Justice shall construe the statute or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling.

(h) The requesting party may agree to allow the Board to issue a ruling on the merits of the request beyond the 60 days allowed by G.S. 150B-4.

Authority G.S. 89E-5; 89E-20; 150B-4.

SECTION .1100 – PROFESSIONAL CONDUCT

21 NCAC 21 .1101 RULES OF PROFESSIONAL CONDUCT

(a) In order to safeguard the life, health, property and welfare of the public and to establish and maintain a high standard of integrity, skills, and practice in the profession of geology, these ~~rules~~ Rules of professional conduct ~~Professional Conduct~~ shall be binding upon every person holding a certificate of license as a geologist, and on all partnerships or corporations or other legal entities authorized to offer or perform ~~geologic-geological~~ services in this state. All persons licensed or corporations registered under the provisions of G.S. 89E are charged with having knowledge of the existence of these Rules of ~~professional conduct~~ Professional Conduct.

(b) The geologist shall conduct his or her practice in order to protect the public health, safety, and welfare.

- (1) The geologist shall at all times recognize his or her primary obligation to protect the safety, health, and welfare of the public in the

performance of his or her professional duties. If his or her geologic judgment is overruled under circumstances where the safety, health and welfare of the public are endangered, he or she shall inform his or her employer of the possible consequences and notify other proper authority of the situation, as may be appropriate.

- (2) The geologist shall protect the public health, safety, and welfare by maintaining sufficient personal on-site involvement and continual direction and review of the activities of subordinates that constitute public practice of geology while such activities are in progress. The licensee must provide such supervision and have sufficient knowledge of the project and site conditions necessary to assure accuracy and compliance with all applicable laws and regulations (including, but not limited to, G.S. 89E and the rules of this Chapter).

(c) The geologist shall perform his or her services only in areas of his or her competence:

- (1) The geologist shall undertake to perform geologic assignments only when qualified by education or experience in the specific technical field of geology involved.
- (2) The geologist may accept an assignment requiring education or experience outside of his or her own field of competence, but only to the extent that his or her services are restricted to those phases of the project in which he or she is qualified. All other phases of such project shall be performed by qualified associates, consultants, or employees.
- (3) The geologist shall not affix his or her signature and seal to any document dealing with subject matter for which he or she lacks competence by virtue of education or experience or to any such plan or document not prepared under his or her direct supervisory control, except that the geologist may affix his or her seal and signature to drawings and documents depicting the work of two or more professionals provided he or she designates by note under his or her seal the specific subject matter for which he or she is responsible.

(d) The geologist shall issue public statements only in an objective and truthful manner:

- (1) The geologist shall be completely objective and truthful in all professional reports, statements, or testimony. He or she shall include all relevant and pertinent information in such reports, statements or testimony.
- (2) The geologist when serving as an expert or technical witness before any court, commission, or other tribunal shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of

the accuracy and propriety of his or her testimony.

- (3) The geologist will issue no statements, criticisms, or arguments on geologic matters connected with public policy which are inspired or paid for by an interested party or parties unless he or she has prefaced his or her comments by explicitly identifying himself, by disclosing the identities of the party or parties on whose behalf he or she is speaking, and by revealing the existence of any pecuniary interest he or she may have in the instant matters.

- (4) The geologist shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of another geologist, nor shall he or she maliciously criticize another geologist's work in public. If he or she believes that another geologist is guilty of misconduct or illegal practice, he or she shall present such information to the Board for action.

(e) The geologist shall not attempt to supplant another geologist in a particular employment after becoming aware that the other has been selected for the employment.

(f) The geologist shall avoid conflicts of interest:

- (1) The geologist shall conscientiously avoid conflicts of interest with his or her employer or client, but when unavoidable, the geologist shall forthwith disclose the circumstances to his or her employer or client.
- (2) The geologist shall avoid all known conflicts of interest with his or her employer or client, and shall promptly inform his or her employer or client of any business association, interest, or circumstances which could influence his or her judgment or the quality of his or her services.
- (3) The geologist shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed to, and agreed to, by all those parties.
- (4) The geologist shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products.
- (5) The geologist shall not solicit or accept substantial gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with his or her client or employer in connection with work for which he or she is responsible.
- (6) When in public service as a member, advisor, or employee of a governmental body or department, the geologist shall not participate in considerations or actions with respect to services provided by him or his or her organization in private geological practices.

- (7) The geologist shall not solicit or accept a geologic contract from a governmental body on which a principal or officer of his or her business serves as a member.
- (g) The geologist shall solicit or accept work only on the basis of his or her qualifications:
- (1) The geologist shall not offer to pay, either directly or indirectly, any commission, political contribution, gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies.
 - (2) The geologist shall compete for professional employment on the basis of qualification and competence for proper accomplishment of the work. He or she shall not solicit or submit proposals for professional services ~~containing~~ that contain a false, fraudulent, misleading, deceptive, or unfair statement or claim regarding the cost, quality or extent of services to be rendered.
 - (3) The geologist shall not falsify or permit misrepresentation of his, or her, or of his or her associates' academic or professional qualifications. He or she shall not misrepresent or exaggerate his or her degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, joint ventures, ~~or his~~ or their past accomplishments with the intent and purpose of enhancing his or her qualifications and those of his or her work associates.
- (h) The geologist shall associate only with reputable persons or organizations:
- (1) The geologist shall not knowingly associate with or permit the use of his or her name or firm name in a business venture by any person or firm which he or she knows, or has reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature.
 - (2) If the geologist has knowledge or reason to believe that another person or firm may be in violation of any of these provisions or of the North Carolina Geologist Licensing Act, he or she shall present such information to the Board and furnish such further information or assistance as may be required by the Board.
- (i) Conviction of a felony without restoration of civil rights, or the revocation or suspension of the license of a geologist by another jurisdiction, if for a cause which in the State of North Carolina would constitute a violation of G.S. 89E or of these rules, shall be grounds for a charge of violation of these Rules and may result in the revocation of the certificate of licensure or corporate registration issued by this Board and the imposition of a civil penalty not to exceed five thousand dollars (\$5,000).

Authority G.S. 89E-5; 89E-16.

21 NCAC 21 .1102 RULES OF CONDUCT OF ADVERTISING

- (a) The geologist shall not make exaggerated, misleading, deceptive or false statements or claims about his or her professional qualifications, experience or performance in his or her brochures, correspondence, listing, or other public communications.
- (b) The prohibitions listed in this Rule include, but are not limited to, the use of statements ~~containing~~ that contain a material misrepresentation of fact or omitting a material fact necessary to keep the statement from being misleading; statements intended or likely to create an unjustified expectation; statements containing prediction of future success; or statements containing an opinion as to the quality of services.
- (c) Consistent with the foregoing, the geologist may advertise for recruitment of personnel.
- (d) Consistent with the foregoing, the geologist may prepare articles for the lay or technical press. Such articles shall not imply credit to the author for work performed by others.

Authority G.S. 89E-5; 89E-16.

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CHAPTER 29 – LOCKSMITH LICENSING BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Locksmith Licensing Board intends to amend the rule cited as 21 NCAC 29 .0201, readopt with substantive changes the rules cited as 21 NCAC 29 .0102, .0702, .0703, and readopt without substantive changes the rules cited as 21 NCAC 29 .0204-.0206, .0401, .0402, .0404, .0502-.0504, .0601, .0802-.0806.

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

Link to agency website pursuant to G.S. 150B-19.1(c):
www.nclocksmithboard.org

Proposed Effective Date: April 1, 2017

Public Hearing:

Date: February 13, 2017

Time: 9:30 a.m.

Location: 1046 Washington Street, Raleigh, NC 27605

Reason for Proposed Action:

21 NCAC 29 .0102 – Board desires flexibility to meet on different days in January and August. Current rule requires meeting on second Monday.

21 NCAC 29 .0201 – Board seeks to provide applicants who do not pass license examination on one-time reduced examination fee to re-test. Also allows applicant to take examination at a third-party commercial testing facility.

21 NCAC 29 .0702 – Increased late renewal fee from \$150 to \$300.

21 NCAC 29 .0703 – Increased reinstatement fee of an expired license; total fee for reinstatement increased from \$400 to \$650.

Comments may be submitted to: *Barden Culbreth, PO Box 10972, Raleigh, NC 27605, fax (919) 833-5743, email barden@recanc.com*

Comment period ends: *February 13, 2017, 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)

SECTION .0100 – LOCKSMITH LICENSING BOARD

21 NCAC 29 .0102 MEETINGS

(a) Frequency. The Board shall meet during January and August on the second Mondays of January and August and at other times agreed upon by a majority of the Board.

(b) Notice. Notification of the time and place of all meetings shall be published on the North Carolina Locksmith Licensing Board website (www.nclocksmithboard.org) not less than 15 days prior to the meeting.

Authority G.S. 74F-5.

SECTION 0200 - EXAMINATION

21 NCAC 29 .0201 EXAMINATION FEE

~~The examination fee shall be two hundred dollars (\$200.00) and shall accompany the examination registration form. If the applicant elects to take the exam at a commercial testing center that charges a fee, then the applicant retains responsibility for paying the additional fee assessed by the testing center.~~

(a) The Board shall charge the examination fee as follows:

- (1) First time test takers – two hundred dollars (\$200.00)
- (2) Second time test takers for applicants who fail to pass pursuant to 21 NCAC 29 .0203 – (\$50.00)
- (3) Third and subsequent test takers – (\$200.00)

(b) The applicant may take the examination at a commercial testing center that charges a fee; however, the examination fee required in this Rule shall not be affected and the Board shall not be responsible for any additional fee assessed by the testing center.

Authority G.S. 74F-6; 74F-9.

21 NCAC 29 .0204 REQUIREMENTS OF EXAMINEES (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 29 .0205 FAILURE TO ATTEND SCHEDULED EXAMINATION SESSION (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 29 .0206 SPECIAL ADMINISTRATION (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

SECTION .0400 – LICENSING REQUIREMENTS

21 NCAC 29 .0401 LICENSING REQUIREMENTS (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 29 .0402 ESTABLISHMENT OF MORAL AND ETHICAL CHARACTER (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 29 .0404 FEES (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

SECTION .0500 – CODE OF ETHICS

21 NCAC 29 .0502 FAIR BUSINESS PRACTICES (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 29 .0503 PROTECTION OF THE PUBLIC INTERST (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 29 .0504 TECHNICAL INTEGRITY (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

SECTION .0600 – ADMINISTRATIVE LAW PROCEDURES

21 NCAC 29 .0601 PETITIONS FOR ADOPTION, AMENDMENT OR REPEAL OF RULES (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

SECTION .0700 – LICENSE RENEWAL REQUIREMENTS

21 NCAC 29 .0702 DUE DATE

~~Applications for license renewal shall be submitted at least 30 days prior to the date of license expiration. Licensees who submit their applications for renewal after the due date but before the license expiration date shall pay a late fee of one hundred fifty dollars (\$150.00) in addition to the license renewal fee specified in Rule .0404 of this Chapter. Applications shall be deemed submitted on the date of their postmark or upon receipt by staff at the Board's offices, whichever is earlier.~~

(a) Applications for license renewal shall be due 30 days prior to the date of license expiration.

(b) Licensees who submit their application for renewal after the due date but before the license expiration date shall pay a late fee of three hundred dollars (\$300.00) in addition to the license renewal fee specified in Rule .0404 of this Chapter.

(c) The Board shall deem applications submitted on the date of their postmark or upon receipt of the Board's office, whichever is earlier.

Authority G.S. 74F-6; 74F-9; 74F-10.

21 NCAC 29 .0703 REINSTATEMENT OF EXPIRED LICENSE

~~(a) A former licensee with an expired license may apply for reinstatement of an expired license only if he or she has completed at least eight contact hours of continuing education within one year preceding the application.~~

~~(b) Applicants for reinstatement must shall pay the following fees:~~

- ~~(1) A License license renewal fee as specified set forth in Rule.0404 of these Rules of this Chapter;~~
- ~~(2) A Late late fee as specified set forth in Rule .0702 of these Rules; of this Section; and~~
- ~~(3) A reinstatement fee of one hundred fifty dollars (\$150.00)-two hundred fifty dollars (\$250.00).~~

Authority G.S. 74F-6; 74F-9; 74F-10.

SECITON .0800 – CONTINUING EDUCATION

21 NCAC 29 .0802 REQUIREMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 29 .0803 DETERMINATION OF A CREDIT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 29 .0804 RECORD KEEPING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 29 .0805 EXCEPTIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 29 .0806 NON COMPLIANCE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

CHAPTER 46 - BOARD OF PHARMACY

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Pharmacy intends to amend the rules cited as 21 NCAC 46 .2102, .2104, .2105, .2107 and .2108.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncbop.org/rulemakings.htm

Proposed Effective Date: May 1, 2017

Public Hearing:

Date: February 21, 2017

Time: 9:00 a.m.

Location: North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517

Reason for Proposed Action: *The Board has proposed the amendment of several of its Board member election rules in order to shift the voting period to coincide with the pharmacist licensing renewal period. The Board proposes to provide an opportunity for pharmacists to vote by electronic ballot at the same time that they perform their on-line license renewal. The Board believes that aligning voting with license renewal is likely to increase pharmacist participation in voting. The Board further proposes to eliminate the option for voting by paper ballots, as no pharmacist has voted by paper ballot since 2011, and elimination of this option will conserve Board resources by allowing it to cease production of paper ballots. The Board further proposes to amend the rules to codify run-off procedures, as run-offs have often become necessary.*

Comments may be submitted to: Jay Campbell, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517, fax (919) 246-1056, email jcampbell@ncbop.org

Comment period ends: 9:00 a.m., February 21, 2017

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 .2100 - ELECTIONS

21 NCAC 46 .2102 ELIGIBILITY TO VOTE

- (a) Eligible voters for Board members shall be the pharmacists licensed in North Carolina and residing in North Carolina on October 31 of the year the election begins. ~~March 15 immediately prior to the election.~~
- (b) Eligible voters for the device and medical equipment subcommittee shall be all device and medical equipment permit holders in North Carolina and residing in North Carolina on October 31 of the year the election begins. ~~March 15 immediately prior to the election.~~

Authority G.S. 90-85.7; 90-85.22.

21 NCAC 46 .2104 COMMITTEE ON NOMINATIONS

The Board may appoint an advisory committee on nominations in ~~September/January~~ of each year that an election for Board position(s) begins. Members of this committee shall submit at least two names of eligible candidates for each position to be filled on the Board and on the device and medical equipment subcommittee by October 1 ~~March 1~~ for the next election.

Authority G.S. 90-85.7.

21 NCAC 46 .2105 NOMINATION BY PETITION

Nominations may also be made by the petition of 10 eligible voters from a geographic area as specified in Rule .2103 of this Section, such document to be filed in the Board office or postmarked before October 1 ~~March 10~~ for the next election. ~~Nominations shall be closed on March 15th.~~

Authority G.S. 90-85.7.

21 NCAC 46 .2107 BALLOTS: CASTING AND COUNTING

- (a) The ballot casting period for each election for a Board position shall begin on November 1 six months prior to the expiration of a Board member's five-year term of office and shall conclude the March 1 after the ballot casting period begins.
- (a)(b) The Board shall provide a access to an electronic ballot to all eligible voters on November 1 in April of each year that there is an election for Board position(s) begins. position(s). The Board shall employ the following method for balloting:
- (1) ~~The Board shall provide access to an electronic ballot to all eligible voters; and~~
 - (2) ~~A paper ballot shall be mailed, with return envelope, to any eligible voter who makes a written request for a paper ballot in lieu of access to an electronic ballot and whose request is actually received by the Board on or before April 20.~~

~~(b)(c) A description of a nominee's qualifications shall be accessible to all eligible voters. voters casting their ballots electronically. The same description of the nominee's qualifications shall accompany each paper ballot sent pursuant to Subparagraph (a)(2) of this Rule.~~

~~(e)(d) On or before the March 1 that the ballot casting period ends, May 15, all ballots shall be cast electronically, electronically, physically delivered to the Board office or postmarked, if the ballot is sent by U.S. mail.~~

~~(d)(e) Ballots received shall be counted and certified by the Board of Pharmacy at the next regularly scheduled Board meeting following an election or at a special Board meeting properly called and noticed for the purpose of counting and certifying the ballots cast.~~ election. The Board of Pharmacy shall determine the validity of any challenged ballot, and electronic or mechanical devices may be used in compiling election results. No person ~~running~~ standing for election or reelection may participate in the counting and certification of ballots for the election or reelection involving that person.

~~(f) If, by operation of Rule .2108 of this Section, a candidate is eligible to request a run-off election, that candidate must provide a request for a run-off, in writing to the Board's Executive Director within one week of the date that the Board certifies the election results. The run-off election shall begin one week from the date that the eligible candidate requests the run-off election and the ballot casting period shall be open for two weeks. With the exception of ballot casting period dates, a run-off election shall follow the same procedures described in this Rule.~~

~~(e)(g) The Executive Director shall convey the certified election results to the Governor.~~

Authority G.S. 90-85.7.

21 NCAC 46 .2108 DETERMINATION OF ELECTION RESULTS

The determination of election results shall be in accordance with G.S. ~~163-111, 163-111(a)(1) and (b)(1)~~ which is ~~adopted~~ incorporated herein by reference and include subsequent amendments and editions. A copy of G.S. 163-111 is available at www.ncleg.net for inspection at the Board office and may be obtained from the Board office for a cost of 25 cents (\$.25) per page.

Authority G.S. 90-85.7.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Pharmacy intends to amend the rule cited as 21 NCAC 46 .1505.

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncbop.org/rulemakings.htm

Proposed Effective Date: May 1, 2017

Public Hearing:
Date: February 21, 2017
Time: 9:00 a.m.

Location: North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517

Reason for Proposed Action: The Board has proposed the amendment of its licensing examination rule in order to adopt the examination administrator's maximum recommended number of attempts to pass the examination. In addition, the Board has proposed clarification of the existing rule provisions.

Comments may be submitted to: Jay Campbell, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517, fax (919) 246-1056, email jcampbell@ncbop.org

Comment period ends: 9:00 a.m., February 21, 2017

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 .1500 - ADMISSION REQUIREMENTS: EXAMINATIONS

21 NCAC 46 .1505 EXAMINATION

- (a) The applicant shall pass the following examinations:
- (1) the North American Pharmacist Licensure Examination ("NAPLEX"); and a national examination;
 - (2) the North Carolina version of the Multistate Pharmacy Jurisprudence Examination ("MPJE"); a jurisprudence examination; and
 - (3) a practical examination which includes an error and omission section.
- (b) In order to pass either the NAPLEX or the MPJE, the applicant shall achieve the passing score set by the National Association of Boards of Pharmacy (or any organization designated by the National Association of Boards of Pharmacy to administer the NAPLEX or the MPJE). For the purpose of

~~grading or rating, the answers, which shall be legible, shall be valued by marks or points based on their importance, as determined by the judgment of the examiners.~~

(c) An applicant who achieves a passing score on one examination must achieve a passing score on the remaining examination within a two calendar year period starting from the date of the first passing score. Failure to achieve passing scores on both examinations in this two calendar year period shall result in the applicant's application for licensure being denied. The applicant may, subject to the testing attempt limitations of Paragraph (d) of this Rule, reapply for licensure and restart the examination process. In order to pass, a score of 75 or more is required on each examination. Candidates who obtain a score of 75 or more on each examination are deemed to have passed the respective examination provided that the candidate obtains a passing score on the remaining examinations within the next following two calendar years. If the examination is taken outside of North Carolina, the examination score shall be properly transferred to North Carolina. A candidate who fails to pass all three examinations in the two calendar year period must retake and pass all three examinations within a two calendar year period.

(d) The applicant shall be afforded a total of five attempts to achieve a passing score on each examination. Failure to achieve a passing score on each examination within five attempts shall result in the applicant being ineligible for licensure. At the time of the examination, the Board may designate certain questions which, if missed, shall require the candidate to obtain continuing education. The continuing education required will be specified by the Board and must be obtained by the candidate prior to issuance of a pharmacist license.

Authority G.S. 90-85.15; 90-85.16.

CHAPTER 52 – BOARD OF PODIATRY EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Podiatry Examiners intends to adopt the rules cited as 21 NCAC 52 .0214, .0409 and amend the rules cited as 21 NCAC 52 .0201 and 0207.

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncpbe.org/content/executive-board

Proposed Effective Date: April 1, 2017

Public Hearing:

Date: February 9, 2017

Time: 10:00 a.m.

Location: Conference Room, FirstPoint Management Resources, 1500 Sunday Drive, Suite 102, Raleigh, NC 27607

Reason for Proposed Action:

21 NCAC 52 .0201 and .0207 – To obtain Drug Enforcement Administration (DEA) license numbers from new and existing licensee and make some updates to a few questions on the renewal application form.

21 NCAC 52 .0214 – To implement a procedure whereby the Board may investigate unlicensed activity, provide notice of possible violations, and seek injunctive relief.

21 NCAC 52 .0409 – To provide procedures for both hardcopy and online complaints and their resolution, including administrative hearings, if necessary.

Comments may be submitted to: Penny De Pas, Executive Secretary, NC Board of Podiatry Examiners, 1500 Sunday Dr., #102, Raleigh, NC 27607-5151

Comment period ends: February 13, 2017

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 (\geq \$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

SECTION .0200 – EXAMINATION AND LICENSING

21 NCAC 52 .0201 APPLICATION

(a) Any applicant for a license to practice podiatry shall submit a written application to the executive secretary of the board. Such Application for Examination or Application of Reciprocity shall be made on a form provided from the board's website (<http://www.ncbpe.org>) or from the board's office as set forth in Rule .0101 of this Chapter. The application shall require the following information:

- (1) Application type (Regular, Temporary Military, Clinical Residency);
- (2) Date of Application;
- (3) Social Security Number-Number;
- (4) Drug Enforcement License Number (DEA), if any;
- (5) National Provider Number (NPI), if any;
- (4)(6) Last name, first name, and middle name;
- (5)(7) Mailing address, including city, state, and zip code;

- (6)(8) Telephone number and type (home, mobile, business);
 - (7)(9) Email address;
 - (8)(10) Whether or not a U.S. citizen;
 - (9)(11) Whether or not the applicant has or is serving in the military, awarded an MOS in podiatry and date, whether or not the applicant's spouse is currently serving in the military, and dates of service;
 - (40)(12) Education (high school, college or university, graduate or professional, residencies, internships, fellowship training), including name and location of institution, dates attended, graduation completion, major and minor, and type of degree received;
 - (44)(13) Whether or not the applicant intends to practice in North Carolina upon licensure;
 - (42)(14) Whether or not the applicant has been licensed in another state or territory and, if so, state or territory, date of issue, expiration date, disciplinary actions (if any), and how license was obtained;
 - (43)(15) Whether or not the licensee has ever had a license revoked, suspended, denied, or cancelled; denied the privilege of taking an exam; dropped, suspended, warned, placed on scholastic or disciplinary probation, expelled, or requested to resign from any school, college, or university, or advised by any such school of institution to discontinue studies therein; been a defendant in a legal action involving professional liability (malpractice), been named in a malpractice suit, had a professional liability claim paid on the applicant's behalf or paid such a claim; been a patient for the treatment of mental illness; been addicted to drugs or alcohol; or been convicted of a felony; and any explanation regarding such information that the applicant wishes to present to the board.
 - (44)(16) Whether or not the applicant has previously taken the North Carolina exam and when;
 - (45)(17) Whether or not the applicant requires special disability accommodations to take the board's examination;
 - (46)(18) The reasons why the applicant is applying for licensure in North Carolina;
 - (47)(19) A list of three references;
 - (48)(20) Applicant's oath;
 - (49)(21) A passport-quality photograph taken within 60 days prior to the date of the application; and
 - (20)(22) Applicant's signature.
- (b) Applicants shall furnish the board with proof that the applicant meets the educational and examination requirements set forth in G.S. 90-202.5(a)
- (c) The application shall be accompanied by a non-refundable application fee of three hundred fifty dollars (\$350.00).
- (d) Applications shall also be notarized by a Notary Public in good standing.

Authority G.S. 90-202.5; 90-202.6; 90-202.7.

21 NCAC 52 .0207 ANNUAL RENEWAL OF LICENSE

(a) The executive secretary of the board shall mail to the last known address of each license holder each year a form on which to apply for renewal of his or her license. The renewal application shall be pre-populated with information contained in the board's licensee database with a space for corrections or additions with regard to the following information about the licensee:

- (1) Social security number;
- (2) NPI number;
- (3) Drug Enforcement Administration License Number, if any;
- (3)(4) Marital status;
- (4)(5) Name;
- (5)(6) NC license number;
- (6)(7) Birthdate;
- (7)(8) Other states licensed in and license numbers;
- (8)(9) Home address and phone number;
- (9)(10) Business address and phone number;
- (10)(11) Preferred mailing address (business or home);
- (11)(12) Email address;
- (12)(13) Whether or not the licensee would like to receive email correspondence from the board;
- (13)(14) Medicare provider number;
- (14) ~~Specialty area of practice (e.g., general surgery, podogeriatrics, podopediatrics, foot orthopedics or biomechanics, other);~~
- (15) Present active status (e.g., ~~active full-time, active part-time, active~~, teaching, retired, residency, other);
- (16) Principal setting of practice (e.g., hospital, nursing home, free-standing clinic, group, practitioner's office, nonfederal health facility, military facility, Veteran's Administration medical facility, school, other);
- (17) Form of employment (e.g., self-employed as a solo practitioner or non-solo practitioner, or employee of individual practitioner, partnership or group, government, other);
- (18) National board certifications (American Board of Podiatry-Podiatric Surgery, American Board of Foot and Ankle Surgery, American Board of Lower Extremity Surgery, and American Board of Multiple Specialties in Podiatry); ~~College of Foot & Ankle Surgery~~;
- (19) Hospital staff privileges (hospital, location, date privileges began, type of privileges), any denial of such privileges, and the reason for such ~~denial~~; denial since last renewal application;
- (20) Whether or not the licensee performs Amputations, Ankle Surgery, and/or Clubfoot procedures;
- (21) Whether or not the licensee is granted specialty privileges by the board for Amputations, Ankle Surgery, and/or Clubfoot procedures;

- (22) Continuing Medical Education (CME) credits earned in the previous license year, pursuant to G.S. 90-202.11 and S.L. 2015-241, s. 12F, 16(c);
- (23) Whether or not the licensee has ever had a license revoked, suspended, denied, or cancelled; been a defendant in a legal action involving professional liability (malpractice), been named in a malpractice suit, had a professional liability claim paid on the applicant's behalf or paid such a claim; been a patient for the treatment of mental illness; been addicted to drugs or alcohol or treated for same; or been convicted of a felony; and any explanation regarding such information that the applicant wishes to present to the board;
- (24) Original signature;
- (25) Date of renewal application; or
- (26) Desire not to renew license.

(b) The renewal form and accompanying documents shall be returned to the board's offices as set forth in Rule .0101 with the original signatures of the licensed podiatrist. The penalties for failure to comply with this Rule are specified in G.S. 90-202.10.

(c) If the licensee does not receive his or her renewal application from the board directly, the licensee may obtain a generic copy, without the pre-populated information, from the board's website at <http://www.ncbpe.org> or by contacting the board's office as set forth in Rule .0101 of this Chapter.

Authority G.S. 90-202.4(g); 90-202.10; 90-202.11; S.L. 2015-241, s. 12F, 16(c).

21 NCAC 52 .0214 NOTICE OF UNLICENSED ACTIVITY

The Board may exercise its authority to investigate unlicensed activity, provide notice of possible violations, and seek injunctive relief pursuant to G.S. 90-202.13.

Authority 90-202.13.

SECTION .0400 – REVOCATION OR SUSPENSION OF LICENSE

21 NCAC 52 .0409 COMPLAINTS

(a) Any person may file a complaint, pursuant to G.S. 150B, Article 3A, against a licensed podiatrist with the board by completing the online complaint form on the board website, <http://www.ncbpe.org> or by providing a completed hardcopy complaint form to the Board, which may be obtained from the board's offices as listed in Rule .0101 of this Chapter.

(b) The complaint shall set forth the name and contact information of the podiatrist against whom the complaint is lodged, a summary of the facts of the complaint, the complainant's name, mailing address and phone number, and whether or not a copy of the complaint may be sent to the podiatrist about whom the complaint is lodged. Within 14 days of a hardcopy complaint received by the board, a receipt notification shall be sent to the complainant by mail. If an online complaint has been submitted to the board, an electronic receipt notification shall automatically

be generated and emailed to the board's Executive Secretary and the complainant. A copy of the complaint shall be sent to the respondent named in the complaint, if so authorized by the complainant; otherwise, the complaint shall be filed in the podiatrist's file for future reference. Should the complaint be sent to the podiatrist, said podiatrist shall respond to the complaint in writing to the board within 45 days of receipt of the complaint and provide the board with a copy of the complainant's medical records pursuant to any board request.

(c) At such time as a complaint is received at the board's office and authorization given by the complainant to share the complaint with the podiatrist against whom the complaint is lodged, the Executive Secretary shall notify the board's appointed Grievance Committee members with a copy of the complaint. A Grievance Committee member who does not have a conflict of interest as defined in G.S. 138A-36(a) shall be assigned to conduct an investigation to determine if probable cause exists that a violation of the Podiatry Practice Act (G.S. 90-202.8) may have occurred. After review, should it be deemed necessary by the Grievance Committee member assigned to the case that further investigation is required to determine if probable cause exists, an outside investigator may be retained with the board's permission.

(d) Should the Grievance Committee member determine that no probable cause exists that there was a violation of the Podiatry Practice Act, the Grievance Committee member shall submit a summary of his investigation and conclusion first to the remaining members of the Grievance Committee, and if the members concur, to the board for approval. If the decision is approved by the board at a regularly called meeting of the board, both the complainant and respondent shall be notified of the disposition of the case within 14 days of the board's decision.

(e) Should the Grievance Committee determine that probable cause of a violation of the Podiatry Practice Act does exist, the Committee shall notify the board and an administrative hearing in compliance with G.S. 150B shall be scheduled. The complainant and the respondent shall be given Notice of the Hearing and the disposition of the case.

Authority G.S. 90-202.8; 150B, Article 3A; [H1007 – G.S. 93B-22].

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings intends to amend the rules cited as 26 NCAC 03 .0120 and .0502.

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncoah.com

Proposed Effective Date: April 1, 2017

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Send any request for a public hearing to Bill Culpepper, General Counsel, Office of Administrative Hearings at bill.culpepper@oah.nc.gov on or before January 3, 2017.*

Reason for Proposed Action: *To provide a delay in contested case hearings when an unrepresented party is seeking pro bono or reduced fee legal assistance (26 NCAC 03 .0120); and to provide for the filing and service of contested case documents by e-OAH users when e-OAH is subject to technical failure (26 NCAC 03 .0502).*

Comments may be submitted to: Bill Culpepper, General Counsel, Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, NC 27609, phone (919) 431-3067, fax (919) 431-3100, bill.culpepper@oah.nc.gov.

Comment period ends: February 13, 2017

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 03 – HEARINGS DIVISION

SECTION .0100 – HEARING PROCEDURES

26 NCAC 03 .0120 RIGHTS AND RESPONSIBILITIES OF PARTIES

(a) A party shall have all evidence to be presented, both oral and written, available on the date for hearing. In cases when the hearing time is expected to exceed one day, the parties shall be prepared to present their evidence at the date and time ordered by the administrative law judge or agreed upon at a prehearing conference.

(b) The administrative law judge shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the administrative law judge shall simultaneously send a copy to all other parties.

(c) All parties have the continuing responsibility to notify the Office of Administrative Hearings of their current address and telephone number.

(d) A party may represent himself or be represented by an attorney. If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney.

(e) With prior notice to the administrative law judge, any person may offer testimony or other evidence relevant to the case. Any nonparty offering testimony or other evidence may be questioned by parties to the case and by the administrative law judge.

(f) Prior to issuing a decision, the administrative law judge may order any party to submit proposed findings of fact and written arguments.

(g) The Administrative Law Judge may allow remote participation via audio or video conference by participant(s) subject to available services at the hearing location. Requests for remote participation shall be made at least seven days in advance and are subject to equipment, staff, and scheduling availability.

(h) The administrative law judge shall not proceed to consideration of dispositive motions or a hearing on the merits in a contested case if an unrepresented party is seeking pro bono or reduced fee legal assistance, unless the administrative law judge has determined that acquisition of such legal assistance by the unrepresented party is improbable based on the circumstances, such as the failure of the unrepresented party to procure legal assistance after multiple attempts.

Authority G.S. 7A-751(a); 150B-25; 150B-33; 150B-34.

SECTION .0500 – ELECTRONIC FILING

26 NCAC 03 .0502 GENERAL

(a) The Office of Administrative Hearings shall permit documents filed and served in a contested case to be filed and served electronically by means of the Electronic Filing Service Provider. All attorneys, mediators, and other parties using e-OAH shall register to use the system through a link on the OAH website at www.ncoah.com. All e-OAH users shall keep current their electronic mail address in e-OAH. When all attorneys and unrepresented parties to a contested case are registered in e-OAH, all documents filed and served in that contested case shall be filed and served electronically by means of the Electronic Filing Service Provider.

(b) In contested cases filed in e-OAH, registration as an e-OAH user constitutes consent to electronic service and receipt of contested case documents, including a notice of hearing given by OAH, by means of the Electronic Filing Service Provider.

(c) An e-OAH user shall be responsible for the readability of any document filed or served electronically by that user. Within five business days of receipt of an unreadable document filed or served electronically, the receiving party shall notify the sending party of the unreadability of the document.

(d) Pleadings and other documents filed or served electronically shall contain the electronic signature of the attorney, mediator, or party who prepared the document and the preparer's name, mailing address, electronic mail address, and telephone number.

Documents prepared by an attorney shall have the attorney's North Carolina State Bar number. An attorney registered as an e-OAH user in a non-Medicaid contested case shall electronically file a notice of appearance in that contested case. An attorney's electronic signature to a petition for a contested case filed electronically shall be that attorney's notice of appearance in that contested case.

(e) Documents filed in e-OAH are filed when received by the chief hearings clerk of the Office of Administrative Hearings. Upon completion of filing, the clerk shall send the e-OAH user a confirmation receipt that includes the date and time of filing which shall be proof of filing.

(f) Documents filed electronically after 5 pm shall be deemed filed at 8 am the following business day.

(g) Documents filed in a contested case by an e-OAH user shall be filed electronically by means of the Electronic Filing Service ~~Provider and Provider~~, shall be served electronically by means of the Electronic Filing Service Provider on all other attorneys or other parties registered in e-OAH in that contested ~~case case~~, and shall include a certificate of service.

(h) Electronic service shall be treated ~~as~~ the same as service by mail for the purpose of adding three days to the prescribed period to respond under Rule 6(e) of the Rules of Civil Procedure as contained in G.S. 1A-1.

(i) A subpoena issued in a contested case by the chief hearings clerk of the Office of Administrative Hearings shall be signed electronically by the clerk.

(j) In contested cases filed electronically, the applicable filing fee shall be:

- (1) forwarded by first class mail or overnight express mail contemporaneously with the electronic filing;
- (2) paid personally to the chief hearings clerk of the Office of Administrative Hearings within five business days of the filing; or
- (3) paid by electronic funds transfer.

(k) If e-OAH is subject to technical failure that prevents the Office of Administrative Hearings from receiving filings in e-OAH in accordance with the rules in this Section, either continuously or intermittently over the course of any period of time that, after 12:00 noon on such day, amounts to more than one hour, filings due that day that were not filed due to technical failure shall become due the next business day. Such delayed filings shall be deemed timely filed if accompanied by a certification attesting to the e-OAH user's failed attempts to file electronically at least two times after 12:00 noon separated by more than one hour on each day that e-OAH is subject to technical failure. If a document must be filed to meet a statutory deadline on a date that e-OAH is subject to technical failure, the e-OAH user shall file that document with the Office of Administrative Hearings pursuant to Rule .0101(b) or Rule .0102(a)(2)(A) of this Chapter and shall serve that document pursuant to Rule .0102(a)(3) of this Chapter.

Authority G.S. 7A-750; 150B-23; 150B-23.2; 150B-23.3.

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Rule-making Agency: Board of Agriculture

Rule Citation: 02 NCAC 52J .0901, .0902

Effective Date: November 29, 2016

Date Approved by the Rules Review Commission: November 17, 2016

Reason for Action: The Animal Shelter Support Fund was created by the General Assembly to reimburse local government for expenses related to their operation of a registered animal shelter due to the denial, suspension, or revocation of the shelter's registration, or an unforeseen catastrophic disaster at an animal shelter. These rules spell out eligibility requirements and application process.

CHAPTER 52 – VETERINARY DIVISION

SUBCHAPTER 52J – ANIMAL WELFARE SECTION

SECTION .0900 – ANIMAL SHELTER SUPPORT FUND

02 NCAC 52J .0901 ELIGIBLE EXPENSES

Eligible expenses include:

- (1) Veterinary costs – Reimbursement may be requested for veterinary expenditures incurred for the assessment, diagnostic and triage evaluation, medical treatment, minor surgical treatment, medications, first aid and minor medical supplies, vaccinations, parasite control/treatment or euthanasia of animals housed at the shelter at the time of the event or impounded during the interim or transition period.
- (2) Sanitation costs – Reimbursement may be requested for expenditures related to sanitation of the affected shelter, including detergent/disinfectant supplies, cleaning supplies, labor costs for the sanitation of the shelter, and waste and carcass disposal costs.
- (3) Animal sustenance and supplies – Reimbursement may be requested for expenditures for animal food, provision of water to the shelter, and food and water bowls or buckets, as well as labor costs for the feeding and watering of the shelter animals.

- (4) Temporary housing and sheltering of animals – Reimbursement may be requested for expenditures for animal cages and kennels, animal transport carriers, fencing panels for runs, tarps, fencing, dog or cat houses and other construction supplies, as well as labor costs or equipment or facility leasing expenses incurred during the construction or repair of temporary animal housing.

History Note: Authority G.S. 19A-67(b); 19A-68(a); Temporary Adoption Eff. November 29, 2016.

02 NCAC 52J .0902 APPLICATION GUIDELINES

A local government applying for reimbursement from the Fund shall submit the request for reimbursement to the Animal Welfare Section (AWS) of the North Carolina Department of Agriculture and Consumer Services. The request shall:

- (1) be received by AWS by mail, email, or fax within 60 days of the date the eligible expense was incurred;
- (2) include a completed "Animal Shelter Support Fund Reimbursement Application" with the county name, tier of county, facility name, facility license number, and contact information. This application can be found on the AWS website (<http://www.ncagr.gov/vet/AWS/>);
- (3) include an itemized listing of eligible expenses for which reimbursement is sought;
- (4) include proof that matching funds have been provided; and
- (5) include proof of payment of the eligible expense. Should the payment of expense occur after the application was submitted, proof of payment shall be submitted to AWS within 30 days of payment of the expense.

History Note: Authority G.S. 19A-67(b); 19A-68(a); Temporary Adoption Eff. November 29, 2016.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission November 17, 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 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate
Jeff Hyde (1st Vice Chair)
Robert A. Bryan, Jr.
Margaret Currin
Jay Hemphill
Jeffrey A. Poley

Appointed by House
Garth Dunklin (Chair)
Stephanie Simpson (2nd Vice Chair)
Paul Powell
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

December 15, 2016	January 19, 2017
February 16, 2017	March 16, 2017

RULES REVIEW COMMISSION MEETING MINUTES

November 17, 2016

The Rules Review Commission met on Thursday, November 17, 2016, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Poley, Paul Powell, and Stephanie Simpson.

Staff members present were Commission Counsels Amber Cronk May, Amanda Reeder, Abigail Hammond, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana Vojtko.

The meeting was called to order at 10:03 a.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the October 20, 2016 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Criminal Justice Education and Training Standards Commission

12 NCAC 09B .0203 - The agency is addressing the objection from the September meeting. No action was required by the Commission.

Environmental Management Commission

15A NCAC 02H .1019, .1042, .1043, .1044, .1045, .1050, .1051, .1052, .1053, .1054, .1055, .1056, .1059, and .1060 – All rewritten rules were unanimously approved.

Environmental Management Commission

15A NCAC 02I .0501 was unanimously approved.

LOG OF FILINGS (PERMANENT RULES)

Structural Pest Control Committee

The Commission extended the period of review for the rules in accordance with G.S. 150B-21.10. They did so in response to a request from the rulemaking coordinator to extend the period in order to allow the agency additional time to make technical changes.

Historical Commission

The rules were unanimously approved with the following exceptions: 07 NCAC 04R .0909 and .0926 were withdrawn at the request of the agency.

HHS - Division of Health Service Regulation

All rules were unanimously approved.

The Commission received over 10 letters of objection requesting a delayed effective date and legislative review for the approved rules except for 10A NCAC 14C .1802, in accordance with G.S. 150B-21.3(b2).

Commission for Public Health

10A NCAC 41C .0702 was unanimously approved.

Department of Insurance

The Commission extended the period of review for the rules in accordance with G.S. 150B-21.10. They did so in response to a request from the rulemaking coordinator to extend the period in order to allow the agency additional time to make technical changes, and to review and prepare responses to the staff opinions.

Commissioner of Insurance

11 NCAC 06A .0809 was unanimously approved.

Manufactured Housing Board

The Commission objected to 11 NCAC 08 .0904 due to lack of statutory authority and failure to comply with the APA. Specifically, the Commission found that the amended rule was approved for publication and adopted by the Department rather than the proper authority: the Manufactured Housing Board. In addition, the Commission found that existing language of the rule exceeds the statutory language of G.S. 143-143.10, as modified in Session Law 2015-286, Section 2.2, because the rule purports to impose requirements on applicants for licensure as manufactured home manufacturers or dealers that were explicitly removed from the statute by the General Assembly.

Wildlife Resources Commission

15A NCAC 10B .0106 was unanimously approved.

Department of Natural and Cultural Resources

All rules were unanimously approved.

Department of Transportation

All rules were unanimously approved.

Board of Cosmetic Art Examiners

All rules were unanimously approved.

Board of Dental Examiners

21 NCAC 16H .0207 was unanimously approved.

Board of Nursing

All rules were unanimously approved.

Social Work Certification and Licensure Board

All rules were unanimously approved with the following exception:

The Commission objected to 21 NCAC 63 .0505 in accordance with G.S. 150B-21.10(2). The Commission objected to the following provisions in this Rule based on ambiguity:

- Line 5 – social workers shall “know the areas of competence of other professionals”

- Item (1) – social workers 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.”
- Item (2) – “In referring clients, social workers shall refer to professionals who are recognized by their respective profession as competent to carry out the services required.”
- Item (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.”
- Item (4) – Social workers “shall evaluate fairly the performance of those under their supervision,” shall not “harass,” and “shall not abuse the power inherent in their position.”
- Item (5) – “unethical or incompetent behavior” and “take equally appropriate steps to assist and defend colleagues unjustly charged with such conduct.”

The Commission objected to the above language as it is unclear as to what is expected of the social worker in carrying out these provisions.

Anna Baird Choi, with the Law Office of Nichols, Choi & Lee, PLLC, representing the Board, addressed the Commission.

Elizabeth Pope, the Assistant Executive Director with the Board, addressed the Commission.

Building Code Council

All rules were unanimously approved.

LOG OF RULES (TEMPORARY RULES)

Board of Agriculture

All rules were unanimously approved.

EXISTING RULES REVIEW

Department of Health and Human Services

10A NCAC 14F - The Commission unanimously approved the report as submitted by the agency with the following exceptions for rules 10A NCAC 14F .1203 and .1903. The RRC designated these rules as “necessary with substantive public interest.”

Wildlife Resources Commission

15A NCAC 10F - The Commission unanimously approved the report as submitted by the agency. Commissioner Doran was not present during the vote.

15A NCAC 10H - The Commission unanimously approved the report as submitted by the agency with the following exception for rule 15A NCAC 10H .1106. The RRC designated the rule as “necessary with substantive public interest.”

Department of State Treasurer

20 NCAC 03 – The Commission deferred review of the report to confirm that the proper agency conducted the analysis, made the initial determinations, posted the report for the 60-day comment period, and made the final determinations. Rule 26 NCAC 05 .0211 was amended to reflect that 20 NCAC 03 was not reviewed at the November 2016 meeting and this report will be rescheduled for review by the Commission.

20 NCAC 08 – The Commission unanimously approved the report as submitted by the agency.

20 NCAC 09 – The Commission deferred review of the report to confirm that the proper agency conducted the analysis, made the initial determinations, posted the report for the 60-day comment period, and made the final determinations. Rule 26 NCAC 05 .0211 was amended to reflect that 20 NCAC 09 was not reviewed at the November 2016 meeting and this report will be rescheduled for review by the Commission.

Patrice Alexander, with the agency, addressed the Commission.

Prior to the review of the reports from the Department of State Treasurer, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the reports because he works with the agency.

Environmental Management Commission

15A NCAC 02S - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than July 31, 2018 pursuant to G.S. 150B-21.3A(d)(2).

State Human Resources Commission

25 NCAC 01J - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than January 31, 2018 pursuant to G.S. 150B-21.3A(d)(2).

Prior to the review of the proposed readoption date from the State Human Resources Commission, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the proposed readoption date because she is a state employee.

State Board of Elections

The agency requested a waiver of 26 NCAC 05 .0203(c) pursuant to 26 NCAC 05 .0204 for the 08 NCAC 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, and 12 reports.

The waiver request was unanimously approved.

The Commission will review the reports at its December 15, 2016 meeting.

Prior to the review of the reports from the State Board of Elections, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the reports because she has a matter before the Board of Elections.

Prior to the review of the reports from the State Board of Elections, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the reports because a partner at his firm is a member of the Board of Elections.

COMMISSION BUSINESS

The Commission voted to approve the amendment of Rule 26 NCAC 05 .0205.

The meeting adjourned at 11:32 a.m.

The next regularly scheduled meeting of the Commission is Thursday, December 15th at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings /Rules Division.

Respectfully Submitted,

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:

Garth Dunklin, Chair

November 17, 2016

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Crystal Tillman	NC Board of Nursing
LINDA BURNAS	NC Board of Nursing
Jennie Houser	NC DOS / EMC
ERICA GARNER	NCWRC
Ashley Snyder	Cultural Resources
Loretta Peace-Bunch	Insurance
Clarence Ervin	NC DHHS / DHSE
Lynda Elliott	nc state Bd of Cosmetic Arts
Jennifer Everett	DEQ
BARRY GUPTON	NC DOI
Misty Buchanan	NC DNCR - NHP
S. M. M. M.	NC DNCR
Nci / Perry	NC DOT - Rail Division
Cygan Tioh	NC SBE
Angela Ellis	NC Board of Nursing
Nadine Pfeiffer	NC DHHS / DHSE
Azzie Conley	NC DHHS / DHSE
Helen Vandi	DOT
Julie Venturo	NC DEQ
Katelyn Love	NC SBE
Amara Carter	Cultural Resources NC DNCR

November 17, 2016

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Victor Lennon	N.C. Dept. of Agriculture + Consumer Services
Beth Blackwell	NC Dept. of Insurance
Patricia Mann	NC Dept. of Ag
JOE SAOUBH	NC DOB MANUFACTURED Housing Assoc
Annette Lucas	NC DEQ
Patrice Alexander	DST
Elizabeth Pope	NC Social Work Board
Katy Kingsbury	BROOKS Pierce
Anwa Choi	Nichols, Choi, Lee
Bob MARTIN	NC DPH
LaShawn Piquant	NC DOJ
Margaret Duce	OSHR
Annie Hirsch	NC DHHS
Mina Shehee	NC DHHS
Martha Frisone	NC DHHS DHSR HPCON



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

November 17, 2016

Jennifer Everett, Rulemaking Coordinator
Department of Environment Quality
Environmental Management Commission
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **15A NCAC 02S**

Dear Ms. Everett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the November 17, 2016 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than July 31, 2018.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Abigail M. Hammond".

Abigail M. Hammond
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
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Clerk's Office
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Rules Review
Commission
919/431-3000
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Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

3/31/2016

RRC Determination - Periodic Rule Review

Generated 3/31/2016 at 11:46 AM

**RRC DETERMINATION
PERIODIC RULE REVIEW
January 01, 2015 through March 30, 2015
Environmental Management Commission
Total: 12**

RRC Determination: Necessary with substantive public interest

Rule	Determination	APO Review Date
<u>15A NCAC 02S .0101</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0102</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0201</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0202</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0301</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0501</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0502</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0503</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0506</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0507</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0508</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0509</u>	Necessary with substantive public interest	April 25, 2015

<http://rats.Reports/RRC/periodicRuleReview.pl?sType=RRCdetermination&sDetermination=Necessary%20with%20substantive%20public%20interest&bCo...> 1/1



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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Raleigh, NC 27609-6285

November 17, 2016

Margaret Duke, Rulemaking Coordinator
State Human Resources Commission
Office of State Human Resources
1331 Mail Service Center
Raleigh, North Carolina 27699-1331

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **25 NCAC 01J**

Dear Ms. Duke:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the November 17, 2016 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than January 31, 2018.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Abigail M. Hammond".

Abigail M. Hammond
Commission Counsel

Administration
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Rules Division
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Rules Review
Commission
919/431-3000
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Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW**

June 16, 2016

APO Review: August 20, 2016

State Human Resources Commission

Total: 14

RRC Determination: Necessary with substantive public interest

Rule	Determination
25 <u>NCAC 01J .1302</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1306</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1307</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1308</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1309</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1310</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1311</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1312</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1314</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1315</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1316</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1318</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1319</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1320</u>	Necessary with substantive public interest

**LIST OF APPROVED PERMANENT RULES
November 17, 2016 Meeting**

HISTORICAL COMMISSION

<u>Scope of Rules and Overview of Statutory Authority under ...</u>	07 NCAC 04R .0918
<u>Definitions</u>	07 NCAC 04R .0919
<u>Applications</u>	07 NCAC 04R .0920
<u>Certification of Historic Significance</u>	07 NCAC 04R .0921
<u>Standards for Evaluating Significance within National Reg...</u>	07 NCAC 04R .0922
<u>Certifications of Rehabilitations</u>	07 NCAC 04R .0923
<u>Standards for Rehabilitation</u>	07 NCAC 04R .0924
<u>Fees for Processing Rehabilitation Certification Requests</u>	07 NCAC 04R .0925

HHS - HEALTH SERVICE REGULATION, DIVISION OF

<u>Purpose and Scope</u>	10A NCAC 14C .1801
<u>Definitions</u>	10A NCAC 14C .1802
<u>Performance Standards</u>	10A NCAC 14C .1804
<u>Purpose and Scope</u>	10A NCAC 14C .3101
<u>Definitions</u>	10A NCAC 14C .3102
<u>Need for Services</u>	10A NCAC 14C .3104

PUBLIC HEALTH, COMMISSION FOR

<u>Reportable Diseases, Illnesses, and Injuries</u>	10A NCAC 41C .0702
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INSURANCE, COMMISSIONER OF

<u>Approval of Courses</u>	11 NCAC 06A .0809
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Coastal Counties</u>	15A NCAC 02H .1019
<u>Standard Permitting Process</u>	15A NCAC 02H .1042
<u>Fast Track Permitting Process: Authorization to Construct</u>	15A NCAC 02H .1043
<u>Fast Track Permitting Process: Final Permit</u>	15A NCAC 02H .1044
<u>Requirements for Permit Transfers and Permit Renewals</u>	15A NCAC 02H .1045
<u>MDC for All Stormwater Control Measures</u>	15A NCAC 02H .1050
<u>MDC for Infiltration Systems</u>	15A NCAC 02H .1051
<u>MDC for Bio retention Cells</u>	15A NCAC 02H .1052
<u>MDC for Wet Ponds</u>	15A NCAC 02H .1053
<u>MDC for Stormwater Wetlands</u>	15A NCAC 02H .1054
<u>MDC for Permeable Pavement</u>	15A NCAC 02H .1055
<u>MDC for Sand Filters</u>	15A NCAC 02H .1056
<u>MDC for Level Sopperader-Filter Strips</u>	15A NCAC 02H .1059
<u>MDC for Disconnected Impervious Surfaces</u>	15A NCAC 02H .1060
<u>Form and Contents of Petition</u>	15A NCAC 02I .0501

WILDLIFE RESOURCES COMMISSION

Wildlife Taken for Depredations 15A NCAC 10B .0106

NATURAL AND CULTURAL RESOURCES, DEPARTMENT OF

Definitions as Used in This Subchapter 15A NCAC 12H .0103
Responsibilities and Duties of Natural Heritage Program 15A NCAC 12H .0104
Natural Heritage Advisory Committee 15A NCAC 12H .0105
Objectives of Registry 15A NCAC 12H .0201
Criteria for Eligibility 15A NCAC 12H .0202
Registration Process 15A NCAC 12H .0203
Registration 15A NCAC 12H .0204
Rescission 15A NCAC 12H .0205
Public Access 15A NCAC 12H .0206
Management of Registered Natural Areas 15A NCAC 12H .0207
Designation of Natural Areas on State Lands 15A NCAC 12H .0208
Objectives of Dedication 15A NCAC 12H .0301
Dedication Process 15A NCAC 12H .0302
Articles of Dedication 15A NCAC 12H .0303
Buffer Areas 15A NCAC 12H .0304
Public Trust 15A NCAC 12H .0305
Amendments 15A NCAC 12H .0306
Extiguishment by the State 15A NCAC 12H .0307
Mutual Termination 15A NCAC 12H .0308
Management Plan 15A NCAC 12H .0401
Management Principles 15A NCAC 12H .0402
Management Rules for Preserves 15A NCAC 12H .0403

TRANSPORTATION, DEPARTMENT OF

Identifying Information 19A NCAC 06B .0402
Ineligible Costs 19A NCAC 06B .0405
Application 19A NCAC 06B .0406
Application Evaluation 19A NCAC 06B .0410
Allocation of Funding 19A NCAC 06B .0411
Requests for Reimbursement 19A NCAC 06B .0413

COSMETIC ART EXAMINERS, BOARD OF

Complaints 21 NCAC 14B .0608
Renewals, Expired Licenses, Licenses Required 21 NCAC 14P .0105
Licenses to be Posted 21 NCAC 14P .0107
Establishment of Cosmetic Art Schools 21 NCAC 14P .0111
Operation of Schools of Cosmetic Art 21 NCAC 14P .0113
Cosmetology Curriculum 21 NCAC 14P .0114
New School Applications 21 NCAC 14T .0102
Esthetics Schools 21 NCAC 14T .0203
Manicuring Schools 21 NCAC 14T .0204

<u>Natural Hair Care Schools</u>	21	NCAC 14T .0205
<u>Permanent Records, Forms and Documentation</u>	21	NCAC 14T .0502
<u>School Operations/Licensure Maintenance</u>	21	NCAC 14T .0701
<u>School Performance Requirements</u>	21	NCAC 14T .0705
<u>School Probation</u>	21	NCAC 14T .0901

DENTAL EXAMINERS, BOARD OF

<u>Limited Exception for Assisting Hygienists</u>	21	NCAC 16H .0207
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NURSING, BOARD OF

<u>Definitions</u>	21	NCAC 36 .0120
<u>Establishment of a Nursing Program Initial Approval</u>	21	NCAC 36 .0302
<u>Existing Nursing Program</u>	21	NCAC 36 .0303
<u>Process for Closure of a Program</u>	21	NCAC 36 .0309
<u>Administration</u>	21	NCAC 36 .0317
<u>Faculty</u>	21	NCAC 36 .0318
<u>Students</u>	21	NCAC 36 .0320
<u>Curriculum</u>	21	NCAC 36 .0321
<u>Facilities</u>	21	NCAC 36 .0322
<u>Records and Reports</u>	21	NCAC 36 .0323

SOCIAL WORK CERTIFICATION AND LICENSURE BOARD

<u>Definitions</u>	21	NCAC 63 .0102
<u>References</u>	21	NCAC 63 .0204
<u>Work Experience</u>	21	NCAC 63 .0211
<u>Certification and Licensure for Military Personnel and Mi...</u>	21	NCAC 63 .0214
<u>Continuing Education Requirements</u>	21	NCAC 63 .0401
<u>Continuances</u>	21	NCAC 63 .0610

BUILDING CODE COUNCIL

<u>2012 NC Existing Building Code/Water Supply System Test</u>	609.4
<u>2012 NC Existing Building Code/Occupant Load Increase</u>	1401.2.6
<u>2012 NC Plumbing Code/Water Service Pipe</u>	Table 605.3

LIST OF APPROVED TEMPORARY RULES
November 17, 2016 Meeting**AGRICULTURE, BOARD OF**

<u>Eligible Expenses</u>	02	NCAC 52J .0901
<u>Application Guidelines</u>	02	NCAC 52J .0902

CONTESTED CASE DECISIONS

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	David Sutton
Stacey Bawtinheimer	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
NC Alcoholic Beverage Control Commission v. Osei Enterprises LLC T/A Osei Food and Beverage	15 ABC 08455	06/02/16	31:05 NCR 426
NC Alcoholic Beverage Control Commission v. Brewsters LLC T/A Two Doors Down	16 ABC 0290	06/01/16	
NC Alcoholic Beverage Control Commission v. Dasab LLC T/A D and S Kwik Stop	16 ABC 01759	05/25/16	
NC Alcoholic Beverage Control Commission v. Cristina Miron Bello and Victor Giles Bello T/A La Poblanita	16 ABC 02166	05/25/16	
NC Alcoholic Beverage Control Commission v. Aarray Inc. T/A Jacks Tap	16 ABC 02702	06/01/16	
NC Alcoholic Beverage Control Commission v. B2 Inc. T/A Cadillac Ranch the Other Side	16 ABC 02703	06/02/16	
NC Alcoholic Beverage Control Commission v. Los Amigos of Shelby Inc. T/A Los Amigos of Shelby	16 ABC 03354	06/21/16	
NC Alcoholic Beverage Control Commission v. Susan Michelle Cloninger T/A Dallas Pub	16 ABC 07133	10/11/16	
<u>BOARD OF SOCIAL WORK</u>			
William B. Shannon v. NC Social Work Certification and Licensure Board	16 BSW 09247	10/17/16	
<u>DEPARTMENT OF PUBLIC SAFETY</u>			
Thomas Anthony Tyger v. Victim Services Janice Carmichael	15 CPS 08771	05/17/16	
George Dudley v. NC Department of Public Safety, Victim Services	16 CPS 01651	05/05/16	
Otero Lee Ingram v. NC Crime Victims Comp Commission	16 CPS 01656	06/09/16	
Sara Neomi Giron v. Department of Public Safety, Victim Services	16 CPS 07583	09/14/16	
Harvey Lewis v. Victim Crime NC	16 CPS 07832	09/16/16	
Lila McCallum v. Victims Compensation Commission	16 CPS 07897	09/14/16	
<u>DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES</u>			
For the Love of Dogs, Max and wife Della Fitz-Gerald v. Department of Agriculture and Consumer Services	15 DAG 09366	09/22/16	31:11 NCR 1147
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>			
Agape Homes Inc. v. Department of Health and Human Services	12 DHR 11808	05/26/16	
Agape Homes Inc. v. Department of Health and Human Services	13 DHR 12398	05/26/16	
Harrold Associates II DDS Nickie Rogerson v. DHHS, DMA	15 DHR 01234	04/29/16	

CONTESTED CASE DECISIONS

WP-Beulaville Health Holdings LLC v. DHHS, Division of Health Service Regulation, Adult Care Licensure Section	15 DHR 02422	06/29/16	31:05 NCR 440
Lavonnie Simmons v. DHHS, Division of Health Service Regulations	15 DHR 05374	10/31/16	
Shanata Crawford, A Fulfilled Vision Home Health v. DHHS	15 DHR 06085	10/12/16	
East Cove Psychiatric Services PC, Dr. Joanna Wolicki-Shannon, and Dr. Walter Shannon v. DHHS, Division of Medical Assistance and its Agent, Eastpointe	15 DHR 06260	09/20/16	
Jessie Buie, George Buie v. DHHS, DMA	15 DHR 07341	05/10/16	
Christopher H Brown v. DHHS, Division of Medical Assistance	15 DHR 08051	08/11/16	
Ashley Cartwright Sr. v. Department of Health and Human Services	15 DHR 08222	06/15/16	
New Hope Adult Care, Frank N. Fisher v. Office of Health and Human Services	15 DHR 08262	06/22/16	
Sandra McKinney Page v. DHHS, Division of Health Service Regulation	15 DHR 09286	05/25/16	
Elaine B. Shelton, Positive Beginnings v. Division of Child Development and Early Education	15 DHR 09330	08/19/16	
Jeannie Ann Kine v. Department of Health and Human Services	16 DHR 00795	05/05/16	
Raiford Testone Jr. v. DHHS, Division of Public Health	16 DHR 01493	09/19/16	
A Brighter Day Group Home Shannon Hairston v. Department of Health and Human Services	16 DHR 01857	05/05/16	
A Brighter Day Group Home Shannon Hairston v. Department of Health and Human Services	16 DHR 01859	05/05/16	
HAL-097-014 Wilkes County Adult Care v. DHHS, Division of Health Service Regulation	16 DHR 02121	07/06/16	
Sagia Grocery Inc d/b/a Red Sea Grocery III v. DHHS, Division of Public Health	16 DHR 02701	05/17/16	
Susan H. Logan v. DHHS, Division of Medical Assistance	16 DHR 03011	06/02/16	
Kathleen B. McGuire v. Department of Health Service Regulation MH Licensure Section	16 DHR 03014	05/13/16	
Kathleen B. McGuire v. Department of Health Service Regulation MH Licensure Section	16 DHR 03015	05/13/16	
Kaitlin Marie Skiba v. DHHS, Division of Health Service Regulation	16 DHR 03101	06/02/16	
Derrell Octavis Moore v. Office of Administrative Hearings-Healthcare Personnel Registry	16 DHR 03127	09/14/16	
Monique Brown Miller v. DHHS, Division of Health Service Regulation	16 DHR 03131	06/22/16	
HAL-082-018 Clinton Health Holdings LLC, Clinton House v. DHHS, Division of Health Service Regulation	16 DHR 03203	08/04/16	
Robin Braswell Ingram v. Nurse Aide Registry	16 DHR 03214	06/10/16	
Sholonda Randolph v. NCDHHS	16 DHR 03217	07/13/16	
Trina C. Sherrill v. DHHS, Division of Health Service Regulation	16 DHR 03315	06/02/16	
William A. Perry v. DHHS, Division of Medical Assistance	16 DHR 03351	10/13/16	
Jacqueline Tate v. DHHS, Division of Medical Assistance	16 DHR 03576	09/01/16	
Dixon Social Interactive Services Inc. v. Trillium Health Resources	16 DHR 03398	07/07/16	
Joanne Marie Cain v. Health Care Personnel Registry	16 DHR 03404	06/02/16	
Crandell's Enterprises inc. v. DHHS, Division of Medical Assistance	16 DHR 03408	08/16/16	
Darrin L Roach v. Medicaid Estate Recovery Unit	16 DHR 03411	07/22/16	
Mariana I Arellanes Owner Liberty Tienda de la Comunidad v. DHHS, Division of Public Health	16 DHR 03475	07/06/16	
Joan Rennea Thomas v. DHHS, Division of Health Service Regulation	16 DHR 03502	06/10/16	
Nathasia Yvonne Lofton v. DHHS, Division of Health Service Regulation	16 DHR 03503	06/10/16	
Cassandra Swaringen Christian v. DHHS	16 DHR 03580	08/30/16	
Patricia Glover v. Department of Health and Human Services	16 DHR 03895	06/29/16	
Quashawn A. Washington v. NCDHHS, Division of Medical Assistance	16 DHR 03899	06/28/16	
Clinton Health holdings, LLC HAL-082-018 v. DHHS, Division of Health Service Regulation	16 DHR 04276	07/07/16	
Dora Zepeda Pastrana v. DHHS	16 DHR 04393	09/06/16	
Tina M Maye, Tina Mayes DCC v. NC Division of Child Development	16 DHR 04471	07/26/16	
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OFFICE OF ADMINISTRATIVE HEARINGS
09/09/2016 12:10 PM

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 REV 07692

Lynn Baldwin Jr. & Vera J Summerville, Petitioner, v. North Carolina Department of Revenue, Respondent.	FINAL DECISION
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THIS MATTER came on for hearing before the undersigned Administrative Law Judge, Augustus B. Elkins II at the April 2016 session of the Office of Administrative Hearings located in Raleigh, North Carolina. After presentation of testimony and exhibits, the record was left open for the parties' submission of materials, including but not limited to supporting briefs, further arguments and proposals. Mailing time was allowed for submissions including the day of mailing as well as time allowed for receipt by the Administrative Law Judge. A Transcript of this Hearing was received at the Office of Administrative Hearings on May 23, 2016. Records on file show Respondent submitted proposals to the Office of Administrative Hearings which were received by the Undersigned on July 25, 2016. The record was held open for seven additional business days to allow any further submissions from Petitioners, and receiving nothing further, the record was closed on August 3, 2016

APPEARANCES

For Petitioners: Lynn Baldwin, Jr. and Vera J. Summerville, *pro se*
5311 Winterset Drive
Greensboro, North Carolina

For Respondent: Perry J. Pelaez, Assistant Attorney General
North Carolina Department of Justice
Raleigh, North Carolina

ISSUE

Whether Petitioners engaged in a racing activity for profit so that Petitioners were entitled to claim a net operating loss related to this racing activity for the 2010, 2011 and 2012 tax years ("Period at Issue").

WITNESSES and EVIDENCE

Three Witnesses were presented at this hearing, including Lynn Baldwin, Jr., Vera J. Baldwin, and Willis Edward Finch.

Admitted into evidence was Petitioners' Exhibits 1 – 3 and 5-10 and Respondent's Exhibits 1 - 31.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, 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. From the evidence presented, the undersigned makes the following Findings of Fact.

FINDINGS OF FACT

1. Petitioners timely appealed to the Office of Administrative Hearings from the Notice of Final Determination issued by the Department on August 24, 2015.
2. Since 2010 to the present, Lynn Baldwin and Vera Summerville have resided at 5311 Winterset Drive, Greensboro, North Carolina. As of the date of the hearing, Lynn Baldwin and Vera Summerville have been married for approximately 10 years.
3. In 1972, Lynn Baldwin ("Baldwin") graduated from North Carolina A&T State University with a degree in mechanical engineering.
4. From 1972-1977, Baldwin was employed full-time as a plant engineer with Carolina Power & Light. From 1977-1985, Baldwin was employed full-time as a design engineer with DuPont in Kinston, North Carolina.
5. From 1985-2008, Baldwin was employed full-time with General Motors Corporation ("GM"). Baldwin was originally hired as a District Manager and was later promoted to Senior District Manager. While employed with GM, Baldwin worked in Auburn Hills, Michigan, St. Louis, Missouri and Tulsa, Oklahoma. During his last five years with GM, Baldwin worked an average of 50 hours per week and had an annual income of approximately \$95,000 to \$105,000.
6. In the mid 1970's, Baldwin purchased a Dodge Roadrunner and began bracket racing. At that time and for the next ten years, Baldwin engaged in this racing activity for pleasure. Baldwin has participated in bracket racing since the mid 1970's to the present.

7. For all years that he has participated in bracket racing, Baldwin has driven the same Dodge Roadrunner. It has the original body but not the same engine and transmission. During the tax years at issue, Baldwin paid various automobile service centers for the repair, maintenance and improvements to the vehicle.

8. Sometime in 1984-85, Baldwin received a notice from the Internal Revenue Service ("IRS") regarding a 1099 issued to him for winnings from bracket racing that Baldwin failed to report on his federal income tax return. At that time, Baldwin decided to file a Schedule C with his federal tax return to claim expenses from the racing activity. Baldwin has filed a Schedule C with his federal income tax returns for the 1985 through 2014 tax years. Starting in 1984 Baldwin's racing was not just for fun. He realized he was better at it than average and decided to see if he could make it into a business. He had to compete or otherwise lose his skills at driving. Moreover, in order for Baldwin to win a championship he could not skip races as he had to be present during every points race.

9. From 1985 until 2008, Baldwin's primary source of income was derived from employment unrelated to the racing activity, which was his employment with GM. In 2008, Baldwin opted for early retirement from GM and received many benefits as an incentive to retire early.

10. Beginning in the mid-1980s, Baldwin declared his racing activities on the appropriate business tax forms when filing in the states of Missouri, Michigan and Oklahoma. None of those states requested supporting documentation regarding his tax returns.

11. In 2010 after retiring from GM, Baldwin moved from Tulsa, Oklahoma to his current residence in Greensboro, North Carolina.

12. For the 2010, 2011 and 2012 tax years, Petitioners had income unrelated to the racing activity, which was in the amount of \$64,133 in 2010, \$58,757 in 2011, and \$77,447 in 2012.

13. For the 2010, 2011, and 2012 tax years, Lynn Baldwin and Vera Summerville filed joint North Carolina individual income tax returns. For each tax year at issue, Petitioners filed a Schedule C with their federal income tax return to deduct certain expenses claimed from a racing activity which generated a loss for each tax year. As a result of the loss claimed on the Schedule C, Petitioners reported no taxable income on their North Carolina tax returns and received a refund for the 2010, 2011 and 2012 tax years.

14. During the 2010, 2011 and 2012 tax years for the racing activity, Baldwin did not maintain a business plan, accounting books, general ledger, annual budget, expense forecast, balance sheets, end of year reports or monthly reports to reconcile income and expenses. Baldwin did not attempt to determine the financial breakeven point for the racing activity and did not attempt to determine how to make a profit with the racing activity.

15. For the 2010, 2011 and 2012 tax years, Baldwin saved receipts of expenses for the racing activity, categorized them and kept them in a drawer in a file. At the end of each tax year these expenses were added against the winnings from racing as reported on the Schedule C.

16. For all years that he has engaged in bracket racing, Baldwin never had an investor, sponsor, promotor or financial advisor for the racing activity. Baldwin stated that his business was a sole proprietorship. He would submit his expenses and winnings yearly to H & R Block in a handwritten summarized manner. He did not send them any supporting documentation as they did not ask for any. He did not send individual receipts but would add up expenses and winnings and submit a summary. Baldwin did recall there was a time when H & R Block did ask for some supporting documentation, but it was once and he could not recall what year it was.

17. Vera (Summerville) Baldwin testified. She was not involved in any record keeping regarding her husband's racing activities. She stated the only document she sent to H & R Block was a form with her social security number on it. After the tax return was prepared, she and her husband viewed the preparer's computer and the forms being shown, and afterwards signed as directed by the preparer.

18. For each tax year at issue, Baldwin devoted approximately 1,040 man hours annually to the racing activity but was never paid for any of the hours he spent in the racing activity. A labor expense was not reported on the Schedule C for each tax year at issue. Baldwin did have a truck that was used strictly for racing, for pulling his trailer and incurred some expenses for it. Expenses for his racing activity also included entry fees.

19. For the 1997 through 2013 tax years, Baldwin reported 17 consecutive years of losses from the racing activity during this period. In the past twenty years, Baldwin only reported a profit from the racing activity in 1996 in the amount of \$982 and in 2014 in the amount of \$180.

20. For the tax years at issue, Baldwin reported losses from the racing activity in the amount of \$4,991.25 for 2010, \$11,562.59 for 2011 and \$8,055.72 for 2012.

21. For the 2010, 2011 and 2012 tax years, Baldwin's winnings, expenses and losses from the racing activity and Petitioners' income unrelated to the racing activity as reported on their federal income tax returns were as follows:

Year	Races Entered	Total Winnings	Expenses Excluding Labor	Net Profit (Loss)	Income Unrelated to Racing
2010	25	\$1,250	\$6,241.25	(\$4,991.25)	\$64,133
2011	14	\$4,000	\$15,652.59	(\$11,652.59)	\$58,757
2012	20	\$2,100	\$10,155.72	(\$8,055.72)	\$77,447
TOTALS	59	\$7,350	\$32,049.56	(\$24,699.56)	\$200,337

22. Without Petitioners' substantial income unrelated to racing, Baldwin could not sustain years of losses from the racing activity, including the 2010, 2011 and 2012 tax years.

23. Eddie Finch who was employed at the North Carolina Department of Revenue at the time of the hearing testified. In positions ranging from Auditor to Assistant Director of was called the Personal Taxes Division, Finch dealt with individual income tax. In examining the relevant sections in the Code of Federal Regulations, Finch reviewed certain factors as outlined in the Code in connection with assessing whether this was an activity being engaged in for profit. Finch concluded that Baldwin was not engaged in the business for profit. The Department disallowed the losses claimed by Petitioners on the Schedule C of their federal income tax returns for all three tax years at issue, which resulted in additional North Carolina tax, interest and penalties due and owing from Petitioners.

BASED UPON the foregoing findings of fact and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following Conclusions of Law.

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.
2. To the extent that certain portions of the foregoing Findings of Fact constitute mixed issues of law and fact, such Findings of Fact shall be deemed incorporated herein by reference as Conclusions of Law. A court need not make findings as to every fact, which arises from the evidence, and need only find those facts that are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, aff'd, 335 N.C. 234, 436 S.E.2d 588 (1993).
3. The burden of proof rests on the Petitioner challenging an agency decision. *Overcash v. N.C. Dept. of Env't & Natural Res.*, 179 N.C. App. 697, 704, 635 S.E.2d 442, 447 (2006). The Petitioner bears the burden of proof by a greater weight or preponderance of the evidence of showing that the Agency has substantially prejudiced its rights as well as whether the agency acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule. See N.C. Gen. Stat. § 150B-23. See also *Surgical Care Affiliates, LLC v. NC. 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' 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. NC. Real Estate Corn'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. 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 intendment will be made in support of the presumption." 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).

6. In weighing evidence which detracts from the agency decision," "[i]f, after all of the record has been reviewed, substantial competent evidence is found which would support the agency ruling, the ruling must stand." *Little v. Bd. of Dental Examiners*, 64 N.C. App. 67, 69, 306 S.E.2d 534, 536 (1983) (citations omitted).

7. For residents of the State, North Carolina taxable income means the taxpayer's taxable income determined under the Internal Revenue Code, adjusted as provided in G.S. 105-134.6 and G.S 105-134.7. N.C.G.S. § 105-134.5(a) (2012).

8. Deductions are in the nature of exemptions: they are privileges, not rights, and are allowed as a matter of legislative grace. *Wal-Mart Stores East v. Hinton*, 197 N.C. App. 30, 54, 676 S.E.2d 634, 651 (2009). A taxpayer claiming a deduction must bring himself within the statutory provisions authorizing the deduction. *Ward v. Clayton*, 5 N.C. App. 53, 58, 167 S.E.2d 808, 811 (1969), *aff'd*, 276 N.C. 411, 172 S.E.2d 531 (1970).

9. Section 162(a) of the U.S. Tax Code allows deductions for all ordinary and necessary expenses paid or incurred during a taxable year in carrying on a trade or business. 26 USC § 162. In the case of an activity engaged in by an individual, if such activity is not engaged in for profit, no deduction attributable to such activity shall be allowed under this chapter except as provided in this section. 26 USC § 183(a).

10. The test for determining whether a taxpayer is carrying on an activity for profit is whether the taxpayer's actual and honest objective in engaging in the activity is to make a profit. *Dreicer v. Commissioner*, 78 T.C. 642, 645 (1982). Greater weight is to be given to objective facts than to a taxpayer's statement of intent. *See Dreicer* at 645.

11. Section 1.183-2(b) of the Code of Federal Regulations provides a non-exhaustive list of factors to consider in determining whether an activity is engaged in for profit. 26 CFR § 1.183-2(b). Petitioner bears the burden of proof on this issue. *Golanty v. Commissioner*, 72 T.C. 411, 426 (1979).

12. The Undersigned has examined the Manner in Which the Taxpayer Carried On the Activity. 26 CFR § 1.183-2(b)(1). Petitioner did not maintain books or written records, had no formal business plan, and did not create annual budget and expense forecasts relating to bracket racing. Although a taxpayer is not required to maintain a sophisticated system of accounting, the taxpayer should keep documents that allow the taxpayer to make informed business decisions.

Burger v. Commissioner, 809 F.2d 355, 359 (7th Cir. 1987). Petitioners did save receipts from expenses related to bracket racing; however, there is no evidence that Petitioners used these receipts as a management tool to reduce expenses or increase profitability. This factor favors Respondent.

13. The Undersigned has examined the Expertise of the Taxpayer or His Advisors. 26 CFR § 1.183-2(b)(2). Petitioner Baldwin has extensive experience with drag racing and has been involved in the activity for over 40 years. However, the focus here is on expertise and preparation with regard to the economic aspects of the activity. *Wesinger v. Commissioner*, T.C. Memo. 1999-372. Petitioners have not shown that they possessed the requisite expertise regarding the business aspects of bracket racing or that they relied on anyone who had that expertise. The fact that Petitioners did not seek advice on the economic aspects of the bracket racing activity suggests that Petitioners lacked a profit objective. *See Fillos v. Commissioner*, T.C. Memo. 1999-92, *affd.* 224 F.3d 16 (1st Cir. 2000). This factor favors Respondent.

14. The Undersigned has examined the Time and Effort Expended in Carrying On the Activity. 26 CFR § 1.183-2(b)(3). Petitioner dedicated significant time and effort to his bracket racing activity. While this fact tends to favor Petitioners' position, Petitioner Baldwin also derived substantial personal enjoyment from drag racing. On balance, this factor is neutral.

15. The Undersigned has examined the Expectation That Assets May Appreciate in Value. 26 CFR § 1.183-2(b)(4). When property's appreciation in value is independent of the claimed business activity, the gain realized from a sale of the property will not be a significant factor in evaluating the nature of the activity in question. *Ruben v. Commissioner*, T.C. Memo. 1986-260, *affd.* without published opinion 852 F.2d 1290 (9th Cir. 1988). Petitioners failed to show that any potential increase in value of the racing car, or any other asset, was attributable to Petitioner Baldwin's success in the racing activity rather than the result of the value of labor and newly purchased component parts. This factor favors Respondent.

16. The Undersigned has examined the Success of Taxpayer in Other Activities. 26 CFR § 1.183-2(b)(5). Petitioner Baldwin was not involved in any other business activities apart from his former employment with and retirement from General Motors Corporation. This factor favors Respondent.

17. The Undersigned has examined the Taxpayer's History of Income or Losses. 26 CFR § 1.183-2(b)(6). Petitioners incurred losses for each tax year at issue. In fact, from 1997 through 2013, Petitioners incurred 17 consecutive years of losses. During the tax years at issue, Petitioners received only \$7,350 in cash winnings while spending \$32,049.56 on the racing activity. On the basis of Petitioners' record of significant years of losses, it is unlikely that Petitioners will be able to recoup his expenses. This factor favors Respondent.

18. The Undersigned has examined the Amount of Occasional Profits, If Any. 26 CFR § 1.183-2(b)(7). With the exception of small cash awards, Petitioner Baldwin's racing activity produced no income during the tax years at issue. The expenses incurred in the racing activity were over 4.5 times the amount of income earned. This factor favors Respondent.

19. The Undersigned has examined the Financial Status of the Taxpayer. 26 CFR § 1.183-2(b)(8). "The rationale for this rule is that a taxpayer with substantial income unrelated to the activity can more easily afford to operate the activity as a hobby." *Emerson v. Commissioner*, T.C. Memo. 2000-137. Petitioners had substantial income unrelated to racing, totaling \$200,337 during the tax years at issue, with an average of \$66,779 of income unrelated to racing per year. Substantial income from sources unrelated to the activity in question, particularly if losses from the activity generate substantial tax benefits, indicate that an activity is not engaged in for profit. This factor favors Respondent.

20. The Undersigned has examined the Elements of Personal Pleasure. 26 CFR § 1.183-2(b)(9). Petitioner undoubtedly obtained enjoyment from this racing activity. It is not necessary that an activity be engaged in with the exclusive intention of making a profit, if for example other investments would more likely be profitable. This factor favors Respondent.

21. Petitioners' racing activity was an "activity . . . not engaged in for profit" within the meaning of 26 USC § 183. Accordingly, the losses claimed by Petitioners related to the racing activity for the 2010, 2011 and 2012 tax years are disallowed and not deductible.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following Final Decision.

DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. The Undersigned enters the following Final Decision based upon the preponderance of the evidence, having given due regard to the demonstrated knowledge and expertise of the Agency with respect to facts and inferences within the specialized knowledge of the Agency as required under N.C. Gen. Stat. § 150B-34.

The Undersigned holds that Petitioners failed to carry their burden of proof by a greater weight of the evidence that the Respondent erred in its Notice of Final Determination. The finder of fact cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbears, in some degree, the weight upon the other side. The weight of Petitioner's evidence does not overbear in that degree required by law the weight of evidence of Respondent to the ultimate issues.

Based on foregoing the Undersigned determines that the Department's Notice of Final Determination is **UPHELD** in its entirety and Petitioners are liable for the tax, penalties, and interest set forth below.

Individual Income Tax (from Notice of Final Determination)	\$3,426.00
Penalties (from Notice of Final Determination)	\$856.50
Interest (updated through May 5, 2016) *	\$678.71
Total due as of May 5, 2016	\$4,961.21


*Plus daily interest which accrues at the rate of \$0.48 per day.

NOTICE

THIS IS A FINAL DECISION issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of N.C. Gen. Stat. §§ 150B-34, 150B-45 and 105-241.16, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of Wake County and in accordance with the procedures for a mandatory business case set forth in N.C. Gen. Stat. § 7A-45.4(b) through (f). The party seeking judicial review must pay the tax due including penalties and interest and file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. This Final Decision was served on the parties as indicated on the Certificate of Service attached to this Final Decision.

This the 9th day of September, 2016.

A handwritten signature in cursive script, reading "Augustus B Elkins II", is written over a horizontal line.

Augustus B Elkins II
Administrative Law Judge