

NORTH CAROLINA REGISTER

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March 15, 2017

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

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NORTH CAROLINA REGISTER
Publication Schedule for January 2017 – December 2017

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
31:13	01/03/17	12/07/16	01/18/17	03/06/17	03/20/17	05/01/17	05/2018	09/30/17
31:14	01/17/17	12/20/16	02/01/17	03/20/17	04/20/17	06/01/17	05/2018	10/14/17
31:15	02/01/17	01/10/17	02/16/17	04/03/17	04/20/17	06/01/17	05/2018	10/29/17
31:16	02/15/17	01/25/17	03/02/17	04/17/17	04/20/17	06/01/17	05/2018	11/12/17
31:17	03/01/17	02/08/17	03/16/17	05/01/17	05/22/17	07/01/17	05/2018	11/26/17
31:18	03/15/17	02/22/17	03/30/17	05/15/17	05/22/17	07/01/17	05/2018	12/10/17
31:19	04/03/17	03/13/17	04/18/17	06/02/17	06/20/17	08/01/17	05/2018	12/29/17
31:20	04/17/17	03/24/17	05/02/17	06/16/17	06/20/17	08/01/17	05/2018	01/12/18
31:21	05/01/17	04/07/17	05/16/17	06/30/17	07/20/17	09/01/17	05/2018	01/26/18
31:22	05/15/17	04/24/17	05/30/17	07/14/17	07/20/17	09/01/17	05/2018	02/09/18
31:23	06/01/17	05/10/17	06/16/17	07/31/17	08/21/17	10/01/17	05/2018	02/26/18
31:24	06/15/17	05/24/17	06/30/17	08/14/17	08/21/17	10/01/17	05/2018	03/12/18
32:01	07/03/17	06/12/17	07/18/17	09/01/17	09/20/17	11/01/17	05/2018	03/30/18
32:02	07/17/17	06/23/17	08/01/17	09/15/17	09/20/17	11/01/17	05/2018	04/13/18
32:03	08/01/17	07/11/17	08/16/17	10/02/17	10/20/17	12/01/17	05/2018	04/28/18
32:04	08/15/17	07/25/17	08/30/17	10/16/17	10/20/17	12/01/17	05/2018	05/12/18
32:05	09/01/17	08/11/17	09/16/17	10/31/17	11/20/17	01/01/18	05/2018	05/29/18
32:06	09/15/17	08/24/17	09/30/17	11/14/17	11/20/17	01/01/18	05/2018	06/12/18
32:07	10/02/17	09/11/17	10/17/17	12/01/17	12/20/17	02/01/18	05/2018	06/29/18
32:08	10/16/17	09/25/17	10/31/17	12/15/17	12/20/17	02/01/18	05/2018	07/13/18
32:09	11/01/17	10/11/17	11/16/17	01/02/18	01/22/18	03/01/18	05/2018	07/29/18
32:10	11/15/17	10/24/17	11/30/17	01/16/18	01/22/18	03/01/18	05/2018	08/12/18
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EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

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

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

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend the rules cited as 10A NCAC 70G .0402, .0501, .0503, .0504, .0506, .0507, .0510, .0512 and .0513.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www2.ncdhhs.gov/dss/sscommissio/contact.htm>

Proposed Effective Date: August 8, 2017

Public Hearing:

Date: June 14, 2017

Time: 10:00 a.m.

Location: NC DSS McBryde Building 1st floor room 151, 820 South Boylan Avenue, Raleigh, NC 27603

Reason for Proposed Action:

10A NCAC 70G .0402(11) & (12) - is proposed for amendment to add the definition of "reasonable and prudent parent standard as defined in G.S. 131D-10.2A and the definition of "social worker".

The Social Worker Certification and Licensure Act (G.S. 90B) clearly defines those individuals who can use the title social worker. Child-placing agency rules for foster care must comply with the Social Worker Certification and Licensure Act (G.S. 90B).

10A NCAC 70G .0501 - is proposed for amendment to give agencies choices of titles other than social work supervisor or social worker. The references to the Office of State Personnel have been changed to the Office of State Human Resources. The hyperlinks for class specifications for Social Services Program Administrator I, Social Work Supervisor II and Social Worker II have been updated. Proposed rule amendment to 70G .0501(f) was to clarify training topic applying to both social work staff and their supervisors, no additional training is being required.

10A NCAC 70G .0501 - The Social Worker Certification and Licensure Act (G.S. 90B) clearly defines those individuals who can use the title social worker. Child-placing agency rules for foster care must comply with the Social Worker Certification and Licensure Act (G.S. 90B).

10A NCAC 70G .0501 - is proposed for amendment to give agencies choices of titles other than social work supervisor or social worker. The references to the Office of State Personnel have been changed to the Office of State Human Resources. The hyperlinks for class specifications for Social Services Program Administrator I, Social Work Supervisor II and Social Worker II have been updated.

Proposed rule amendment to 70G .0501(f) was to clarify training topic applying to both social work staff and their supervisors, no additional training is being required.

10A NCAC 70G .0503(g) - rule amendment proposal is to align with state and federal outcomes that children when possible children should be placed in an effort to maintain their connections to their neighborhood, community, faith, extended family, tribe, school and friends.

10A NCAC 70G .0503(h) - rule amendment proposal is in accordance with 70B-903.1(d) that requires notice be given to the child's parent or guardian when a change in placement is necessary. The proposed rule quantifies the notice that the supervising agency must provide.

10A NCAC 70G .0503(i) - rule amendment proposal is to move 70G .0510 Health Services as it relates to health services requirements.

10A NCAC 70G .0503(o)(6) - proposed rule amendment is in accordance with 131D-10.2A to add reasonable and prudent parent standard decision making as an item to be discussed when developing a child's out-of-home family services agreement or person-centered plan.

10A NCAC 70G .0503(r) - rule amendment proposed is to quantify the required weekly 60 minutes of supervision per child to therapeutic foster parents to occur fifty percent of the time through face to face contact in the foster home. There are other precedent rules that support this quantification, existing rule 70E .0113 require that the licensing social worker to have two quarterly visits in the foster home and 70G .0503(O) requires that foster children be seen by the social worker or case manager face to face monthly. Quantifying the supervision of therapeutic foster parents to include face to face contact in the foster home provides the opportunity to support and provide therapeutic strategies in the environment that the foster parent and child reside. The remaining fifty percent of supervision time can occur where determined by the foster parent and supervising agency.

10A NCAC 70G .0504(d) - is proposed for amendment to add parent is to be included in the development of child's out-of-home Family Services Agreement.

10A NCAC 70G .0506 - proposed rule revisions removes reference to current DSM IV; the Diagnostic and Statistical Manual of Mental Disorders frequently is updated and results in rules being obsolete.

10A NCAC 70G .0506(b) - proposed rule revision is obsolete; there are no licensed agencies providing these services requiring an agency to maintain such a record.

10A NCAC 70G .0506(d)(23), (24), (25), & (26) - proposed rule amendments are to clarify that results of criminal histories and finger print clearance that are required in 70E .1114 & .0116 are maintained in the foster parent home record by the supervising agency.

10A NCAC 70G .0507(f) - proposed rule amendment requiring child placing agencies for foster care develop and implement

policies and procedures in accordance with G.S. 131D-10.2A that creates the "reasonable and prudent parent standard" to be used for foster children. This statute brings State law in line with Federal Law established by P.L. 113-183. The goals of the reasonable and prudent parent standard are to provide children and youth in foster care with access to normal childhood experiences and empower the placement provider to engage in activities which promote well-being. The rule amendment directs agencies on areas that must be addressed in their policies and procedures.

10A NCAC 70G .0510 - is proposed for amendment to change the name of the rule section from Medication Administration Requirements to Health Services to align with other licensure rule sections. Existing health related rules located in less appropriate sections have been moved to the Health Services section to give medical and health related the importance needed.

10A NCAC 70G .0510(6) - is proposed for amendment to align with existing rules in 70E .1102(1)(f) to child placing agencies for foster care.

10A NCAC 70G .0510(c) - proposed rule amendment to remove the requirement to return unused prescription medications to a pharmacy and refer to Food and Drug Administration (FDA) for proper disposal. Pharmacy will no longer accept unused medications.

10A NCAC 70G .0510(e) & (f) - is proposed for amendment to move existing rule for 70G .0503 Placement Services to Health Services.

10A NCAC 70G .0510(g) - is proposed for amendment to align with existing rule in 70I .0604 for residential child care, appropriate dental care should be obtained for all foster children and not only limited to children placed in residential child care. The obtainment of dental care is widely a practice observed in foster placements as required by Federal well-being outcomes for children in care.

10A NCAC 70 .0512(f) - proposed rule amendments eliminates the use of prone or face down position restraints from crisis intervention techniques in accordance with signed written communication dated November 12, 2012 by the NC DHHS Secretary. DSS sent out written communication to all licensed agencies to inform providers, this proposed rule only clarifies this practice that can place children's safety at risk.

10A NCAC 70G .0513 - proposed rule amendment to comply with Federal Public Law 113-183 signed into law by the President effective September 29, 2014. The purpose of the legislation was to identify and protect children and youth at risk of sex trafficking. The law requires the title IV-E agencies must develop and implement protocols to report children and youth immediately on missing or abducted to law enforcement to be entered in the National Crime Information Center database (NCIC) and to the National Center for Missing and Exploited Children.

Comments may be submitted to: Carlotta Dixon, 820 South Boylan Avenue, MSC 2402, Raleigh, NC 27603; phone (919) 527-6421; fax (919) 334-1198; email Carlotta.dixon@dhhs.nc.gov

Comment period ends: June 16, 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 70 - CHILDREN'S SERVICES

SUBCHAPTER 70G – CHILD PLACING AGENCIES: FOSTER CARE

SECTION .0400 – GENERAL

10A NCAC 70G .0402 DEFINITIONS

Except when the context of the Rule indicates that the term has a different meaning the following definitions shall apply to the rules in Subchapter 70G:

- (1) "Agency" means a child placing agency as defined in G.S. 131D-10.2 that is authorized by law to receive children for purposes of placement in foster homes or adoptive homes.
- (2) "Family Foster Home" has the meaning as defined in G.S. 131D-10.2(8).
- (3) "Family Foster Care" means a planned, goal-directed service in which the temporary protection and care of children take place in a family foster home. Family foster care is a child welfare service for children and their parents who must live apart from each other for a period of time due to abuse, neglect, dependency, or other circumstances necessitating out-of-home care.
- (4) "Guardian" means an individual as defined in G.S. 7B-600 who is appointed by the court to serve as the guardian of the person for a juvenile. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions

- before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including marriage, enlisting in the armed forces and enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. Guardian also means an individual appointed by the clerk of court in North Carolina to exercise all the powers conferred by G.S. 35A-1241, including a standby guardian appointed under Article 21A of Chapter 35A whose authority has actually commenced and also means an individual appointed in another jurisdiction according to the law of that jurisdiction who has the powers consistent with G.S. 35A-1241.
- (5) "Legal Custodian" means a person or agency that has been awarded legal custody of a juvenile by a court of competent jurisdiction.
- (6) "Licensing Authority" means the North Carolina Division of Social Services.
- (7) "Out-of-Home Family Services Agreement" is a Division of Social Services document required of all children in the custody of a county department of social services receiving family foster care services or therapeutic foster care services. This agreement is used to define the primary permanency plan; to identify the family's strengths and needs; to set objectives and case activities to assist the family in resolving those issues that place the child at risk; to specify consequences if the plan does or does not succeed; and to establish the alternative permanency plan if the primary plan does not succeed. The agreement must address the services to be provided or arranged; the visitation plan designed to maintain links with the family; expectations of the family, agency, placement provider and community members; target dates; and expected outcomes.
- (8) "Owner" means any person who holds an ownership interest of five percent or more of the applicant. A person includes a sole proprietor, co-owner, partner or shareholder, principal or affiliate, or any person who is the applicant or any owner of the applicant.
- (9) "Parent" means the birth parent or adoptive parent.
- (10) "Person-Centered Plan" is a Division of Mental Health, Developmental Disabilities and Substance Abuse Services document and must be completed on all children receiving therapeutic foster care services. The person-centered plan is the umbrella under which all planning for treatment, services and supports occurs. Person-centered planning begins with the identification of the reason the individual/family is requesting assistance. It focuses on the identification of the individual's/family's needs and desired life outcomes--not just a request for a specific service. The plan captures all goals and objectives and outlines each team member's responsibilities within the plan.
- (11) ~~"Supervising Agency" means a county department of social services or a private child-placing agency that is authorized by law to receive children for purposes of placement in foster homes or adoptive homes. Supervising agencies are responsible for recruiting, training, and supporting foster parents. Supervising agencies recommend the licensure of foster homes to the licensing authority.~~
- (12) "Social worker" shall mean those who have a bachelor's, master's, or doctorate degree in social work from a social work program accredited by the Council on Social Work Education (CSWE) as provided in the Social Worker Certification and Licensure Act (G.S. 90B).
- (13) "Therapeutic Foster Care" means a foster home where the foster parent has received additional training in providing care to children with behavioral mental health or substance abuse problems.
- (14) The "reasonable and prudent parent standard", as defined in G.S.131D-10.2.

Authority G.S 131D-10.1; 131D-10.2; 131D-10.3; 131D-10.5; 143B-153.

SECTION .0500 - MINIMUM LICENSING STANDARDS

10A NCAC 70G .0501 PERSONNEL

- (a) The executive director is responsible for the general management and administration of the agency in accordance with licensing requirements and policies of the governing body. The executive director shall meet the requirements of a Social Services Program Administrator I as defined by the North Carolina Office of State ~~Personnel~~. Human Resources. A copy of these requirements can be ~~obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing~~ reviewed at the following web site: (http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_0310-04099/PDF_Files/04077.pdf). (<http://www.oshr.nc.gov/state-employee-resources/classifications/job-classification>). The college or university degree shall be from a college or university listed at the time of the degree in the Higher Education Directory. This information can be obtained by calling Higher Education Publications, Inc. at ~~1-888-349-7745~~. or by viewing site at: <http://www.hepinc.com>.
- (b) The social work supervisor is responsible for supervising, evaluating, and monitoring the work and progress of the social work or case management staff. The social work supervisor or case manager supervisor shall meet the requirements of a Social Work Supervisor II as defined by the North Carolina Office of State ~~Personnel~~. Human Resources. A copy of these requirements can be ~~obtained by contacting the Division of Social Services at~~

~~828-669-3388 or by reviewing the following web site:~~
~~(http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_0310_0-04099/PDF_Files/04016.pdf).~~ found at

~~(<http://www.oshr.nc.gov/state-employee-resources/classification/job-classification>).~~ The college or university degree shall be from a college or university listed at the time of the degree in the Higher Education Directory. This information can be obtained by calling Higher Education Publications, Inc. at 1-888-349-7715, or by viewing the site at: <http://www.hepinc.com>. Social work supervisors shall receive 24 hours of continuing education annually.

(c) The social worker or case manager is responsible for intake services, providing casework or group work services for children and their families, conducting home-finding and assessment studies related to foster parents and planning and coordinating the services and resources affecting children and their families. The social worker or case manager shall meet the requirements of a Social Worker II as defined by the North Carolina Office of State Personnel, Human Resources. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing reviewed at the following web site: ~~(http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_0310_0-04099/PDF_Files/04012.pdf).~~ (<http://www.oshr.nc.gov/state-employee-resources/classification/job-classification>). The college or university degree shall be from a college or university listed at the time of the degree in the Higher Education Directory. This information can be obtained by calling Higher Education Publications, Inc. at 1-888-349-7715, or by viewing at site: <http://www.hepinc.com>. Social workers shall receive 24 hours of continuing education annually.

(d) Social workers or case managers serving children in family foster homes shall serve no more than 15 children. Social workers or case managers serving children in therapeutic foster homes shall serve no more than 12 children. Social workers or case managers providing foster home licensing services (licensing workers) shall serve no more than 32 foster families. Agencies providing family foster care services may combine the duties of the social worker or case manager and licensing worker and serve no more than ten children and ten foster families. Agencies providing therapeutic foster care services may combine the duties of the social worker or case manager and licensing worker and serve no more than eight children and eight foster families.

(e) Supervision of social workers or case managers shall be assigned as follows:

Supervisors Required	Social Workers or Case Managers
0	0-4 (executive director serves as social work or <u>case manager</u> supervisor)
1	5
2	6-11
3	12-17
There shall be one additional supervisor for every one to five additional social workers or case managers.	

(f) The child placing agency shall ensure that the social work supervisors and social workers receive training in the areas of

child development, permanency planning methodology, family systems and relationships, child sexual abuse, trauma informed care and reasonable and prudent parent standard.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70G .0503 PLACEMENT SERVICES

(a) The agency shall assist the parents or guardian to assume or resume their parental roles and responsibilities as specified in the out-of-home family services agreement or person-centered plan.

(b) The agency shall assist the parents or guardian to gain access to the services necessary to accomplish the goals and objectives specified in the out-of-home family services agreement or person-centered plan.

(c) The agency shall encourage contacts between parents or guardian and children after placement, in accordance with the visitation and contact plan.

(d) The agency shall have a signed agreement with the parents, guardian or legal custodian of the child in care which includes the expectations and responsibilities of the agency and the parents, guardian or legal custodian for carrying out the steps to meet the out-of-home family services agreement or person-centered plan goals, the financial arrangements for the child in care, and visitation and contact plans.

(e) The agency shall select the most appropriate form of care for the child consistent with the needs of the child, parents and guardian for family foster care or therapeutic foster care. The agency shall provide for any services the child may need and shall make every effort when placing the child to select the least restrictive and most appropriate setting closest to the child's home.

(f) The agency shall document any need to place a child in a family foster home or therapeutic foster home that is beyond a radius of 150 miles from the child placing agency and the child's parents or guardian.

~~(g) The agency, when selecting care, shall take into consideration a child's racial, cultural, ethnic, and religious heritage and preserve them to the extent possible without jeopardizing the child's right to care.~~

(g) The agency, when selecting care, shall make concerted efforts to maintain the child's connections to their neighborhood, community, faith, extended family, tribe, school and friends.

(h) The agency shall involve the parents or guardian in the selection of the placement. In accordance with 7B-903.1(d) when the supervising agency intends to change a child's placement, they shall give the parent or guardian notice of its intention unless precluded by emergency circumstances. Where emergency circumstances exist, the supervising agency shall notify the parent or guardian within 72 hours of the placement change.

(i) The family foster home or the therapeutic foster home shall be licensed by the Division of Social Services.

(j) The agency social worker for the child shall become acquainted with the child and family prior to placement, except when a child is placed on an emergency basis or in the case of an infant.

(k) The agency social worker shall help the child understand the reasons for placement and prepare him or her for the new environment. The social worker shall, except when placing under emergency conditions, arrange at least one preplacement visit for

the child and shall be available to the child, the parents or guardian, and foster parents for supportive services.

~~(l)~~ No child shall be accepted into a foster home without having had a current medical examination by a licensed medical provider (physician, physician's assistant or nurse practitioner). Medical examinations completed by a licensed medical provider within 12 months prior to the admission of the child in foster care are considered current. If a child has not had a medical examination by a licensed medical provider within 12 months prior to admission, the agency shall arrange a medical examination for the child within two weeks after admission or sooner if indicated by the child's health condition. The medical examination report shall include a signed statement by a licensed medical provider specifying the child's medical condition and medications prescribed and indicating the presence of any communicable disease which may pose a risk of transmission in the foster home. If a child is in the custody of a county department of social services, is already scheduled to have and is having a medical examination completed annually, and is entering a foster home, the schedule of annual medical examinations do not have to be changed. A copy of the most recent medical examination report shall be obtained from the responsible county department of social services by the agency.

~~(m)~~ The agency shall obtain and record a developmental history for each child.

~~(n)~~ (l) The agency shall supervise the care of the child and shall coordinate the planning and services for the child and family as stated in the out-of-home family services agreement or person-centered plan.

~~(o)~~ (m) Children in family foster homes and therapeutic foster homes shall have a monthly face-to-face contact by the social worker or case manager or more if specified in the out-of-home family services agreement or person-centered plan. The parents or guardian of children in family foster care and therapeutic foster care shall have a monthly face-to-face contact by the social worker or case manager unless the out-of-home family services agreement or person-centered plan indicates a different schedule of face-to-face contacts.

~~(p)~~ (n) The agency social worker or case manager shall meet with the children and the parents, guardian or legal custodian, either separately or together based on the out-of-home family services agreement or person-centered plan to assess and work on the following:

- (1) progress in resolving problems which precipitated placement;
- (2) parent and child relationship difficulties;
- (3) adjustment to separation;
- (4) adjustment to placement; ~~and~~
- (5) achievement of out-of-home family services agreement goals or person-centered plan goals; goals; and
- (6) the reasonable and prudent parent standard.

~~(q)~~ (o) The agency shall refer the child's parents or guardian to other agencies in the community if they require services the agency does not provide and it is specified in the out-of-home family services agreement or person-centered plan. The agency shall receive reports from the agency providing services regarding the parents' or guardian's progress or lack of progress.

~~(r)~~ (p) The agency shall make provisions for social work, mental health and health care services as stated in the out-of-home family services agreement or person-centered plan.

~~(s)~~ (q) The agency shall give foster parents assistance, training, consultation, and emotional support in caring for children and in resolving problems related to their role as foster parents. Foster parents shall have one face-to-face contact per month by the social worker or case manager unless the out-of-home family services agreement or person-centered plan indicates a different schedule of face-to-face contacts for each foster child placed in the home. Phone support and 24-hour on-call support shall be provided to foster parents. Therapeutic foster care parents shall have at least 60 minutes of supervision by a qualified professional as defined in 10A NCAC 27G .0104 on a weekly basis for each therapeutic foster child placed in the foster home. home unless the person-centered plan indicates a different schedule of supervision for each therapeutic foster child placed in the home. At least 50 percent of the supervision shall be face to face in the foster home unless specified differently in the person-centered plan. Therapeutic Foster Parents providing treatment to children/youth with substance abuse treatment needs shall receive supervision from a qualified substance abuse professional as defined in 10A NCAC 27G .0104. The agency shall provide each foster parent with a Foster Parent Handbook that outlines agency procedures, requirements and expectations.

Authority G.S. 131D-10.2; 131D-10.5; 143B-153.

10A NCAC 70G .0504 OUT-OF-HOME FAMILY SERVICES AGREEMENT FOR CHILDREN RECEIVING FAMILY FOSTER CARE SERVICES

(a) The agency shall develop a written out-of-home family services agreement within 30 days of admission of a child in a family foster home. The out-of-home family services agreement shall be developed in cooperation with the child, parents, guardian or legal custodian and foster parents when possible. The out-of-home family services agreement shall be based upon an assessment of the needs of the child, parents or guardian. The out-of-home family services agreement shall include goals stated in specific, realistic, and measurable terms and plans that are action oriented, including responsibilities of staff, parents or guardian, other family members, legal custodian, foster parents and the child.

(b) The out-of-home family services agreement shall be reviewed by the agency within 60 days of placement; the second out-of-home family services agreement review shall occur within 90 days of the first review, and subsequent reviews shall be held every six months. Parents, guardian, legal custodian, foster parents, the child, as well as any individual or agency designated as providing services, shall participate in the reviews to determine the child's and parents' or guardian's progress or lack of progress towards meeting the goals and objectives, and to determine changes that need to be made in the out-of-home family services agreement.

(c) If the legal custodian is a county department of social services, the child-placing agency, the department of social services, parents or guardian, foster parents, other service providers and child shall develop a single out-of-home family services agreement. A copy of the child's out-of-home family services

agreement shall be provided to the parents, guardian, the executive director of the child-placing agency or his or her designee and the foster parents by the county department of social services serving as the legal custodian. The child's out-of-home family services agreement shall be provided to other agencies and individuals listed as providing services to the child and his or her parents or guardian. An age appropriate version of the out-of-home family services agreement shall be written and provided to each child by the legal custodian.

(d) The child-placing agency and foster parents shall attend court reviews, child and family team meetings, agency reviews and permanency planning action team meetings. The Out-of-Home Family Services Agreement (DSS-5240 or DSS-5241) and the Transitional Living Plan may serve as the out-of-home family services agreement for the child-placing agency if the documents reflect input and participation by the parents, child-placing agency and foster parents.

Authority G.S. 131D-10.5; 131D-10.10; 143B-153.

10A NCAC 70G .0506 CLIENT RECORDS

(a) The agency shall maintain an individual record for each child receiving foster care services which contains:

- (1) an application for services that includes:
 - (A) demographic information about the child, including name, address, sex, race, birth date, birth place, educational information, medical information and client record number;
 - (B) demographic information about the parents or guardian of the child, including names, addresses, telephone numbers, birth dates, races, religion and marital status;
 - (C) demographic information about the siblings and other relatives of the child, including names, addresses, and telephone numbers;
 - (D) the reasons the child was removed from the home of his or her parents;
 - (E) a record of the child's prior placements with names and addresses of foster parents and other caregivers and dates of care provided by each foster parent or caregiver, and
 - (F) the services the agency shall provide the child and his or her parents or guardian.
- (2) legal documents of importance to the child including a birth certificate and any court dispositions;
- (3) pre-admission medical examination report or a medical examination report completed within two weeks of admission (unless the child's health status indicates the completion of a medical examination report sooner) and copies of subsequent medical examination reports;
- (4) medical reports including medical history, cumulative health history, immunization

records, and available psychological and psychiatric reports; and if applicable:

- (A) documentation of mental illness, developmental disabilities or substance abuse diagnosis coded according to the latest edition of the Diagnostic and Statistical Manual of Mental Disorders; ~~Fourth Edition- Revised DSM-IV~~;
 - (B) documentation of screening and assessment;
 - (C) medication orders and Medication Administration Record (MAR);
 - (D) documentation of medication administration errors;
 - (E) documentation of adverse drug reactions; and
 - (F) orders and copies of lab tests;
- (5) educational assessments, records and reports of school-age children;
 - (6) intake study which includes initial social assessment and background of parents or guardian and the circumstances leading to the decision to place the child;
 - (7) signed out-of-home family services agreement or person-centered plan along with out-of-home family services agreement or person-centered plan reviews which reflect the status of the child, parents or guardian in relation to the out-of-home family services agreement or person-centered plan and any progress or lack of progress in the goals of the out-of-home family services agreement or person-centered plan;
 - (8) documentation of services provided;
 - (9) documentation which reflects the dates and content of social worker's or case manager's visits with the child;
 - (10) documentation of the agency's involvement with the parents, guardian or legal custodian, including services offered, delivered, or rejected;
 - (11) documentation which includes the content of any administrative or service reviews;
 - (12) a visitation and contact plan that specifies the child's contacts with parents, guardian, siblings and other family members and individuals who may have contact with the child;
 - (13) consents for release of information;
 - (14) a signed statement from the parents, guardian or legal custodian, granting permission to seek emergency care from a hospital or licensed medical provider;
 - (15) emergency information for each child that shall include the name, address and telephone number of the person to be contacted in case of sudden illness or accident and the name, address and telephone number of the child's preferred licensed medical provider;

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| <p>(16) authorization from the parents, guardian, legal custodian or licensed medical provider to administer non-prescription medications;</p> <p>(17) consents for time-limited audio-visual recordings signed by the parents, guardian or legal custodian, and child, if 12 years of age or older;</p> <p>(18) documentation of searches for drugs, weapons, contraband or stolen property, including date and time of the search, action taken by foster parents and the agency, name of foster parent informing the agency, the date and time the agency is informed of the search, the date and time of the notification to the child's parents, guardian or legal custodian; and</p> <p>(19) discharge summary including date and time of discharge, the name, address, telephone number, and relationship of the person or agency to whom the child was discharged, a summary of services provided during care, needs which remain to be met, and plans for the services needed to meet these goals.</p> <p>(b) If the agency maintains a separate record on the parents and guardians of children whom they place into care, the parents' or guardians' record shall contain:</p> <p>(1) demographic information including names, addresses, birth dates, races, religion, family composition;</p> <p>(2) social histories, including any psychological or psychiatric reports and medical histories;</p> <p>(3) strengths and needs of the parents or guardian and the services required;</p> <p>(4) signed agreements between the agency and parents or guardian;</p> <p>(5) summary of dates of contacts and progress toward goals;</p> <p>(6) case review reports; and</p> <p>(7) discharge summary.</p> <p>(e)(b) Documentation shall be entered into the child's, parents' or guardians' records within five days of occurrence.</p> <p>(d)(c) The agency shall keep separate records for each family foster home which contains:</p> <p>(1) application;</p> <p>(2) mutual home assessment;</p> <p>(3) medical examination reports;</p> <p>(4) fire inspection safety report;</p> <p>(5) environmental conditions checklist;</p> <p>(6) proof of high school diploma or GED;</p> <p>(7) dates and content of worker's contacts with the foster family;</p> <p>(8) training record that includes all required and ongoing training;</p> <p>(9) foster parent agreement signed by foster parents and agency representative;</p> <p>(10) discipline agreement signed by foster parents and agency representative;</p> <p>(11) three references relevant to the role and responsibilities of a foster parent;</p> | <p>(12) annual assessment of strengths and needs of the foster family in providing foster care to children;</p> <p>(13) chronological record of all placements of children receiving care in the home, including the dates of their care and an assessment of the care;</p> <p>(14) written approval letter from executive director or his or her designee authorizing foster parents to administer physical restraint holds, if applicable;</p> <p>(15) signed statement by the foster parents and adult members of the household that they have not been found to have abused or neglected a child or have not been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child;</p> <p>(16) signed statement by the foster parents and adult members of the household that they have not been confirmed or substantiated for abusing, neglecting or exploiting a disabled adult;</p> <p>(18) documentation of the results of the search of the Responsible Individual's List as defined in 10A NCAC 70A .0102 for all adult members of the household that indicate they have not had child protective services involvement resulting in a substantiation of child abuse or serious neglect;</p> <p>(18) signed statement by the foster parents and adult members of the household that they have not been a domestic violence perpetrator;</p> <p>(19) documentation of the results of the search of the North Carolina Sex Offender and Public Protection Registry of all adult members of the household;</p> <p>(20) documentation of the results of the search of the North Carolina Health Care Personnel Registry pursuant to G.S. 131E-256 of all adult members of the household;</p> <p>(21) copies of waivers, as specified in 10A NCAC 70L .0102; and</p> <p>(22) when closed, a summary containing reasons for the closing of the home and an assessment of the strengths and needs of the foster family in providing foster care to children, children;</p> <p><u>(23) documentation of the results of criminal record check(s) of all adult members of the household;</u></p> <p><u>(24) fingerprint clearance letters of all adult members of the household;</u></p> <p><u>(25) documentation of the results of child abuse and neglect registry checks of every state where the foster parent resided in the past five years; and</u></p> <p><u>(26) documentation of the results of the search of the North Carolina Department of Public Safety, Division of Adult Correction, Offender Information for all adult members of the household.</u></p> |
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Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70G .0507 CLIENT RIGHTS

- (a) The agency shall develop and implement policies and procedures to protect the individual rights and dignity of children and families who are provided services by the agency.
- (b) The agency shall have a client's and family's rights policy that complies with 10A NCAC 70E .1101(a).
- (c) The agency shall have a policy that prohibits direct involvement by a child in funds solicitation for the agency.
- (d) The agency shall have a policy, which prohibits the child's participation in any activities involving audio or visual recording and research without the voluntary signed, time-limited consent of the parents, guardian or legal custodian and child, if 12 years of age or older.
- (e) Each agency shall ensure that information relative to AIDS or related conditions is disclosed only in accordance with the communicable disease laws as specified in G.S. 130A-143.
- (f) The agency shall have a policy to comply with the reasonable and prudent parent standard in accordance with G.S. 131D-10.2.

Authority G.S. 131D-10.2; 131D-10.5; 143B-153.

10A NCAC 70G .0510 HEALTH SERVICES

- (a) The agency shall have written policies and procedures regarding foster parents administering medications to children placed in their home that shall be discussed with each child and the child's parents, guardian or legal custodian, prior to or upon placement.
- (b) These policies and procedures shall address medication:
 - (1) administration;
 - (2) dispensing, packaging, labeling, storage and disposal;
 - (3) review;
 - (4) education and training; ~~and~~
 - (5) documentation, including medication orders, Medication Administration Record (MAR), orders and copies of lab tests, and medication administration errors and adverse drug ~~reactions.~~ reactions; and
 - (6) record in a medical administration record (MAR) provided by the supervising agency all medications administered to each child. The MAR shall include the following: child's name; name, strength, and quantity of the medications; instructions for administering the medications; date and time the medication is administered, discontinued, or returned to the supervising agency or the person legally authorized to remove the child from foster care; name or initials of person administering or returning the medications; child's request for changes or clarifications concerning medications; and child's refusal of any prescribed medications.
- (c) Upon discharge of a child from foster care, the foster parents or the agency shall return prescription medication to the person or agency legally authorized to remove the child from foster care. Unwanted, out-dated, improperly labeled, damaged, adulterated or discontinued prescription medications shall be ~~returned to a~~

~~pharmacy for disposal.~~ disposed in accordance with the Federal Drug Administration guidelines found at: <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm101653.htm>.

- (d) The agency shall ensure that each child started or maintained on a medication by a licensed medical provider receives either oral or written education regarding the prescribed medication by the licensed medical provider or his or her designee. In instances where the ability of the child to understand the education is questionable, the agency shall ensure that a responsible person receives either oral or written education regarding the prescribed medication by the licensed medical provider or his or her designee and provides either oral or written instructions to the child. The agency shall ensure that the medication education provided is sufficient to enable the child or other responsible person to make an informed consent, to safely administer the medication and to encourage compliance with the prescribed regimen.
- (e) No child shall be accepted into a foster home without having had a current medical examination by a licensed medical provider (physician, physician's assistant or nurse practitioner). Medical examinations completed by a licensed medical provider within 12 months prior to the admission of the child in foster care are considered current. If a child has not had a medical examination by a licensed medical provider within 12 months prior to admission, the agency shall arrange a medical examination for the child within two weeks after admission or sooner if indicated by the child's health condition. The medical examination report shall include a signed statement by a licensed medical provider specifying the child's medical condition and medications prescribed and indicating the presence of any communicable disease which may pose a risk of transmission in the foster home. If a child is in the custody of a county department of social services, is already scheduled to have and is having a medical examination completed annually, and is entering a foster home, the schedule of annual medical examinations do not have to be changed. A copy of the most recent medical examination report shall be obtained from the responsible county department of social services by the agency.
- (f) The agency shall obtain and record a developmental history for each child.
- (g) Children shall have had a dental examination, by a licensed dentist, within one year prior to admission or arrangements shall be made for an exam within six weeks after admission and annually thereafter. The agency shall document dental services in the child's record.

Authority G.S. 131D-10.5.

10A NCAC 70G .0512 PHYSICAL RESTRAINT HOLDS, BEHAVIOR MANAGEMENT AND DISCIPLINE

- (a) Agencies using physical restraint holds shall, within 72 hours of an incident involving a physical restraint, review the incident report to ensure that correct steps were followed and forward the report to the parents, guardian or legal custodian and the licensing authority on a report form developed by the licensing authority.
- (b) Agencies shall submit a report to the licensing authority by the 10th day of each month indicating the number of physical restraint holds used during the previous month on each child and any injuries that resulted.

(c) Agencies shall maintain reports of physical restraint holds in a manner consistent with the agency's risk management policies (clinical decisions and activities undertaken to identify, evaluate and reduce the risk of injury to clients, staff and visitors and reduce the risk of loss to the agency) and make them available to the licensing authority upon request.

(d) Foster parents and agency staff who utilize physical restraint holds shall receive at least 16 hours of training in behavior management, including techniques for de-escalating problem behavior, the appropriate use of physical restraint holds, monitoring of vital indicators, and debriefing children, foster parents and agency staff involved in physical restraint holds. Foster parents and agency staff authorized to use physical restraint holds shall annually complete at least eight hours of behavior management training, including techniques for de-escalating problem behavior. Foster parents and agency staff shall be trained by instructors who have met the following qualifications and training requirements:

- (1) trainers shall demonstrate competence by scoring 100 percent on testing in a training program aimed at preventing, reducing and eliminating the need for restrictive interventions;
- (2) trainers shall demonstrate competence by scoring 100 percent on testing in a training program teaching the use of physical restraint; trainers shall demonstrate competence by scoring a passing grade on testing in an instructor training program;
- (3) the training shall be competency-based, and shall include measurable learning objectives, measurable testing (written and by observation of behavior) on those objectives and measurable methods to determine passing or failing the course;
- (4) the content of the instructor training shall be approved by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services and shall include presentation of understanding the adult learner, methods of teaching content of the course, evaluation of trainee performance and documentation procedures;
- (5) trainers shall be retrained at least annually and demonstrate competence in the use of physical restraint;
- (6) trainers shall be trained in CPR;
- (7) trainers shall have coached experience in teaching the use of restrictive interventions at least two times with a positive review by the coach;
- (8) trainers shall teach a program on the use of physical restraints at least once annually; and
- (9) trainers shall complete a refresher instructor training at least every two years.

(e) Foster parents and agency staff shall only use physical restraint holds approved by the North Carolina Interventions (NCI) Quality Assurance Committee, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 3022

Mail Service Center, Raleigh, NC 27699-3022. Requests for approval shall be submitted to the North Carolina Interventions (NCI) Quality Assurance Committee, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 3022 Mail Service Center, Raleigh, NC 27699-3022.

(f) Physical restraints where a person ends up in a prone or face-down position are prohibited.

~~(f)~~(g) Foster parents and agency staff shall receive written approval from the executive director or his or her designee of the supervising agency to administer physical restraint holds. A copy of this letter shall be placed in the foster home record of foster parents and the personnel file of agency staff members.

~~(g)~~(h) Agencies shall complete an annual review of the discipline and behavior management policies and techniques to verify that the physical restraint holds being utilized are being applied properly and safely. The review of the policies and techniques shall be documented and submitted to the licensing authority at the time of relicensure as part of the reapplication process.

Authority G.S. 131D-10.5; 143B-153; P.L. 113-183.

10A NCAC 70G .0513 CRITICAL INCIDENTS

(a) The agency shall have written policies and procedures for reporting critical incidents.

(b) The agency shall follow policies and procedures for handling any suspected incidents of abuse or neglect of a child involving staff, subcontractors, volunteers, interns or foster parents in a foster home supervised by the agency. The policies and procedures shall include:

- (1) a provision for reporting any suspicion of abuse or neglect to the appropriate county department of social services for investigation;
- (2) a provision for recording any suspected incident of abuse or neglect and for reporting it to the executive director or to the governing body;
- (3) a provision for notifying parents, guardian or legal custodian;
- (4) a provision for preventing a recurrence of the alleged incident pending the investigative assessment;
- (5) a policy concerning personnel action to be taken when the incident involves a staff member, subcontractor, volunteer or intern;
- (6) a policy concerning the action to be taken when the incident involves a foster parent;
- (7) a provision for submitting a critical incident report to the licensing authority within 72 hours of the incident being accepted for an investigative assessment by a county department of social services; and
- (8) a provision for submitting written notification to the licensing authority within 72 hours of the case decision by the county department of social services conducting the investigative assessment.

(c) Critical incident reports shall be submitted to the licensing authority by the executive director or his or her designee on a form provided by the licensing authority within 72 hours of the critical

incident. Critical incidents involving a child in placement in a foster home supervised by the agency include the following:

- (1) a death of a child;
- (2) reports of abuse and neglect;
- (3) admission to a hospital;
- (4) suicide attempt;
- (5) runaway lasting more than 24 hours; and
- (6) arrest for violations of state, municipal, county or federal laws.

(d) Documentation of critical incidents shall include:

- (1) name of child or children involved;
- (2) date and time of incident;
- (3) brief description of incident;
- (4) action taken by staff;
- (5) need for medical attention;
- (6) name of staff involved and person completing the report;
- (7) Name of child's parent, guardian or legal custodian notified and the date and time of notification, and;
- (8) approval of supervisory or administrative staff reviewing the report.

(e) When there is a death of a child in placement in a foster home supervised by the agency, the executive director or his or her designee shall notify the parent, guardian or legal custodian and the licensing authority within 72 hours of the death of the child.

(f) Critical incident reports shall be maintained in manner consistent with the agency's risk management policies that include clinical decisions and activities undertaken to identify, evaluate and reduce the risk of injury to clients, staff and visitors and reduce the risk of loss to the agency and shall be made available to the licensing authority upon request.

(g) When a foster parent determines that a foster child under the age of 18 is missing, they shall notify the appropriate law enforcement authority immediately.

Authority G.S. 131D-1; 131D-10.5; 143B-153.

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Social Services Commission intends to amend the rule cited as 10A NCAC 70K .0202 and readopt with substantive changes the rules cited as 10A NCAC 70K .0101 and .0201.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www2.ncdhhs.gov/dss/sscommission/contact.htm>

Proposed Effective Date: August 1, 2017

Public Hearing:
Date: June 14, 2017
Time: 10:00 a.m.
Location: NC DSS McBryde Building 1st Floor Room 151, 820 South Boylan Avenue, Raleigh, NC 27603

Reason for Proposed Action:

10A NCAC 70K .0101(a) - is proposed for rule amendment to clarify that residential maternity homes cannot simultaneously be licensed as residential child-care facilities. Program requirements are different and mutually exclusive for each type of facility. The current rule is clear that residential maternity homes cannot also be licensed as facilities licensed under G.S. 122C, but the proposed amendment is necessary to make it clear agencies cannot have dual licenses under 10A NCAC 70K and 10A NCAC 70I.

10A NCAC 70K .0101(b) - is proposed rule amendment in accordance G.S. 131D-10.2 that creates the "reasonable and prudent parent standard" to be used for foster children. This statute brings State law in line with Federal Law established by P.L. 113-183. The goals of the reasonable and prudent parent standard are to provide children and youth in foster care with access to normal childhood experiences and empower the placement provider to engage in activities which promote well-being.

10A NCAC 70K .0201(a)(1) - proposed rule revisions include references to the Office of State Personnel have been changed to the Office of State Human Resources. The hyperlinks for class specifications for Social Services Program Administrator I, Social Work Supervisor II and Social Worker II have been updated.

10A NCAC 70K .0201(a)(3) & (4) - are proposed for amendment to comply with the Social Worker Certification and Licensure Act (G.S. 90B). The proposed amendment gives agencies choices of titles other than social work supervisor or social worker.

10A NCAC 70K .0201(f)(2)(X) and (Y) - is proposed for amendment to state that residential maternity home staff have written staff development plans that includes training components on trauma informed care and reasonable & prudent parent standard. The proposed amendment does not require additional hours only that these components be included in the staff's development plans.

10A NCAC 70K .0201(f)(3) - is proposed for amendment to state that residential maternity home staff shall successfully complete certification in first aid, CPR and universal precautions. "Successfully completed" is defined as demonstrating competency, as evaluated by the instructor who has been approved by the American Heart Association, the American Red Cross, or other organizations approved by the Division of Social Services to provide first-aid, CPR and universal precautions. If staff cannot demonstrate competencies residents will be at risk. (Amended rule 10A .1117 is based on child care rule 10A NCAC 09.0705).

10A NCAC 70K .0202(c) - proposed rule amendment to clarify consent for psychological and psychiatric services for minors in accordance with G.S. 7B-505.1.

Comments may be submitted to: Carlotta Dixon, 820 South Boylan Avenue, MSC 2402, Raleigh, NC 27603; phone (919) 527-6421; fax (919) 334-1198; email Carlotta.dixon@dhhs.nc.gov

Comment period ends: June 16, 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 70 - CHILDREN'S SERVICES

SUBCHAPTER 70K - RESIDENTIAL MATERNITY HOMES

SECTION .0100 - GENERAL

10A NCAC 70K .0101 DEFINITION

(a) For the purposes of the rules in this Subchapter, "residential maternity home" means a child-caring institution which provides continuing full time care for adolescent women during pregnancy and after delivery when delivery takes place in a licensed hospital, and a facility for adult women during pregnancy and after delivery when delivery takes place in a licensed hospital. The rules in this Subchapter apply to persons intending to organize, develop, or operate a residential maternity home. Residential maternity homes shall not hold dual licensure under G.S. 131D and G.S. 122C. A residential maternity home shall not be licensed under both 10A NCAC 70I and this Subchapter. The North Carolina Department of Health and Human Services, Division of Social Services, is the licensing authority for residential maternity homes.

(b) The "Reasonable and Prudent Parent Standard", as defined in G.S. 131D-10.2.

Authority G.S. 131D-10.2; 131D-10.10; 143B-153.

SECTION .0200- MINIMUM LICENSURE STANDARDS

10A NCAC 70K .0201 PERSONNEL

(a) Staff Qualifications and Functions.

- (1) Executive Director. There shall be an executive director employed for the general management and supervision of the maternity home. The executive director shall meet the requirements

of a Social Services Program Administrator I as defined by the North Carolina Office of ~~State Personnel~~ Human Resources. A copy of these requirements can be ~~obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site:~~ (http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_03100-04099/PDF_Files/04077.pdf. found at (http://www.oshr.nc.gov/state-employee-resources/classification-compensation/job-classification). The college or university degree shall be from a college or university listed at the time of the degree in the Higher Education Directory. This information can be obtained by calling Higher Education Publications, Inc. at ~~1-888-349-7715.~~ or by viewing site at: http://www.hepinc.com.

The executive director shall:

- (A) direct the maternity home's program of care and services in accordance with policies established by the governing board and within license standards;
 - (B) recruit, employ, supervise and discharge staff;
 - (C) assure a training program for staff;
 - (D) prepare the annual budget, supervise expenditures, and operate within the budget established;
 - (E) establish and maintain good working relationships with other human service agencies and represent the agency in the community; and
 - (F) delegate authority to a staff member meeting the qualifications described in this Subparagraph during his or her absence.
- (2) Professional Services Staff. The maternity home shall have available professional services personnel to assure appropriate services are provided for each resident in accordance with her case plan or out-of-home family services agreement.
- (3) Social Work Supervisor or case manager supervisors. Social work supervisors shall be employed by the maternity home to supervise, evaluate and monitor the work and progress of the social work staff. The social work supervisor or case manager supervisor shall meet the requirements of a Social Work Supervisor II as defined by the North Carolina Office of ~~State Personnel~~ Human Resources. A copy of these requirements can be ~~obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site~~ (http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_03100-04099/PDF_Files/04016.pdf. found at

(<http://www.oshr.nc.gov/state-employee-resources/classification-compensation/job-classification>). The college or university degree shall be from a college or university listed at the time of the degree in the Higher Education Directory. Social work supervisors shall receive 24 hours of continuing education annually.

- (4) Social Worker case manager. Social workers or case managers shall be employed by the maternity home to provide intake services and social work services to the residents and their families in accordance with the case plan or out-of-home family services agreement. The social worker shall meet the requirements of a Social Worker II as defined by the North Carolina Office of ~~State Personnel~~ Human Resources. A copy of these requirements can be ~~obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site~~ (http://www.osp.state.nc.us/CLASS_SPECS/Spee_Folder_03100-04099/PDF_Files/04012.pdf) found at (<http://www.oshr.nc.gov/state-employee-resources/classification-compensation/job-classification>). The college or university degree shall be from a college or university listed at the time of the degree in the Higher Education Directory. Social workers shall receive 24 hours of continuing education annually.
- (5) Direct Care Staff. All direct care staff shall have a high-school diploma or GED. Direct care staff shall receive 24 hours of continuing education annually.
- (6) Direct Care Supervisory Staff. All direct care supervisory staff shall have a high-school diploma or GED. Direct care supervisory staff shall receive 24 hours of continuing education annually.
- (7) Staff members of the maternity home may maintain dual employment or serve as volunteers with adoption agencies or crisis pregnancy centers as long as the maternity home does not provide services to the clients of the adoption agency or crisis pregnancy center. Staff members of the maternity home may serve on the board of directors of adoption agencies or crisis pregnancy centers as long as the adoption agency or crisis pregnancy center does not provide services to the clients of the maternity home.

(b) Staffing Requirements. There shall be at least one social worker or case manager assigned for every 15 residents. Supervision or case manager supervisor staffing ratio to ~~of~~ social workers or case managers shall be assigned as follows:

Supervisors Required	Social Workers or Case Managers Employed
0	0-4 (executive director serves as social work supervisor)
1	5
2	6-10
3	11-15
There shall be one additional supervisor for every one to five additional social workers.	

(c) Direct Care Staff. Direct care staff shall be employed for direct care of maternity home residents (residents include mothers and infants as well as any children or dependents of staff members who live or are cared for in the home). There shall be at least one direct care staff member assigned for every eight residents during waking hours and one direct care staff member for every twelve residents during sleeping hours. Additional direct care staff or other personnel shall be available to assist with emergency situations or special needs of the residents.

(d) Direct Care Supervisory Staff. There shall be at least one direct care supervisor for every 15 direct care staff members.

(e) Volunteers and Interns. If the maternity home uses volunteers or interns to work directly with residents, the requirements of 10A NCAC 70F .0207 apply.

(f) Additional Personnel Requirements. In addition to those requirements specified in 10A NCAC 70F .0207, the following rules are applicable to maternity home programs:

- (1) Health Examinations. All direct care staff, food service staff and anyone serving in the capacity of direct care staff and food service staff shall have a medical examination completed by a physician, physician's assistant, or nurse practitioner, hereafter referred to as "licensed medical provider," within at least 12 months before beginning employment and biennially thereafter. The agency shall maintain documentation that all direct care staff and food service staff or anyone serving in the capacity of direct care staff and food service staff have had a TB skin test or chest x-ray prior to employment unless contraindicated by a licensed medical provider. A medical history form shall be completed by all direct care staff and food service staff. Examinations must include tests necessary to determine that the staff member is able to carry out assigned duties and does not have any communicable disease or condition which poses risk of transmission in the facility. A report of each examination shall be made a part of the employee's personnel file. A medical examination report shall be completed on any adopted children or relative children of direct care staff residing in the maternity home within 12 months prior to the license date. The birth children of direct care staff who reside in the maternity home shall be tested for TB only if one or more of the parents

tests positive for TB. There shall be documentation that adopted children or other relative children residing in the maternity home have had a TB skin test or chest x-ray prior to initial licensure unless contraindicated by a licensed medical provider. A medical examination and TB test, if required, shall be completed on any children or relative children of direct care staff who subsequently begin residing in the maternity home. Examinations shall include tests necessary to determine that the children or relative children of staff members who reside in the maternity home do not have any communicable diseases or conditions which pose risk of transmission in the facility. A medical history form shall be completed on any children or relative children of direct care staff who reside in the living unit. Medical examination reports and medical history forms of children of the residents residing the maternity home shall be maintained in the personnel file of their parent or relative.

- (2) Staff Development. The maternity home staff shall have a written staff development plan which provides staff training in the following areas:

- (A) medical, physical, and psychological aspects of pregnancy;
- (B) prenatal and postnatal care;
- (C) developmental needs of adolescents and young adults;
- (D) developmental needs of infants and children;
- (E) parenting preparation classes;
- (F) stages of growth in infants;
- (G) day-to-day care of infants;
- (H) disciplinary techniques for infants, children and adolescents;
- (I) education planning;
- (J) job seeking skills;
- (K) locating housing;
- (L) money management;
- (M) food management;
- (N) child care;
- (O) health education;
- (P) stress management;
- (Q) life skills;
- (R) decision making;
- (S) substance abuse;
- (T) pregnancy prevention;
- (U) counseling skills;
- (V) emergency medical care; ~~and~~
- (W) nutrition and food ~~preparation~~ preparation;
- (X) reasonable and prudent parent standard; and
- (Y) trauma informed care.

- (3) A residential maternity home shall ensure that a staff member trained in cardiopulmonary

resuscitation (CPR) and first aid, such as those provided by the American Red Cross, the American Heart Association or equivalent organizations, is always available to the clients in care.; ~~and that direct care service personnel shall receive training in first aid and CPR within the first 30 days of employment. Training in CPR shall be appropriate for the ages of clients in care. First aid and CPR training shall be updated as required by the American Red Cross, the American Heart Association or equivalent organizations.~~ Residential maternity home staff shall successfully complete certification in first-aid, cardiopulmonary resuscitation (CPR) and universal precautions provided by either the American Heart Association or the American Red Cross or other organizations approved by the Division of Social Services within the first 30 days of employment. Other organizations shall be approved if the Division of Social Services determines that courses offered are substantially equivalent to those offered by the American Heart Association or the American Red Cross. First-aid, CPR and universal precautions training shall be renewed as required by the American Heart Association, the American Red Cross or equivalent organizations. Successfully completed is defined as demonstrating competency, as evaluated by the instructor who has been approved by the American Heart Association or the American Red Cross or other organizations approved by the Division of Social Services to provide first-aid, CPR and universal precautions training. Training in CPR shall be appropriate for the ages of children in care. Documentation of successful completion of first-aid, CPR and universal precautions shall be maintained by the supervising agency. Web-based trainings are not acceptable methods of successfully completing certification in first-aid, CPR and universal precautions.

Authority G.S. 7B-505.1; 131D-10.5; 131D-10.10; 143B-153.

10A NCAC 70K .0202 SERVICES

(a) A maternity home shall have a written statement of purpose and objectives, services offered, eligibility requirements, application procedures, and procedures for implementing all services. This information shall be available to persons or agencies making inquiries.

(b) Social Services. The maternity home shall provide admission, residential, and discharge services to applicants, residents in care, and their families or legal custodians, as follows:

- (1) Admission services shall include an assessment of the need for maternity home care, for specific services for the applicant's individual needs, and shall include information to determine if

the maternity home's program of care and services can meet these needs.

- (2) When an applicant who lives out of state is being considered for admission and the applicant is under the age of eighteen years, the provisions of the North Carolina interstate placement laws (G.S. 7B-3800 et. seq.) shall be met.
- (3) Staff responsibility shall be established for decisions on admissions.
- (4) Applicants or legal custodians shall complete a written application before or upon admission. Written agreements shall be made concerning release of information, medical care, and fees for care and services.
- (5) An applicant accepted for care shall be referred to and have a working agreement with a licensed child-placing agency or county department of social services of the applicant's choice for planning and decision making in relation to her baby. No maternity home staff member shall directly or indirectly assume responsibility for placement of children for adoption.
- (6) Residential services throughout the period of care shall include counseling for each resident and her family.
- (7) Each resident shall have the opportunity to talk privately with staff, family members, friends and social workers from child-placing agencies or county departments of social services and to express grievance.
- (8) Each resident shall have assistance as requested in making the best use of her time in the maternity home, adjusting to the living situation, accessing all services needed, resolving personal and family problems, and planning for discharge.
- (9) Discharge services for residents shall include planning for living arrangements, employment or education, and for those residents planning to keep their babies, preparation for parenthood and support services for single parents.

(c) Psychological and Psychiatric Services. Arrangements shall be made for a resident to have the services of a psychologist or a psychiatrist, if necessary, as well as for consultation for the staff providing care and services to the resident. Maternity homes shall receive documentation regarding who has the authority to consent to psychological and psychiatric services received by the resident. Persons or entities with authority to consent may include the resident's parent, legal guardian or custodian, or county department of social services with legal custody of the resident in accordance with G.S. 7B-505.1.

Authority G.S. 7B-505.1; 131D-10.10; 143B-153.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Manufactured Housing Board intends to amend the rule cited as 11 NCAC 08 .0904.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncdoi.com/LS/Rules.aspx>

Proposed Effective Date: July 1, 2017

Public Hearing:

Date: March 30, 2017

Time: 9:00 a.m.

Location: Room B090B located in the Administration Building at 116 W. Jones Street, Raleigh, NC 27603

Reason for Proposed Action: This rule is being amended to reflect changes made in S.L 2015-286 (G.S. 143-143.10A).

Comments may be submitted to: Joseph H. Sadler, Deputy Director, Office of the State Fire Marshal, 1202 Mail Service Center, Raleigh, NC 27699-1202; phone (919) 647-0052; email joe.sadler@ncdoi.gov.

Comment period ends: May 15, 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 08 - ENGINEERING AND BUILDING CODES DIVISION

SECTION .0900 - MANUFACTURED HOUSING BOARD

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 08 .0904 FORMS

(a) The application for license as a manufactured housing manufacturer, ~~dealer, and set-up contractor~~ and manufactured housing dealer shall include the following:

- (1) The name of the person or business applicant;
- (2) The business address of applicant;
- (3) The state under whose laws the applicant firm or corporation is organized or incorporated;
- (4) A resume' of each owner, partner, or officer of the corporation. Each resume' shall include education and a complete job history, as well as a listing of residences for the last seven years.
- (5) Type of license applied for;
- (6) Signature of the person with authority to legally obligate the applicant; and
- (7) A statement that the appropriate bond is ~~attached; and attached.~~
- (8) ~~A criminal history record check consent form signed by each owner, partner and officer of the corporation, and any other documentation or materials required by G.S. 143-143.10A.~~

(b) The application for license as a manufactured set-up contractor shall include the following:

- (1) The name of the person or business applicant;
- (2) The business address of applicant;
- (3) The state under whose laws the applicant firm or corporation is organized or incorporated;
- (4) A resume' of each owner, partner, or officer of the corporation. Each resume' shall include education and a complete job history, as well as a listing of residences for the last seven years;
- (5) Type of license applied for;
- (6) Signature of the person with authority to legally obligate the applicant;
- (7) A statement that the appropriate bond is attached; and
- (8) A criminal history record check consent form signed by each owner, partner and officer of the corporation with their initial application, and any other documentation or materials required by G.S. 143-143.10A.

~~(b)(c)~~ The application for license as a manufactured housing salesperson shall include the following:

- (1) The name of the applicant;
- (2) The applicant's address;
- (3) The name and business address of the dealer employing the applicant;
- (4) The name and address of previous employers of applicant for the past three years;
- (5) Three personal references;
- (6) A wallet size photograph; and
- (7) A criminal history record check consent form signed by each ~~applicant~~, applicant with their initial application, and any other documentation or materials required by G.S. 143-143.10A.

~~(e)(d)~~ Corporate surety bonds shall include the name of the applicant, the name of the surety, the amount of the bond, and the terms of cancellation specified in 11 NCAC 08 .0905.

~~(d)(e)~~ All license forms shall include the name and address of the licensee, the type of license being issued, the date of issuance, the date of expiration, the amount of the license fee, and the terms of the license.

~~(e)(f)~~ All applications for renewal of licenses shall include the name and address of the applicant, the type of license, the date the license expires, the amount of the license renewal fee, and instructions for completion.

~~(f)(g)~~ A request for cancellation of license shall include the name and address of the licensee, the effective date of the cancellation, the specific reason for the cancellation, and the signature of the person with authority to legally obligate the licensee.

~~(g)(h)~~ Each application ~~form and criminal history record check form required by Paragraphs (a)(b) and (b)(c) of this Rule~~ may be obtained from the North Carolina Manufactured Housing Board, c/o North Carolina Department of Insurance, 1202 Mail Service Center, Raleigh, NC 27699-1202.

Authority G.S. 143-143.10; 143-143.10A; 143-143.11; 143-143.12.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 09B .0301, .0403; and 09E .0105.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://ncdoj.gov/getdoc/5fld1bb7-69fl-48d5-b3f6-cdce4bc1ab11/PROPOSED-RULES-81617.aspx>

Proposed Effective Date: October 1, 2017

Public Hearing:

Date: August 16, 2017

Time: 10:30 a.m.

Location: Wake Technical Community College-Public Safety Training Center, 321 Chapanoke Road, Raleigh, NC 27603

Reason for Proposed Action:

12 NCAC 09B .0301 – To address Commission authority to suspend or deny an instructor's certification to teach Commission courses based on misconduct or suspension/denial of law enforcement certification.

12 NCAC 09B .0403 – To provide criteria of federal law enforcement within a specified classification credit for training experience toward NC law enforcement officer certification.

12 NCAC 09E .0105 – To specify the in-service training topics and minimum number of training hours to be completed.

Comments may be submitted to: Charminique Branson, PO Drawer 149, Raleigh, NC 27602; phone (919) 779-8206; fax (919) 779-8210; email cbranson@ncdoj.gov.

Comment period ends: August 16, 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 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING

SECTION .0300 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE INSTRUCTORS

12 NCAC 09B .0301 CERTIFICATION OF INSTRUCTORS

(a) Any person participating in a Commission-certified criminal justice training course or program as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor.

(b) The Commission shall certify instructors under the following categories: General Instructor Certification, Specialized Instructor Certification or Professional Lecturer Certification as outlined in Rules .0302, .0304 and .0306 of this Section. Instructor certification shall be granted on the basis of documented qualifications of experience, education, and training in accord with the requirements of this Section and reflected on the applicant's Request for Instructor Certification Form.

(c) In addition to all other requirements of this Section, each instructor certified by the Commission to teach in a Commission-certified course shall remain competent in his/her specialized areas. Such competence includes remaining current in the instructor's area of expertise, which shall be demonstrated by attending and successfully completing all instructor updates issued by the Commission.

(d) The Standards Division may notify an applicant for instructor certification or a certified instructor that a deficiency appears to exist and attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(e) When any person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of the rules in this Subchapter, the Commission may take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual; and
- (5) revoking the individual's certification.

(f) The Commission may deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification;
- (2) has failed to remain knowledgeable in the person's areas of expertise;
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans outlined in the "Basic Instructor Training Manual" as found in 12 NCAC 09B .0209;
- (4) has failed to follow specific guidelines outlined in the "Basic Law Enforcement Training Course Management Guide" as found in 12 NCAC 09B .0205;
- (5) has demonstrated in the delivery of commission-mandated training, unprofessional personal conduct, defined as an act that is: conduct for which no reasonable person should expect to receive prior warning; job-related conduct which constitutes a violation of State or federal law; conviction or commission of a criminal offense as set out in 12 NCAC 09A .0204; the willful violation of Rules of this Chapter; conduct that is detrimental to instruction in the Commission's mandated courses; the abuse of client(s), student(s) over whom the instructor has charge; or falsification of an instructor application or in other employment documentation;
- (6) has demonstrated instructional incompetence;
- (7) has knowingly and willfully obtained, or attempted to obtain instructor certification by deceit, fraud, or misrepresentation;
- (8) has failed to meet or maintain good moral character as defined in: re Willis, 299 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (9175); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); in re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); in re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v.

Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and their progeny, as required to effectively discharge the duties of a criminal justice instructor;

- (9) has failed to deliver training in a manner consistent with the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program as found in 12 NCAC 09H .0102; or
- (10) has knowingly and willfully aided or attempted to aid any person in obtaining qualification/certification under the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program by deceit, fraud or misrepresentation;
- (11) has committed or been convicted of an offense which could result in the [denial,] suspension or revocation of an officer's law enforcement certification pursuant to 12 NCAC 02A .0204 or 12 NCAC 09G .0504;
- (12) has knowingly made a material misrepresentation of any information required for certification or accreditation.

(g) When any person certified as a law enforcement officer by the North Carolina Criminal Justice Education and Training Standards Commission (Commission) or the North Carolina Sheriffs Education and Training Standards Commission (Commission) has his/her law enforcement officer certification suspended/revoked by either Commission, they shall also have their General Instructor certification (if applicable) similarly and automatically suspended/revoked for the same time period as their law enforcement officer certification.

- (1) This suspension/revocation of the General Instructor certification shall also include suspension/revocation to any Commission recognized Specialized or additional Instructor certification as outlined in 12 NCAC 09B .0304 Specialized Instructor Certification.
- (2) If the term of suspension/revocation exceeds the expiration date of the Instructor's initial certification expiration date, they shall forfeit their certification(s) as a General Instructor/Specialized Instructor(s) and shall be required to obtain certification pursuant to all requirements as established in 12 NCAC 09B .0302 before any instruction may be delivered within any commission approved/mandated training, including the completion of a subsequent General Instructor training course in it's entirety.
- (3) If the term of suspension/revocation does not exceed the expiration date of the Instructor's initial certification expiration date, they shall be reinstated as a General Instructor only upon reinstatement of their law enforcement officer certification by the Commission. The terms of renewal for the existing General Instructor/Specialized Instructor certification(s) shall remain subject to all

renewal requirements pursuant to 12 NCAC 09B .0303(c) by the next immediate expiration date.

Authority G.S. 17C-6.

SECTION .0400 – MINIMUM STANDARDS FOR COMPLETION OF TRAINING

12 NCAC 09B .0403 EVALUATION FOR TRAINING WAIVER

(a) The Standards Division staff shall evaluate each law enforcement officer's training and experience to determine if equivalent training has been completed as specified in Rule .0402(a) of this Section. Applicants for certification with prior law enforcement experience shall have been employed in a full-time, sworn law enforcement position in order to be considered for training evaluation under this Rule. Applicants for certification with a combination of full-time and part-time experience shall be evaluated on the basis of the full-time experience only. The following criteria shall be used by Standards Division staff in evaluating a law enforcement officer's training and experience to determine eligibility for a waiver of training requirements:

- (1) Persons having completed a Commission-accredited basic training program and not having been duly appointed and sworn as a law enforcement officer within one year of completion of the program shall complete a subsequent Commission-accredited basic training program, as prescribed in Rule .0405(a) of this Section, and shall achieve a passing score on the State Comprehensive Examination prior to obtaining probationary law enforcement certification, unless the Director determines that a delay in applying for certification was not due to neglect on the part of the applicant, in which case the Director shall accept a Commission-accredited basic training program that is over one year old. The appointing agency shall request in writing the extension of the one year period, which shall not exceed 30 days from the first year anniversary of the passing of the state comprehensive examination;
- (2) Out-of-state transferees shall be evaluated to determine the amount and quality of their training and experience. Out-of-state transferees shall not have a break in service exceeding ~~one year~~ three years. At a minimum, out-of-state transferees shall have two years' full-time, sworn law enforcement experience and have completed a basic law enforcement training course accredited by the transferring State. Prior to employment as a certified law enforcement officer, out-of-state transferees shall complete with a passing score the employing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 09E .0106. In addition, out-of-state

- transferees shall complete the Legal Unit in a Commission-accredited Basic Law Enforcement Training Course as prescribed in Rule .0205(b)(1) of this Subchapter and shall achieve a passing score on the State Comprehensive Examination within the 12 month probationary period;
- (3) Persons who have completed a 369-hour basic law enforcement training program accredited by the Commission under guidelines administered beginning October 1, 1984, and have been separated from a sworn position for over one year but less than three years who have had a minimum of two years' experience as a full-time, sworn law enforcement officer in North Carolina shall complete the Legal Unit in a Commission-accredited Basic Law Enforcement Training Course as prescribed in Rule .0205(b)(1) of this Subchapter and shall achieve a passing score on the State Comprehensive Examination within the 12 month probationary period. Prior to employment as a certified law enforcement officer, these persons shall complete with a passing score the employing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 09E;
 - (4) Persons out of the law enforcement profession for over one year but less than three years who have had less than two years' experience as a full-time, sworn law enforcement officer in North Carolina shall complete a Commission-accredited basic training program, as prescribed in Rule .0405(a) of this Section, and achieve a passing score on the State Comprehensive Examination;
 - (5) Persons out of the law enforcement profession for over three years regardless of prior training or experience shall complete a Commission-accredited basic training program, as prescribed in Rule .0405(a) of this Section, and shall achieve a passing score on the State Comprehensive Examination;
 - (6) Persons who separated from law enforcement employment during their probationary period after having completed a Commission-accredited basic training program and who have separated from a sworn law enforcement position for more than one year shall complete a subsequent Commission-accredited basic training program and shall achieve a passing score on the State Comprehensive Examination;
 - (7) Persons who separated from a sworn law enforcement position during their probationary period after having completed a Commission-accredited basic training program and who have separated from a sworn law enforcement position for less than one year shall serve a new 12 month probationary period as prescribed in Rule .0401(a) of this Section, but shall not be required to complete an additional training program;
 - (8) Persons who have completed a minimum 160-hour basic law enforcement training program accredited by the North Carolina Criminal Justice Training and Standards Council under guidelines administered beginning on July 1, 1973, and continuing through September 30, 1978, and who have separated from a sworn law enforcement position for over one year but less than two years shall complete the Legal Unit and the topical area entitled "Law Enforcement Driver Training" of a Commission-accredited Basic Law Enforcement Training Course as prescribed in Rule .0205(b)(1) and .0205(b)(5)(C) of this Subchapter and shall achieve a passing score on the State Comprehensive Examination within the 12 month probationary period;
 - (9) Persons who have completed a minimum 160-hour basic law enforcement training program accredited by the North Carolina Criminal Justice Training and Standards Council under guidelines administered beginning on July 1, 1973, and continuing through September 30, 1978, and have been separated from a sworn law enforcement position for two or more years shall complete a Commission-accredited basic training program, as prescribed in Rule .0405 of this Section, regardless of training and experience and shall achieve a passing score on the State Comprehensive Examination;
 - (10) Persons who have completed a minimum 240-hour basic law enforcement training program accredited by the Commission under guidelines administered beginning October 1, 1978, and continuing through September 30, 1984, and have been separated from a sworn position over one year but less than three years shall complete the Legal Unit in a Commission-accredited Basic Law Enforcement Training Course as prescribed in Rule .0205(b)(1) of this Subchapter and shall achieve a passing score on the State Comprehensive Examination within the 12 month probationary period;
 - (11) Persons previously holding law enforcement certification in accordance with G.S. 17C-10(a) who have been separated from a sworn law enforcement position for over one year and who have not previously completed a minimum basic training program accredited by either the North Carolina Criminal Justice Training and Standards Council or the Commission shall complete a Commission-accredited basic training program, as prescribed in Rule .0405 of

- this Section, and shall achieve a passing score on the State Comprehensive Examination prior to employment;
- (12) ~~Persons who have completed training as a federal law enforcement officer and are candidates for appointment as a sworn law enforcement officer in North Carolina shall complete a Commission accredited basic training program, as prescribed in Rule .0405 of this Section, and shall achieve a passing score on the State Comprehensive Examination; Individuals seeking certification with the Commission and have been appointed as Special Agents with the Federal Bureau of Investigation, United States Secret Service, Bureau of Alcohol, Tobacco and Firearms, and Drug Enforcement Administration, United States Marshals and Deputy United States Marshals shall be evaluated to determine the amount and quality of their training and experience. These individuals shall not have a break in service exceeding three years. At a minimum, federal law enforcement officers shall have two years' full-time, sworn law enforcement experience and have completed a basic law enforcement training course as required by their appointing federal agency. Prior to employment as a certified law enforcement officer, these individuals must complete with a passing score the employing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 09E .0106. These individuals shall complete the Basic Law Enforcement Training topics pursuant to 12 NCAC 09B .0205(b)(1)(A), (b)(1)(C), (b)(1)(D), (b)(1)(F), (b)(2)(A), (b)(2)(C), (b)(2)(E), (b)(2)(F), (b)(2)(I), (b)(3)(B), (b)(3)(D), (b)(4)(E), (b)(5)(A), (b)(6)(A), (b)(6)(B), (b)(6)(C), and shall achieve a passing score on the State Comprehensive Examination pursuant to 12 NCAC 09B .0406 within 12 month probationary period. Individuals who submit to the Commission documentation of completion of training equivalent to the topics pursuant to 12 NCAC 09B .0205(b)(2)(A), (b)(2)(C), (b)(2)(E), (b)(2)(F), (b)(2)(I), (b)(3)(B), (b)(3)(D), (b)(4)(E), (b)(5)(A), (b)(6)(A), (b)(6)(B), and (b)(6)(C) shall not be required to complete those topics.~~
- (13) Federal law enforcement transferees other than those listed in Paragraph (12) of this Rule shall be evaluated to determine the amount and quality of their training and experience. Federal law enforcement officers shall not have a break in service exceeding three years. At a minimum, federal law enforcement officers shall have two years' full-time, sworn law enforcement experience and have completed a
- basic law enforcement training course as required by their appointing federal agency. Prior to employment as a certified law enforcement officer, transferees, must complete with a passing score the employing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 09E .0106. At a minimum, transferees shall complete the Legal Unit in a Commission- accredited Basic Law Enforcement Training Course as prescribed in Rule .0205(b)(1) of this Subchapter and shall achieve a passing score on the State Comprehensive Examination within 12 month probationary period.
- (14) Applicants with part-time experience who have a break in service in excess of one year shall complete a Commission-accredited basic training program, as prescribed in Rule .0405 of this Section, and shall achieve a passing score on the State Comprehensive Examination prior to employment;
- (15) Applicants who hold or previously held certification issued by the North Carolina Sheriffs' Education and Training Standards Commission (Sheriffs' Commission) shall be subject to evaluation based on the applicant's active or inactive certification status with the Sheriffs' Commission. A deputy sheriff certified with the Sheriffs' Commission shall be considered active if he or she has performed any law enforcement function during the previous 12 months. A deputy sheriff certified with the Sheriffs' Commission is considered inactive if he or she has not performed a law enforcement function during the previous 12 months.
- (A) The Standards Division shall issue certification to an applicant holding active general certification with the Sheriffs' Commission provided that the applicant:
- (i) Does not have a break in service of greater than 12 months;
 - (ii) Has completed the mandatory in-service training requirements pursuant to 12 NCAC 10B .2005 for each year certification was held; and
 - (iii) Held active status with the Sheriffs' Commission within 12 months of the date the applicant achieved a passing score on the Basic Law Enforcement Training state comprehensive examination.
- (B) The Standards Division shall issue certification to an applicant holding inactive certification with the Sheriffs'

Commission provided that the applicant:

- (i) Holds inactive probationary or general certification with the Sheriffs' Commission;
- (ii) Has served a minimum of 24 months of full time sworn service or does not have a break in service of greater than 12 months;
- (iii) Has completed the mandatory in-service training requirements pursuant to 12 NCAC 10B .2005, with the exception of Firearms Training and Requalification, during each year certification was held; and
- (iv) Held active status with the Sheriffs' Commission within 12 months of the date the applicant achieved a passing score on the Basic Law Enforcement Training state comprehensive examination.

(C) An applicant awarded certification with the Sheriffs' Commission by means of the Sheriffs' Standards BLET Challenge as prescribed in 12 NCAC 10B .0505(9)(b) shall meet the following requirements in order to obtain probationary certification from the Commission:

- (i) Have a minimum of 24 months of sworn, full-time law enforcement service;
- (ii) Not have a break in service of greater than 12 months; and
- (iii) Have completed all mandatory in-service requirements pursuant to 12 NCAC 10B .0505 during the previous 2 years.

(D) An applicant defined as a criminal justice officer, as defined in G.S. 17C-2(3), who is elected Sheriff shall not be required to maintain certification with the Sheriffs' Commission for the time period he or she serves as Sheriff. The applicant's certification shall be reinstated by the Commission upon the conclusion of the period of service as Sheriff, and in conformance with 12 NCAC 09C .0303.

~~(45)~~(16) Alcohol law enforcement agents who received basic alcohol law enforcement training prior to November 1, 1993, and transfer to another law enforcement agency in a sworn capacity shall

be subject to evaluation of their prior training and experience on an individual basis. The Standards Division staff shall determine the amount of training required of these applicants, based upon the type of certification held by the applicant and the length of any break in the applicant's sworn, full-time service.

~~(46)~~(17) Wildlife enforcement officers who separate from employment with the Wildlife Enforcement Division and transfer to another law enforcement agency in a sworn capacity shall be subject to evaluation of their prior training and experience on an individual basis. The Standards Division staff shall determine the amount of training required of these applicants, based upon the type of certification held by the applicant and the length of any break in the applicant's sworn, full-time service.

~~(47)~~(18) Active duty, guard, or reserve military members failing to complete all of the required annual in-service training topics, as defined in 12 NCAC 09E .0105 of this Chapter, due to military obligations, are subject to the following training requirements as a condition for return to active criminal justice status. The agency head shall verify the person's completion of the appropriate training by submitting a statement, on Form F-9C, Return to Duty Request form. This form is located on the agency's website: <http://www.ncdoj.gov/getdoc/ac22954d-5e85-4a33-87af-308ba2248f54/F-9C-6-11.aspx>.

(A) Active duty members of the armed forces eligible for probationary certification pursuant to Paragraph (18) of this Rule, and active duty, guard, or reserve military members holding probationary or general certification as a criminal justice officer who fail to complete all of the required annual in-service training topics due to military obligations for up to a period of three years, shall complete the previous year's required in-service training topics, the current year's required in-service training topics, and complete with a passing score the appointing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 09E prior to their return to active criminal justice status;

(B) Active duty, guard, or reserve military members holding probationary or general certification as a criminal justice officer who fail to complete all of the required annual in-service training topics due to military obligations for a period greater than three years shall complete the

following topic areas within the following time frames:

- (i) The person shall complete the previous year's required in-service training topics, the current year's required in-service training topics, and complete the appointing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 09E prior to their return to active criminal justice status;
- (ii) The person shall achieve a passing score on the practical skills testing for the First Responder, Law Enforcement Driver Training, and Subject Control Arrest Techniques topics enumerated in Rule .0205(b)(5) of this Subchapter prior to returning to active criminal justice status. This practical skills testing may be completed either in a Commission-accredited Basic Law Enforcement Training course or under the instruction of a Commission-Certified instructor for that particular skill. The person shall complete one physical fitness assessment in lieu of the Fitness Assessment and Testing topic. The person shall also be examined by a physician per Rule .0104(b) of this Subchapter; and
- (iii) The person shall complete some of the topics in the legal unit of instruction in the Basic Law Enforcement Training course as set forth in Rule .0205(b)(1) of this Subchapter. The required topics include Motor Vehicle Law; Juvenile Laws and Procedures; Arrest, Search and Seizure/Constitutional Law; and ABC Laws and Procedures. The person shall achieve a passing score on the appropriate topic tests for each course delivery. The person may undertake each of these legal unit topics of

instruction either in a Commission-accredited Basic Law Enforcement Training course or under the instruction of a Commission certified instructor for that particular topic of instruction. The person shall complete each of the enumerated topics of instruction within 12 months from the beginning of his or her return to active criminal justice status.

~~(48)~~(19) An active duty member of the armed forces who completes the basic training course in its entirety as prescribed in Rule .0405 of this Subchapter, and annually completes the mandatory in-service training topics as prescribed in 12 NCAC 09E .0105, with the exception of the Firearms Qualification and Testing requirements contained in 12 NCAC 09E .0105(a)(1), for each year subsequent to the completion of the basic training course and achieves a passing score on the state comprehensive examination as prescribed in Rule .0406 of this Subchapter within five years of separating from active duty status shall be eligible for probationary certification as prescribed in 12 NCAC 09C .0303 for a period of 12 months from the date he or she separates from active duty status in the armed forces. All mandatory in-service training topics as prescribed in 12 NCAC 09E .0105 shall be completed by the individual prior to receiving probationary certification as prescribed in 12 NCAC 09C .0303.

(b) In the event the applicant's prior training is not equivalent to the Commission's standards, the Commission shall prescribe as a condition of certification supplementary or remedial training to equate previous training with current standards.

(c) Where certifications issued by the Commission require satisfactory performance on a written examination as part of the training, the Commission shall require the examinations for the certification.

(d) Where an evaluation of the applicant's prior training and experience determines that required attendance in the entire Basic Law Enforcement Training Course would be impractical, the Director of the Standards Division is authorized to exercise his or her discretion in determining the amount of training those persons shall complete during their probationary period.

(e) The following criteria shall be used by Standards Division staff in evaluating prior training and experience of local confinement personnel to determine eligibility for a waiver of training requirements:

- (1) Persons who hold probationary, general, or grandfather certification as local confinement personnel and separate after having completed a Commission-accredited course as prescribed

- in Rule .0224 or .0225 of this Subchapter and have been separated for one year or more shall complete a subsequent Commission-accredited training course and achieve a passing score on the State Comprehensive Examination during the probationary period as prescribed in Rule .0401(a) of this Section;
- (2) Persons who separated from a local confinement personnel position after having completed a Commission-accredited course as prescribed in Rule .0224 or .0225 of this Subchapter and who have been separated for less than one year shall serve a new 12 month probationary period, but shall be required to complete an additional training program;
 - (3) Applicants who hold or previously held "Detention Officer Certification" issued by the North Carolina Sheriffs' Education and Training Standards Commission shall be subject to evaluation of their prior training and experience on an individual basis. No additional training shall be required where the applicant obtained certification and successfully completed the required 120 hour training course and has not had a break in service in excess of one year; and
 - (4) Persons holding certification for local confinement facilities who transfer to a district or county confinement facility shall complete the course for district and county confinement facility personnel, as adopted by reference in Rule .0224 of this Subchapter, and achieve a passing score on the State Comprehensive Examination during the probationary period as prescribed in Rule .0401(a) of this Section.

Authority G.S. 17C-2; 17C-6; 17C-10; 93B-15.1.

SUBCHAPTER 09E - IN-SERVICE TRAINING PROGRAMS

SECTION .0100 - LAW ENFORCEMENT OFFICER'S IN-SERVICE TRAINING PROGRAM

12 NCAC 09E .0105 MINIMUM TRAINING SPECIFICATIONS: ANNUAL IN-SERVICE TRAINING

(a) The following are established as topics, specifications, and hours to be included in each law enforcement officer's annual in-service training courses. For the purposes of this Subchapter, a credit shall be equal to one hour of traditional classroom instruction. All sworn law enforcement officers shall complete a minimum of 24 in-service training credits. The following topics, totaling 18 credits, are specifically required: These specifications shall be incorporated in each law enforcement agency's annual in-service training courses:

- (1) ~~2017 2018 Firearms Training and Qualification (6 credits);~~ (4 credits);
- (2) ~~2017 2018 Legal Update~~ (4 credits);

- (3) ~~2017 2018 Strategies to Improve Law Enforcement Interactions and Relationships With Minority Youth Positively Impacting Today's Youth~~ (2 credits);
- (4) ~~2017 2018 Equality in Policing Domestic Violence: Protecting Victims of Domestic Violence~~ (4 credits);
- (5) ~~2017 2018 Communications Skills With Persons in Crisis – De-escalation Techniques Improving Decision-Making Skills~~ (4 credits); and (4 credits).
- (6) ~~2017 Department Topics of Choice~~ (4 credits).

(b) All sworn law enforcement officers shall complete a minimum of 6 in-service credits, in topics identified by their respective agency heads. The Department Head may choose any topic, provided the lesson plan is written in Instructional Systems Design format and is taught by an instructor who is certified by the Commission. Topics delivered pursuant to Rule .0104(1) of this Section to satisfy this requirement shall not be required to be written in Instructional Systems Design format or delivered by an instructor certified by the Commission.

~~(b)(c)~~ The "Specialized Firearms Instructor Training Manual" published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Raleigh, North Carolina 27610

and may be obtained at the cost of printing and postage from the Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385

~~(e)(d)~~ The "In-Service Lesson Plans" published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Raleigh, North Carolina 27610

and may be obtained at the cost of printing and postage from the Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385

~~(d)(e)~~ Lesson plans are designed to be delivered in hourly increments. A student who completes an online in-service training topic shall receive the number of credits that correspond to the number of hours of traditional classroom training, regardless of the amount of time the student spends completing the course.

~~(e)(f)~~ Completion of training shall be demonstrated by passing a written test for each in-service training topic, as follows:

- (1) A written test comprised of at least five questions per credit shall be developed by the agency or the North Carolina Justice Academy for each in-service training topic requiring

testing. Written courses that are more than four credits in length are required to have a written test comprising of a minimum of 20 questions. The Firearms Training and Qualifications in-service course and topics delivered pursuant to Rule .0104(1) of this Section shall be exempt from this written test requirement;

- (2) A student shall pass each test by achieving 70 percent correct answers; and
- (3) A student who completes a topic of in-service training in a traditional classroom setting or online and fails the end of topic exam shall be given one attempt to re-test. If the student fails the exam a second time, the student shall complete the in-service training topic in a traditional classroom setting before taking the exam a third time.

Authority G.S. 17C-6; 17C-10.

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Alcoholic Beverage Control Commission intends to readopt without substantive changes the rule cited as 14B NCAC 15A .1403.

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

Link to agency website pursuant to G.S. 150B-19.1(c):
abc.nc.gov

Proposed Effective Date: *July 1, 2017*

Public Hearing:

Date: *April 12, 2017*

Time: *10:00 a.m.*

Location: *ABC Commission Hearing Room, 400 East Tryon Road, Raleigh, NC 27610*

Reason for Proposed Action: *Rules Review Commission determination that the rule is "necessary with substantive public interest" pursuant to mandatory review process.*

Comments may be submitted to: *Renee C. Metz, 400 East Tryon Road, Raleigh, NC 27610, phone (919) 779-8331, email renee.metz@abc.nc.gov*

Comment period ends: *May 15, 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 15 - ALCOHOLIC BEVERAGE CONTROL COMMISSION

SUBCHAPTER 15A - ORGANIZATIONAL RULES: POLICIES AND PROCEDURES

SECTION .1400 - PURCHASE OF ALCOHOLIC BEVERAGES BY LOCAL BOARDS

14B NCAC 15A .1403 SPECIAL ORDERS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .0306 and 07J .1301.

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: *September 1, 2017*

Public Hearing:

Date: *April 27, 2017*

Time: *1:30 p.m.*

Location: *Dare County Government Complex, 954 Marshall C. Collins Drive, Manteo, NC 27954*

Reason for Proposed Action: *General Use Standards for Ocean Hazard Areas 15A NCAC 07H .0306(a)(3) define the seaward limit where an oceanfront Development Line can be established. 15A NCAC 07J .1300 are procedures for requesting, approving and managing oceanfront Development lines, and specify*

information that is to be submitted to the Coastal Resources Commission by the Petitioner. The proposed amendments are intended to both clarify how to determine the oceanward limit, and what information is to be submitted to the Coastal Resources Commission.

Comments may be submitted to: Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557; email Braxton.Davis@ncdenr.gov

Comment period ends: May 15, 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 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 - OCEAN HAZARD AREAS

15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's rules shall be located according to whichever of the following is applicable:

- (1) The ocean hazard setback for development is measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line, whichever is applicable.
- (2) In areas with a development line, the ocean hazard setback line shall be set at a distance in accordance with Subparagraphs (a)(3) through (9) of this Rule. In no case shall new

development be sited seaward of the development line.

- (3) In no case shall a development line be created or established below the mean high water line on state owned lands, or oceanward of the mean high water line or perpetual property easement line, whichever is more restrictive.

- (4) The setback distance shall be determined by both the size of development and the shoreline long term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:

- (A) The total square footage of heated or air-conditioned living space;
- (B) The total square footage of parking elevated above ground level; and
- (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.

Decks, roof-covered porches, and walkways shall not be included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.

- (5) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback is established based on the following criteria:

- (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
- (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
- (D) A building or other structure greater than or equal to 20,000 square feet but

- less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
- (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
- (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
- (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
- (H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
- (I) Infrastructure that is linear in nature such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water, and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- (J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
- (K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the static vegetation line, the vegetation line, or measurement line, whichever is farthest landward; and
- (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square feet, and commercial and multi-family residential structures with a total floor area no greater than 10,000 square feet, shall be allowed provided that the structure meets the following criteria:
- (i) the structure was originally constructed prior to August 11, 2009;
 - (ii) the structure as replaced does not exceed the original footprint or square footage;
 - (iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(5) of this Rule;
 - (iv) the structure as replaced meets the minimum setback required under Part (a)(5)(A) of this Rule; and
 - (v) the structure is rebuilt as far landward on the lot as feasible.
- (6) If a primary dune exists in the AEC on or landward of the lot where the development is proposed the development shall be landward of the crest of the primary dune, the ocean hazard setback, or development line, whichever is farthest from vegetation line, static vegetation line, or measurement line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback, but shall not be located on or oceanward of a frontal dune or the development line. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.
- (7) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where the development is proposed, the development shall be set landward of the frontal dune, ocean hazard setback, or development line, whichever is farthest from the vegetation line, static vegetation line, or measurement line, whichever is applicable.
- (8) If neither a primary nor frontal dune exists in the AEC on or landward of the lot where

- development is proposed, the structure shall be landward of the ocean hazard setback or development line, whichever is more restrictive.
- (9) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.
 - (10) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.
 - (11) Beach fill as defined in Rule .0305(a)(7) of this Section, represents a temporary response to coastal erosion, and compatible beach fill as defined in 15A NCAC 07H .0312 may be expected to erode at least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future funding or beach-compatible sediment for continued beach fill projects and project maintenance. A vegetation line that becomes established oceanward of the pre-project vegetation line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront if the beach fill project is not maintained. A development setback measured from the vegetation line may provide less protection from ocean hazards. Therefore, development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section, unless a development line has been approved by the Coastal Resources Commission in accordance with 15A NCAC 07J .1300.
 - (12) In order to allow for development landward of the large-scale beach fill project that cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraphs (a)(1) and (a)(5) of this Rule, a local government, group of local governments involved in a regional beach fill project, or qualified "owners' association" defined in G.S. 47F-1-103(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association, and has jurisdiction over at least one mile of ocean shoreline, may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception applies to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(5)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner, as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J .1200. If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:
 - (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(5) of this Rule;
 - (B) Development setbacks shall be calculated from the shoreline erosion rate in place at the time of permit issuance;
 - (C) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;
 - (D) With the exception of swimming pools, the development defined in Rule .0309(a) of this Section shall be allowed oceanward of the static vegetation line; and
 - (E) Development shall not be eligible for the exception defined in Rule .0309(b) of this Section.
- (b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon that would adversely affect the integrity of the dune. Other dunes within the ocean

hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes shall be allowed only to the extent permitted by 15A NCAC 07H .0308(b).

(c) Development shall not cause irreversible damage to historic architectural or archaeological resources as documented by the local historic commission, the North Carolina Department of Natural and Cultural Resources, or the National Historical Registry.

(d) Development shall comply with minimum lot size and set back requirements established by local regulations.

(e) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.

(f) Development shall comply with the general management objective for ocean hazard areas set forth in 15A NCAC 07H .0303.

(g) Development shall not interfere with legal access to, or use of, public resources, nor shall such development increase the risk of damage to public trust areas.

(h) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:

- (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
- (2) restore the affected environment; or
- (3) compensate for the adverse impacts by replacing or providing substitute resources.

(i) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant to the Division of Coastal Management that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(j) All relocation of structures requires permit approval. Structures relocated with public funds shall comply with the applicable setback line as well as other applicable AEC rules. Structures including septic tanks and other essential accessories relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location. Septic tanks may not be located oceanward of the primary structure. All relocation of structures shall meet all other applicable local and state rules.

(k) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such structure shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This permit condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under 15A NCAC 07H .0308(a)(2).

Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

**SUBCHAPTER 07J - PROCEDURES FOR PROCESSING
AND ENFORCEMENT OF MAJOR AND MINOR
DEVELOPMENT PERMITS, VARIANCE REQUESTS,
APPEALS FROM PERMIT DECISIONS,
DECLARATORY RULINGS, AND STATIC LINE
EXCEPTIONS**

SECTION .1300 – DEVELOPMENT LINE PROCEDURES

**15A NCAC 07J .1301 REQUESTING THE
DEVELOPMENT LINE**

(a) Any local government, group of local governments involved in a regional beach fill project, or qualified owner's association with territorial jurisdiction over an area that is subject to ocean hazard area setbacks pursuant to 15A NCAC 07H .0305, may petition the Coastal Resources Commission for a development line for the purposes of siting oceanfront development in accordance with the provisions of this Section. A "qualified owner's association" is an owner's association defined in G.S. 47F-1-103(3) that has authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at least one mile of ocean shoreline.

(b) A development line request applies to the entire large-scale project area as defined in 15A NCAC 07H .0305(a)(7), and at the petitioner's request may be extended to include the entire oceanfront jurisdiction or legal boundary of the petitioner.

(c) The petitioner shall utilize an adjacent neighbor sight-line approach, resulting in an average line of structures. In areas where the seaward edge of existing development is not linear, the petitioner may determine an average line of construction on a case-by-case basis. In no case shall a development line be established seaward of the most seaward structure within the petitioner's oceanfront jurisdiction.

(d) An existing structure that is oceanward of an approved development line may remain in place until damaged greater than 50 percent in accordance with Rule .0210 of this Subchapter. At that time it may only be replaced landward of the development line, and shall meet the applicable ocean hazard setback requirements as defined in 15A NCAC 07H .0306(a).

(e) A request for a development line or amendment shall be made in writing by the petitioner and submitted to the CRC by sending the written request to the Director of the Division of Coastal Management. A complete request shall include the following:

- (1) A detailed survey of the development line using on-ground observation and survey, or aerial imagery along the oceanfront jurisdiction or legal boundary; any local regulations associated with the development line; a record of local adoption of the development line by the petitioner; and documentation of incorporation of development line into local ordinances or rules and regulations of an owner's association.
- (2) The survey shall include the development line and static vegetation line. line, static vegetation line, mean high water line, and any other

information the Coastal Resources Commission deems necessary for a review of the petitioner's proposed development line.

- (3) Surveyed development line spatial data in a geographic information systems (GIS) format referencing North Carolina State Plane North American Datum 83 US Survey Foot, to include Federal Geographic Data Committee (FGDC) compliant metadata.

(f) Once a development line is approved by the Coastal Resources Commission, only the petitioner may request a change or reestablishment of the position of the development line.

(g) A development line request shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed development line request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

(h) The Coastal Resources Commission shall consider a development line request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when the petitioner and the Division of Coastal Management agree upon a later date.

Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10F.0303 .0323, and .0339.

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

Proposed Effective Date: *October 1, 2017*

Public Hearing:

Date: *April 4, 2017*

Time: *10:00 a.m.*

Location: *WRC Headquarters 5th Floor, 1751 Varsity Drive, Raleigh, NC 27606*

Reason for Proposed Action:

15A NCAC 10F .0303 – *Beaufort County submitted an application for a no-wake zone in the waters of Little Creek, a tributary of Blounts Creek. Staff identified hazards to boater safety that include a shallow creek with approximately 15 docks. Boaters who use the nearby Blounts Creek Boating Access Area enter and exit Little Creek at high speeds, posing dangers to those who swim and recreate in the creek.*

15A NCAC 10F .0323 – *Burke County submitted a formal application and resolution requesting a no-wake zone on Lake James in the waters of Sherman's Hollow Cove and contiguous with the waters within 50 yards of Linville Point. The no wake zone is necessary to mitigate hazards to boater and swimmer safety. Sherman's Hollow Cove is narrow with obstructed views,*

and heavy boat traffic along Linville Point poses dangers to swimmers and kayakers.

15A NCAC 10F .0339 – *McDowell County submitted an application for amendments to 15A NCAC 10F .0339 for no-wake zones on Lake James to mitigate hazards to boater safety. An extension of the no-wake zone at Marion Moose Club is requested because the area is heavily populated with many docks and a narrow shallow channel. There is a blind bend in the channel and there have been several boating incidents there. A no-wake zone within 50 yards of the shoreline of the peninsula at Waterylyn Cove Subdivision will mitigate hazards to boaters and swimmers near shore who are endangered by vessels travelling at high speeds in the area. A technical correction is requested to clarify the parameters of the existing no-wake zone at Plantation Point Cove. A no-wake zone is already marked within 50 yards of a boating access area at hidden Cove. This no-wake zone needs to be codified in the NCAC. Amendments under 10F .0339 (a)(11) and (a)(12) will remove no-wake zones at campgrounds that no longer exist or are not navigable and enforceable.*

Comments may be submitted to: *Betsy Haywood, 1701 Mail Service Center, Raleigh, NC 27699-1701; phone (919) 707-0013; email betsy.haywood@ncwildlife.org*

Comment period ends: *May 15, 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 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY
REGULATIONS

15A NCAC 10F .0323 BURKE COUNTY

(a) Regulated Areas. This Rule applies only to the following waters or portions of waters in Burke County described as follows:

- (1) Lake Hickory;
- (2) Lake James, delineated by markers consistent with Paragraph (e) of this Rule, at the following locations:
 - (A) Holiday Shores Subdivision;
 - (B) Lake James Campground;
 - (C) Laurel Pointe Subdivision;
 - (D) The waters of Boyd Moore Cove; Cove shore to shore, north of a line from a point on the northwest shore at 35.76667 N, 81.82337 W to a point on the southeast shore at 35.76558 N, 81.82245 W;
 - (E) East Shores development;
 - (F) Eastern shore of Lake James at Mallard Cove;
 - (G) Highway 126 Bridge, area defined using the North American Datum of 1983 beginning 50 yards from the northeast side defined by a shore to shore line extending from state plane coordinates: Northing = 224985.481182, Easting = 348767.698377 to Northing = 224912.319514, Easting = 348805.193732, encompassing all waters to a line 200 yards south of the bridge defined by a line extending shore to shore from state plane coordinates: Northing = 224723.881492, Easting = 348679.284125 to Northing = 224835.222394, Easting = 348534.751513; That portion of Lake James shore to shore, beginning 50 yards northeast of the NC Highway 126 bridge at a line from a point on the north shore at 35.74398 N, 81.88426 W, to a point on the south shore at 35.74334 N, 81.88383 W, and ending at a line 215 yards southwest of the NC Highway 126 bridge, from a point on the northwest shore at 35.74257 N, 81.88679 W to a point on the southeast shore at 35.74160 N, 81.88516 W;
 - (H) Canal Bridge Boating Access Area: within 50 yards of the Canal Bridge Boating Access area dock;
 - (I) South Pointe/Dry Creek Community Piers in the vicinity of the point of land at Lot 86 at the South Pointe Subdivision. Area defined using the

~~North American Datum of 1983 and encompassing waters off the point; from the shoreline, 50 yards out to a perimeter defined by the following State Plane Coordinates: Northing = 226977.08583, Easting = 353148.128305; Northing = 226950.431724, Easting = 353076.195527; Northing = 227004.286569, Easting = 353011.808157; and Northing = 227082.795442, Easting = 353042.59595. The waters within 50 yards of the end of the South Pointe Subdivision peninsula from a point east of the peninsula at 35.76399 N, 81.83768 W, and surrounding the peninsula from a point east of the peninsula at 35.76399 N, 81.83768 W, and surrounding the peninsula to a point west of the peninsula at 35.76307 N, 81.83648 W; and~~ The waters of Sherman's Hollow Cove shore to shore, and contiguous with those waters beginning at a point on the west shore of the mouth of Sherman's Hollow Cove at 35.76423 N, 81.82748 W, extending northeast within 50 yards of Linville Point to a point on the northeast shore of Linville Point at 35.76596 N, 81.82432 W.

(J)

(3) Lake Rhodhiss.

- (b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within 50 yards of any designated public boat launching ramp, bridge, marina, boat storage structure, boat service area, dock, or pier; or while on designated waters of the areas described in Paragraph (a) of this Rule.
- (c) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a marked mooring area established with the approval of the Executive Director, or his representative, on the regulated areas described in Paragraph (a) of this Rule.
- (d) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area established with the approval of the Executive Director, or his representative, on the regulated areas described in Paragraph (a) of this Rule.
- (e) ~~Placement and Maintenance~~ of Markers. The Board of Commissioners of Burke County is designated a suitable agency for placement ~~and maintenance~~ of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers, if applicable. ~~With regard to marking the regulated areas described in Paragraph (a) of this Rule, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.~~

Authority G.S. 75A-3; 75A-15; 102-1.1.

15A NCAC 10F .0339 MCDOWELL COUNTY

(a) Regulated Areas. This Rule applies to the following waters located on Lake James in McDowell County, as designated by the United States Aids to Navigation system:

- (1) ~~that area adjacent to the shoreline of the McDowell Wildlife Club property; the cove east of Old Wildlife Club Road, beginning at a line from a point on the northwest shore at 35.73649 N, 81.92296 W to a point on the southeast shore at 35.73595 N, 81.92194 W;~~
- (2) ~~that area adjacent to the shoreline of the Marion Moose Club property; those waters including coves, shore to shore in the vicinity of the Marion Moose Club property, east of the line from a point on the north shore at 35.72026 N, 81.97292 W, to a point on the south shore at 35.71908 N, 81.97257 W, and south of the line from a point on the west shore at 35.72214 N, 81.96807 W to a point on the east shore at 35.72305 N, 81.96642 W;~~
- (3) ~~that area known as Morgan Cove;~~
- (4) that area within 50 yards of the shoreline at the New Manna Baptist Youth Camp;
- (5) that area within 50 yards of the shoreline at Burnett's Landing;
- (6) ~~the cove area adjacent to the State Park swimming area;~~
- (6) the coves adjacent to Lake James State Park swimming area southeast of a line from a point on the northeast shore at 35.73402 N, 81.90450 W to a point on the southwest shore at 325.73268 N, 81.90614 W;
- (7) ~~the cove area adjacent to the State Park picnic area and dock;~~
- (8)(7) that area within 50 yards of camping areas in the Lake James State Park;
- (9)(8) that area within 50 yards of the boat launching ramp at the Marion Lake Club; including the cove between Waterglyn Subdivision and Lakeview Shores Subdivision and extending within 50 yards of the shoreline of Lakeview Point Subdivision and within 50 yards of the boat launching ramp at the Marion Lake Club;
- (10)(9) that area within 50 yards in either direction from the marina docks in Plantation Point Cove; Cove southwest of a line from a point on the north shore at 35.71672 N, 81.98065 W to a point on the south shore at 35.71616 N, 81.98010 W;
- (11) ~~that area of Goodman's Landing Cove within 50 yards of the swimming area and boat docks of Goodman's Campground;~~
- (12) ~~that area beginning at the rock shoals located at Deerfield Campground downstream for a distance of approximately 200 yards;~~
- (13) ~~that area along the shoreline of the development known as Lakeview Pointe;~~
- (14)(10) ~~that area at the Waterglyn Subdivision Cove;~~

- (15) ~~that area at the North Fork of the Catawba River where it enters Lake James;~~
- (11) that area within 50 yards of the boat ramp at Lake James Landing, near the mouth of the North Fork of the Catawba River;
- (16)(12) ~~that area within 50 yards of the Bear Creek Marina; and~~
- (17) ~~that cove which is bounded by Waterglyn Subdivision to the west beginning at the point of the shoreline known as the Island and extending in a straight line eastward to the boundary between the Carrier and Finger property within Lakeview Shores Subdivision.~~
- (13) the waters within 50 yards of the peninsula at Waterglyn Cove Subdivision, from the point on land east of the cove east of Old Wildlife Club Road at 35.73600 N, 81.92185 W to a point on land west of Waterglyn Cove at 35.73549 N, 81.91900 W; and
- (14) the waters within 50 yards of the boat ramp in Hidden Cove.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within any of the regulated areas described in Paragraph (a) of this Rule.

(c) Restricted Swimming Areas. No person operating or responsible for the operation of any vessel, surfboard or waterskis shall permit the same to enter any marked swimming area located on the regulated area.

(d) Placement ~~and Maintenance~~ of Markers. The Board of Commissioners of McDowell County is designated a suitable agency for placement ~~and maintenance~~ of the markers implementing this Rule.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0303 BEAUFORT COUNTY

(a) Regulated Areas. This Rule applies to the following waters in Beaufort County:

- (1) that portion of Broad Creek south of a line from a point on the east shore at 35.49472 N, 76.95693 W to a point on the west shore at 35.49476 N, 76.96028 W and north of a line from a point on the east shore at 35.48485 N, 76.95178 W to a point on the west shore at 35.48495 N, 76.95619 W;
- (2) that portion of Blounts Creek south of a line 100 yards north of the Blounts Creek Boating Access Area, from a point on the east shore at 35.40846 N, 76.96091 W to a point on the west shore at 35.40834 N, 76.96355 W, and north of a line 100 yards south of Cotton Patch Landing, from a point on the east shore at 35.40211 N, 76.96573 W to a point on the west shore at 35.40231 N, 76.96702 W;
- (3) the waters of Battalina Creek, within the territorial limits of the Town of Belhaven;
- (4) the navigable portion of Nevil Creek extending upstream from its mouth at the Pamlico River;

- (5) that portion of Blounts Creek north of a line 35 yards south-southeast of the Mouth of the Creek Bridge from a point on the east shore at 35.43333 N, 76.96985 W to a point on the west shore at 35.43267 N, 76.97196 W and south of a line 350 yards north-northeast of the Mouth of the Creek Bridge from a point on the east shore at 35.43553 N, 76.96962 W to a point on the west shore at 35.43645 N, 76.96998 W; ~~and~~
- (6) that portion of Tranters Creek east of a line from a point on the north shore at 35.56961 N, 77.09159 W to a point on the south shore at 35.56888 N, 77.09118 W and north of a line from a point on the east shore at 35.56714 N, 77.08941 W to a point on the west shore at 35.56689 N, 77.09029 ~~W~~; ~~W~~; and
- (7) the waters of Little Creek beginning at a line near its mouth from a point on the east shore at 35.41917 N, 76.97102 W to a point on the west shore at 35.41900 N, 76.96940 W.

(b) Speed Limit. It is unlawful to operate a vessel at greater than no-wake speed in the regulated areas described in Paragraph (a) of this Rule.

(c) Placement ~~and Maintenance~~ of Markers. The Board of Commissioners of Beaufort County and the City Council of the City of Washington are designated as suitable agencies for placement ~~and maintenance~~ of the markers implementing this Rule.

Authority G.S. 75A-3; 75A-15.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10I .0103-.0105.

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

Proposed Effective Date: October 1, 2017

Public Hearing:

Date: April 18, 2017

Time: 7:00 p.m.

Location: WRC Headquarters, 1751 Varsity Drive, Raleigh, NC 27606

Date: April 24, 2017

Time: 7:00 p.m.

Location: Craven Community College, Orringer Auditorium, 800 College Court, New Bern, NC 28562

Date: April 25, 2017

Time: 7:00 p.m.

Location: Western Piedmont Community College, Foothills Higher Education Center, 2128 S. Sterling St., Room 163, Morganton, NC 28655

Reason for Proposed Action: *As part of its mission, WRC adopts and publishes an endangered species list, a threatened species list and a list of special concern species, as required by G.S. 113-333. Lists are amended from time-to-time, in response to public proposals or as the Commission deems necessary.*

Comments may be submitted to: *Carrie Ruhlman, Rule-making Coordinator, 1701 Mail Service Center, Raleigh, NC 27699-1701; email regulations@ncwildlife.org*

Comment period ends: May 15, 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 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10I - ENDANGERED AND THREATENED SPECIES

SECTION .0100 - ENDANGERED AND THREATENED SPECIES

15A NCAC 10I .0103 ENDANGERED SPECIES LISTED

(a) The following species of resident wildlife shall be designated as federally-listed endangered species:

- (1) Amphibians: None Listed At This Time.
~~None Listed At This Time.~~
- (2) Birds:
 - (A) Bachman's warbler (Vermivora bachmanii);
 - (B) Ivory-billed woodpecker (Campephilus principalis);

- (C) Kirtland's warbler (~~Dendroica~~ Setophaga kirtlandii);
- (D) Piping plover (*Charadrius melodus circumcinctus*);
- (E) Red-cockaded woodpecker (*Picoides borealis*); and
- (F) Roseate tern (*Sterna dougallii dougalli*; and dougallii).
- (G) ~~Wood stork (*Mycteria americana*)~~.
- (3) Crustacea: None Listed At This Time.
- (4) Fish:
- (A) Cape Fear shiner (*Notropis mekistocholas*);
- (B) Roanoke logperch (*Percina rex*);
- (C) Shortnose sturgeon (*Acipenser brevirostrum*), when found in inland fishing waters as defined in G.S. 113-129(9a) and (9b); and
- (D) Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*), when found in inland fishing waters.
- (5) Mammals:
- (A) Carolina northern flying squirrel (*Glaucomys sabrinus coloratus*);
- (B) Eastern cougar (*Puma concolor*);
- (C) Gray bat (*Myotis grisescens*);
- (D) Indiana bat (*Myotis sodalis*);
- (E) Manatee (*Trichechus manatus*), when found in inland fishing waters; and
- (F) Virginia big-eared bat (*Corynorhinus townsendii virginianus*).
- (6) Mollusks:
- (A) Appalachian elktoe (*Alasmidonta raveneliana*);
- (B) Carolina heelsplitter (*Lasmigona decorata*);
- (C) Dwarf ~~wedge mussel~~ wedgemussel (*Alasmidonta heterodon*);
- (D) James spinymussel (*Pleurobema collina*);
- (E) ~~Little wing~~ Littlewing pearlymussel (*Pegias fabula*);
- (F) Tan riffleshell (*Epioblasma florentina walkeri*); and
- (G) Tar River spinymussel (*Elliptio steinstansana*).
- (7) Reptiles:
- (A) Kemp's ridley seaturtle (*Lepidochelys kempii*);
- (B) Atlantic hawksbill seaturtle (*Eretmochelys imbricata imbricata*); and
- (C) Leatherback seaturtle (*Dermochelys coriacea*).
- (b) The following species of resident wildlife shall be designated as state-listed endangered species:
- (1) Amphibians: ~~Green salamander (*Aneides aeneus*)~~.
- (A) Gopher frog (*Rana [=Lithobates] capito*);
- (B) Ornate chorus frog (*Pseudacris ornata*); and
- (C) River frog (*Rana [=Lithobates] heckscheri*).
- (2) Birds:
- (A) American peregrine falcon (*Falco peregrinus anatum*); and
- (B) Bewick's wren (*Thryomanes bewickii*); bewickii;
- (C) Common tern (*Sterna hirundo*);
- (D) Henslow's sparrow (*Ammodramus henslowii*); and
- (E) Wayne's black-throated green warbler (*Setophaga virens waynei*).
- (3) Crustacea: ~~Bennett's Mill cave water slater (*Caecidotea carolinensis*)~~.
- (A) Bennett's Mill cave water slater (*Caecidotea carolinensis*).
- (4) Fish:
- (A) Blotchside logperch (*Percina burtoni*);
- (B) Bridle shiner (*Notropis bifrenatus*);
- (C) Dusky darter (*Percina sciera*);
- (D) Orangefin madtom (*Noturus gilberti*);
- (E) Paddlefish (*Polyodon spathula*);
- (F) Robust redhorse (*Moxostoma robustum*);
- (G) Rustyside sucker (*Thoburnia hamiltoni*); and
- (H) Sharpnose darter (*Percina oxyrhynchus*); and
- (~~H~~)(I) Stonecat (*Noturus flavus*).
- (5) Mammals: None Listed At This Time.
- (6) Mollusks:
- (A) Atlantic pigtoe (*Fusconaia masoni*);
- (B) Barrel floater (*Anodonta couperiana*);
- (C) Brook floater (*Alasmidonta varicosa*);
- (D) Carolina creekshell (*Villosa vaughaniana*);
- (E) Fragile glyph (*Glyphyalinia clingmani*);
- (F) Green floater (*Lasmigona subviridis*);
- (G) Greenfield rams-horn (*Helisoma eucosmium*);
- (H) Knotty elimia (*Elimia christyi*);
- (I) Longsolid (*Fusconaia subrotunda*);
- (~~H~~)(J) Magnificent rams-horn (*Planorbella magnifica*);
- (~~H~~) Neuse spike (*Elliptio judithae*);
- (K) Purple wartyback (*Cyclonaias tuberculata*);
- (L) Savannah lilliput (*Toxolasma pullus*);
- (M) Slippershell mussel (*Alasmidonta viridis*);
- (N) Tennessee clubshell (*Pleurobema oviforme*);
- (O) Tennessee heelsplitter (*Lasmigona holstonia*);

- (P) Tennessee pigtoe (*Fusconaia barnesiana*);
- (Q) Yellow lampmussel (*Lampsilis cariosa*); and
- (R) Yellow lance (*Elliptio lanceolata*).
- (7) Reptiles:
 - (A) Eastern coral snake (*Micrurus fulvius fulvius*); and
 - (B) Eastern diamondback rattlesnake (*Crotalus adamanteus*).

Authority G.S. 113-134; 113-291.2; 113-292; 113-333.

15A NCAC 10I .0104 THREATENED SPECIES LISTED

(a) The following species of resident wildlife shall be designated as federally-listed threatened species:

- (1) Amphibians: None Listed At This Time.
- (2) Birds:
 - (A) Piping plover (*Charadrius melodus melodus*); ~~and~~
 - (B) Red ~~knott knot~~ (~~*calidris*~~ *Calidris canutus rufa*); ~~and~~
 - (C) Wood stork (*Mycteria americana*).
- (3) Crustacea: None Listed At This Time.
- (4) Fish:
 - (A) Spotfin chub (~~*Cyprinella monacha*~~ *Erimonax monachus*); and
 - (B) Waccamaw silverside (*Menidia extensa*).
- (5) Mammals: Northern ~~Long-eared Bat~~ long-eared bat (*Myotis septentrionalis*)
- (6) Mollusks: Noonday globe (*Patera clarki nantahala*).
- (7) Reptiles:
 - (A) Bog turtle (*Glyptemys muhlenbergii*);
 - (B) American alligator (*Alligator mississippiensis*);
 - (C) Green seaturtle (*Chelonia mydas*); and
 - (D) Loggerhead seaturtle (*Caretta caretta*).

(b) The following species of resident wildlife are designated as state-listed threatened species:

- (1) Amphibians:
 - (A) ~~Carolina gopher frog (*Rana capito capito*)~~;
 - (B)(A) Eastern tiger salamander (*Ambystoma tigrinum tigrinum*);
 - (B) Green salamander (*Aneides aeneus*);
 - (C) Junaluska salamander (*Eurycea junaluska*); ~~and~~
 - (D) Mabee's salamander (*Ambystoma mabeei*); and
 - (D)(E) Wehrle's salamander (*Plethodon wehrlei*).
- (2) Birds:
 - (A) Bald eagle (*Haliaeetus leucocephalus*);
 - (B) Caspian tern (*Hydroprogne caspia*);

- (B)(C) Gull-billed tern (~~*Sterna*~~ *Gelochelidon nilotica aranea*); and
- (C)(D) Northern saw-whet owl (*Aegolius acadicus*).
- (3) Crustacea: None Listed At This Time.
- (4) Fish:
 - (A) ~~American brook lamprey (*Lampetra* appendix)~~;
 - (B) ~~Banded sculpin (*Cottus carolinae*)~~;
 - (C)(A) Bigeye jumprock (~~*Seartomyzon ariommus*~~ *Moxostoma ariommmum*);
 - (D) ~~Blackbanded darter (*Percina nigrofasciata*)~~;
 - (E)(B) Carolina madtom (*Noturus furiosus*);
 - (F)(C) Carolina pygmy sunfish (*Elassoma boehlkei*);
 - (G)(D) Carolina redbreast (*Moxostoma* sp.) (Pee Dee River and its tributaries and Cape Fear River and its tributaries);
 - (H)(E) Least brook lamprey (*Lampetra aepyptera*);
 - (F)(F) Logperch (*Percina caprodes*);
 - (G) Mimic shiner (*Notropis volucellus*);
 - (D)(H) Rosyface chub (*Hybopsis rubrifrons*);
 - (K)(I) Sharphead darter (*Etheostoma acuticeps*);
 - (L)(J) Sicklefin redbreast (*Moxostoma* sp.) (Hiwassee River and its tributaries and Little Tennessee River and its tributaries);
 - (M)(K) Turquoise darter (*Etheostoma inscriptum*); and
 - (N)(L) Waccamaw darter (*Etheostoma perlongum*).
- (5) Mammals:
 - (A) Eastern woodrat (*Neotoma floridana floridana*);
 - (B) Rafinesque's big-eared bat (*Corynorhinus rafinesquii rafinesquii*); and
 - (C) Red wolf (*Canis rufus*).
- (6) Mollusks:
 - (A) Alewife floater (*Anodonta implicata*);
 - (B) Big-tooth covert (*Fumonelix jonesiana*);
 - (C) Cape Fear threetooth (*Triodopsis soelneri*);
 - (D) Carolina fatmucket (*Lampsilis radiata conspicua*);
 - (E) ~~Clingman covert (*Fumonelix wheatleyi clingmanicus*)~~;
 - (F)(E) Eastern lampmussel (*Lampsilis radiata radiata*);
 - (G)(F) Eastern pondmussel (*Ligumia nasuta*);
 - (H)(G) Engraved covert (*Fumonelix orestes*);
 - (H)(H) Mountain creekshell (*Villosa vanuxemensis*);
 - (I) Notched rainbow (*Villosa constricta*);
 - (J) Rainbow (*Villosa iris*);

- (~~J~~)(K) Roan supercoil (*Paravitrea varidens*);
 (~~K~~) ~~Roanoke slabshell~~ (~~*Elliptio roanokensis*~~);
 (L) Sculpted supercoil (*Paravitrea ternaria*);
 (~~M~~) ~~Seep mudalia~~ (~~*Leptoxis dilatata*~~);
 (~~N~~)(M) Smoky Mountain covert (*Inflectarius ferrissi*);
 (~~O~~)(N) Squawfoot (*Strophitus undulatus*);
 (~~P~~)(O) Tidewater mucket (*Leptodea ochracea*);
 (~~Q~~)(P) Triangle floater (*Alasmidonta undulata*);
 (~~R~~)(Q) Waccamaw ambersnail (*Catinella waccamawensis*);
 (~~S~~)(R) Waccamaw fatmucket (*Lampsilis fullerhati*); and
 (~~T~~)(S) Waccamaw spike (*Elliptio waccamawensis*).
 (7) Reptiles: ~~None Listed At This Time.~~
 (A) Northern pine snake (*Pituophis melanoleucus melanoleucus*); and
 (B) Southern hognose snake (*Heterodon simus*).

Authority G.S. 113-134; 113-291.2; 113-292; 113-333.

15A NCAC 10I .0105 SPECIAL CONCERN SPECIES LISTED

The following species of resident wildlife shall be designated as state-listed special concern species:

- (1) Amphibians:
 (a) Crevice salamander (*Plethodon longicrus*);
 (b) Dwarf salamander (*Eurycea quadridigitata*);
 (c) Dwarf black-bellied salamander (*Desmognathus folkertsi*);
 (~~e~~)(d) Eastern hellbender (*Cryptobranchus alleganiensis alleganiensis*);
 (~~d~~)(e) Four-toed salamander (*Hemidactylium scutatum*);
 (f) Gray treefrog (*Hyla versicolor*);
 (~~e~~)(g) Longtail salamander (*Eurycea longicauda longicauda*);
 (~~f~~)(h) Mole salamander (*Ambystoma talpoideum*);
 (~~g~~)(i) Mountain chorus frog (*Pseudacris brachyphona*);
 (~~h~~)(j) Mudpuppy (*Necturus maculosus*);
 (~~i~~)(k) Neuse River waterdog (*Necturus lewisi*);
 (j) River frog (*Rana heckscheri*);
 (~~k~~)(l) Southern zigzag salamander (*Plethodon ventralis*); and
 (~~l~~)(m) Weller's salamander (*Plethodon welleri*).

- (2) Birds:

- (a) American oystercatcher (*Haematopus palliatus*);
 (b) Bachman's sparrow (~~*Aimophila*~~ *Peucaea aestivalis*);
 (c) Barn owl (*Tyto alba*);
 (~~e~~)(d) Black-capped chickadee (*Poecile atricapillus*);
 (~~d~~)(e) Black rail (*Laterallus jamaicensis*);
 (~~e~~)(f) Black skimmer (*Rynchops niger*);
 (~~f~~)(g) Brown creeper (*Certhia americana nigrescens*);
 (~~g~~)(h) Cerulean warbler (~~*Dendroica*~~ *Setophaga cerulea*);
 (h) ~~Common tern (*Sterna hirundo*);~~
 (i) Glossy ibis (*Plegadis falcinellus*);
 (j) Golden-winged warbler (*Vermivora chrysopetra*);
 (k) ~~Henslow's sparrow (*Ammodramus henslowii*);~~
 (~~j~~)(k) Least bittern (*Ixobrychus exilis*);
 (~~m~~)(l) Least tern (~~*Sterna*~~ *Sternula antillarum*);
 (~~n~~)(m) Little blue heron (*Egretta caerulea*);
 (~~o~~)(n) Loggerhead shrike (*Lanius ludovicianus*);
 (p) ~~Olive-sided flycatcher (*Contopus cooperi*);~~
 (~~q~~)(o) Painted bunting (*Passerina ciris*);
 (~~r~~)(p) Red crossbill (*Loxia curvirostra*);
 (~~s~~)(q) Snowy egret (*Egretta thula*);
 (~~t~~)(r) Tricolored heron (*Egretta tricolor*);
 (~~u~~)(s) Vesper sparrow (*Poocetes gramineus*); and
 (~~v~~)(t) ~~Wilson's plover (*Charadrius wilsonia*); and *wilsonia*.~~
 (w) ~~Yellow-bellied sapsucker (*Sphyrapicus varius appalachiensis*).~~
 (3) Crustacea:
 (a) Broad River spiny crayfish (*Cambarus spicatus*);
 (b) Carolina skistodiaptomus (*Skistodiaptomus carolinensis*);
 (c) Carolina well diacyclops (*Diacyclops jeannelli putei*);
 (d) Chowanoke crayfish (*Orconectes virginienensis*);
 (e) Graceful clam shrimp (*Lynceus gracilicornis*);
 (f) Greensboro burrowing crayfish (*Cambarus catagius*);
 (g) Hiwassee headwaters crayfish (*Cambarus parrishi*);
 (h) Little Tennessee River crayfish (*Cambarus georgiae*);
 (i) North Carolina spiny crayfish (*Orconectes carolinensis*);
 (j) Oconee stream crayfish (*Cambarus chaugaensis*); and

- (k) Waccamaw crayfish (*Procambarus braswelli*).
- (4) Fish:
- (a) American brook lamprey (*Lethenteron appendix*);
- (b) Banded sculpin (*Cottus carolinae*);
- (c) Blackbanded darter (*Percina nigrofasciata*);
- ~~(a)(d)~~ Bluefin killifish (*Lucania goodei*);
- ~~(b)(e)~~ Blue Ridge sculpin (*Cottus caeruleomentum*);
- ~~(c)(f)~~ Blueside darter (*Etheostoma jessiae*);
- ~~(d)(g)~~ Broadtail madtom (*Noturus* sp.) (Lumber River and its tributaries and Cape Fear River and its tributaries);
- ~~(e)(h)~~ Carolina darter (*Etheostoma collis*);
- ~~(f)(i)~~ Cutlip minnow (*Exoglossum maxillingua*);
- ~~(g)(j)~~ Freshwater drum (*Aplodinotus grunniens*) (French Broad River);
- ~~(h)(k)~~ Highfin carpsucker (*Carpiodes velifer*) (Cape Fear River and its tributaries);
- ~~(i)(l)~~ Kanawha minnow (*Phenacobius teretulus*);
- ~~(j)(m)~~ Lake sturgeon (*Acipenser fulvescens*);
- ~~(k)(n)~~ Least killifish (*Heterandria formosa*);
- ~~(l)(o)~~ Longhead darter (*Percina macrocephala*);
- ~~(m)(p)~~ Mooneye (*Hiodon tergisus*);
- ~~(n)(q)~~ Mountain madtom (*Noturus eleutherus*);
- (r) Ohio lamprey (*Ichthyomyzon bdellium*);
- ~~(o)(s)~~ Olive darter (*Percina squamata*);
- ~~(p)(t)~~ Pinewoods darter (*Etheostoma mariae*);
- ~~(q)(u)~~ River carpsucker (*Carpiodes carpio*);
- ~~(r)~~ Riverweed darter (*Etheostoma podostemone*);
- ~~(s)(v)~~ Sandhills chub (*Semotilus lumbee*);
- ~~(t)~~ Sharpnose darter (*Percina oxyrinchus*);
- ~~(u)(w)~~ Smoky dace (*Clinostomus* sp.) (Little Tennessee River and tributaries);
- ~~(v)(x)~~ Striped shiner (*Luxilus chrysocephalus*);
- ~~(w)(y)~~ Tennessee snubnose darter (*Etheostoma simoterum*);
- ~~(x)(z)~~ Thinlip chub (*Cyprinella zanema*) (Lumber River and its tributaries and Cape Fear River and its tributaries);
- ~~(y)(aa)~~ Waccamaw killifish (*Fundulus waccamensis*);
- ~~(z)(bb)~~ Wounded darter (*Etheostoma vulneratum*); and
- ~~(aa)(cc)~~ Yellowfin shiner (*Notropis lutipinnis*) (Savannah River and its tributaries);

- (5) Mammals:
- (a) Allegheny woodrat (*Neotoma magister*);
- (b) Buxton Woods white-footed mouse (*Peromyscus leucopus buxtoni*);
- (c) Coleman's oldfield mouse (*Peromyscus polionotus colemani*);
- (d) Eastern big-eared bat (*Corynorhinus rafinesquii macrotis*);
- (e) Eastern small-footed bat (*Myotis leibii leibii*);
- (f) Florida yellow bat (*Lasiurus intermedius floridanus*);
- (g) Pungo white-footed mouse (*Peromyscus leucopus easti*);
- (h) Southeastern bat (*Myotis austroriparius*);
- ~~(i)~~ Southern rock shrew (*Sorex dispar blitchi*);
- ~~(j)(i)~~ Southern rock vole (*Microtus chrotorrhinus carolinensis*); and
- ~~(k)~~ Southern water shrew (*Sorex palustris punctulatus*); and
- ~~(l)(j)~~ Star-nosed mole (*Condylura cristata parva*).
- (6) Mollusks:
- (a) Appalachian gloss (*Zonitoides patuloides*);
- (b) Bidentate dome (*Ventridens coelaxis*);
- (c) Black mantleslug (*Pallifera hemphilli*);
- (d) Blackwater ancyloid (*Ferrissia hendersoni*);
- (e) Blue-foot lancetooth (*Haplotrema kendeighi*);
- (f) Cape Fear spike (*Elliptio marsupiobesa*);
- (g) Clingman covert (*Fumonelix wheatleyi clingmanicus*);
- ~~(g)(h)~~ Dark glyph (*Glyphyalinia junaluskana*);
- ~~(h)(i)~~ Dwarf proud globe (*Patera clarki clarki*);
- ~~(i)(j)~~ Dwarf threetooth (*Triodopsis fulciden*);
- ~~(j)(k)~~ Fringed coil (*Helicodiscus fimbriatus*);
- ~~(k)(l)~~ Glossy supercoil (*Paravitrea placentula*);
- ~~(l)(m)~~ Great Smoky slitmouth (*Stenotrema depilatum*);
- ~~(m)(n)~~ High mountain supercoil (*Paravitrea andrewsae*);
- ~~(n)(o)~~ Honey glyph (*Glyphyalinia vanattai*);
- ~~(o)(p)~~ Lamellate supercoil (*Paravitrea lamellidens*);
- ~~(p)(q)~~ Mirey Ridge supercoil (*Paravitrea clappi*);
- ~~(q)~~ Notched rainbow (*Villosa constricta*);

- (r) Open supercoil (Paravitrea umbilicaris);
 - (s) Pink glyph (Glyphyalinia pentadelphina);
 - (t) Pod lance (Elliptio folliculata);
 - (u) Queen crater (Appalachina chilhowensis);
 - ~~(v)~~ ~~Rainbow (Villosa iris);~~
 - ~~(w)~~(v) Ramp Cove supercoil (Paravitrea lacteodens);
 - (w) Ridged lioplax (Lioplax subcarinata);
 - (x) Roanoke slabshell (Elliptio roanokensis);
 - ~~(x)~~(y) Saw-tooth disc (Discus bryanti);
 - (z) Seep mudalia (Leptoxis dilatata);
 - ~~(y)~~(aa) Spike (Elliptio dilatata);
 - ~~(z)~~(bb) Spiral coil (Helicodiscus bonamicus);
 - ~~(aa)~~(cc) Velvet covert (Inflectarius subpalliatu);
 - ~~(bb)~~(dd) Waccamaw amnicola (Amnicola sp.);
 - ~~(ee)~~ ~~Waccamaw lampmussel (Lampsilis erocata);~~
 - ~~(dd)~~(ee) Waccamaw siltsnail (Cincinnatia sp.); and
 - ~~(ee)~~(ff) Wavy-rayed lampmussel (Lampsilis fasciola).
- (7) Reptiles:
- (a) Carolina pigmy rattlesnake (Sistrurus miliarius miliarius);
 - (b) Carolina swamp snake (Seminatrix pygaea paludis);
 - ~~(b)~~(c) Carolina watersnake (Nerodia sipedon williamengelsi);
 - (d) Cumberland slider (Trachemys scripta troostii);
 - ~~(c)~~(e) Diamondback terrapin (Malaclemys terrapin);
 - (f) Eastern chicken turtle (Deirochelys reticularia reticularia);
 - ~~(d)~~(g) Eastern smooth green snake (Opheodrys vernalis vernalis);
 - ~~(e)~~(h) Eastern spiny softshell (Apalone spinifera spinifera);
 - ~~(f)~~(i) Mimic glass lizard (Ophisaurus mimicus);
 - ~~(g)~~ ~~Northern pine snake (Pituophis melanoleucus melanoleucus);~~
 - ~~(h)~~(j) Outer Banks kingsnake (Lampropeltis getula sticticeps);
 - ~~(i)~~ ~~Southern hognose snake (Heterodon simus);~~
 - ~~(j)~~(k) Stripeneck musk turtle (Sternotherus minor peltifer); and
 - ~~(k)~~(l) Timber rattlesnake (Crotalus horridus).

TITLE 18 – DEPARTMENT OF THE SECRETARY OF STATE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of the Secretary of State intends to amend the rule cited as 18 NCAC 12 .0214.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://sosnc.gov/legal/ThePage.aspx>

Proposed Effective Date: July 1, 2017

Public Hearing:

Date: April 4, 2017

Time: 10:00 a.m.

Location: Old Revenue Building, 2 South Salisbury Street, First Floor Conference Room, Raleigh, NC 27601

Reason for Proposed Action: *The Lobbying Act has been in effect for ten years. The Department has reviewed requests for rule changes from lobbyists and others. The Department has determined that the amendment will provide filers, including lobbyists, with an effective alternative method for filing expense reports, while preserving evidence for departmental review. The amendment will have the potential effect of a decrease in costs to filers.*

Comments may be submitted to: Ann B. Wall, General Counsel, NC Department of the Secretary of State, PO Box 29622, Raleigh, NC 27626-0622

Comment period ends: May 15, 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**

Authority G.S. 113-134; 113-291.2; 113-292; 113-333.

CHAPTER 12 - LOBBYING

SECTION .0200 – FORMS COMPLETION

**18 NCAC 12 .0214 SIGNATURE AND EXECUTION
UNDER OATH OF AN ELECTRONICALLY FILED
DOCUMENT**

A document submitted to the Department for which notarization is required may be filed electronically if:

- (1) The document is electronically notarized pursuant to Article 2 of Chapter 10B of the General Statutes; ~~or~~
- (2) The document is submitted without an electronic notarization pursuant to Article 2 of Chapter 10B of the General Statutes and an affidavit containing the information required by Rule .0215 of this Chapter is delivered to the Department within seven days or postmarked within seven days after the document is electronically ~~filed~~; filed; or
- (3) The document is submitted without an electronic notarization pursuant to Article 2 of Chapter 10B of the General Statutes and the original paper inked, signed and notarized document is maintained in the filer's own records for three years as required by Rule .1301 of this Chapter.

Authority G.S. 10B-115; 66-312(9); 120C-101(a); 120C-200; 120C-201; 120C-206; 120C-207; 120C-400; 120C-401; 120C-600; 120C-603; 120C-800.

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

**CHAPTER 65 – BOARD OF RECREATIONAL THERAPY
LICENSURE**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Recreational Therapy Licensure intends to adopt the rules cited as 21 NCAC 65 .1002-.1007 and amend the rule cited as 21 NCAC 65 .1001.

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

Proposed Effective Date: July 1, 2017

Public Hearing:

Date: April 21, 2017

Time: 12:30 p.m.

Location: 3725 National Drive Suite 105, Raleigh, NC 27612

Reason for Proposed Action: NCBRTL would like to separate the Complaints, Investigations, Violations, Sanctions, Hearings, and define Unauthorized Practice into separate rules for additional information, distinction of types of violations and the process used by the Board for increased clarity to licensees.

Comments may be submitted to: Becky Garrett, PO Box 2655, Durham, NC 27715; phone (336) 212-1133; email becky@ncbrtl.org

Comment period ends: May 15, 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 .1000 - REVOCATION, SUSPENSION OR
DENIAL OF LICENSURE**

21 NCAC 65 .1001 COMPLAINTS

(a) ~~The Board shall accept self-reports, public~~ (a) It is the policy of the Board to investigate reports and complaints of suspected malpractice, violations of Chapter 90C, complaints, or reports of discipline by an employer and sanctions imposed by a credentialing organization or a professional association to protect the health, safety and welfare of recreational therapy consumers. disciplinary issues to include misconduct in the workplace or the community by any licensee.

(b) ~~The Board may require information from the licensee regarding any disciplinary action taken by an employer or any sanctions issued to the licensee by a credentialing board or by a professional association. If this information indicates suspected malpractice or ethical violations the Board will investigate the matter in the same manner as a complaint and may, if the facts indicate that malpractice or ethical violation has occurred, issue sanctions or otherwise discipline the licensee. The complainant shall submit a signed Board approved form. The form shall be filed electronically on the Board website at www.ncbrtl.org or by contacting the Board office by phone, email or mail for a form. The complainant shall affirm he or she believes the facts stated in the complaint or report to be true.~~

(c) A complaint regarding a violation of the G.S. 90C or Rules and Regulations must be submitted in writing within 24-72 hours of occurrence or upon receipt of knowledge regarding a suspected occurrence and must ~~document~~ document the following facts pertaining to the complaint or report:

- (1) ~~The name of the licensee or other person involved;~~
- (2) ~~A description of the alleged behavior or incident; and~~
 - (1) the complainant first and last name;
 - (2) the complainant address;
 - (3) the complainant phone number;
 - (4) the licensee first and last name;
 - (5) nature of the complaint and description of the alleged behavior or incident;
- ~~(3)(6) The name, mailing address, email address and phone number of the person filing the complaint; individual or respondent involved in the complaint;~~
- (7) name, work address and phone number of the supervisor of the individual being reported; and
- (8) Signature of complainant attesting to the truthfulness of the information

(d) The Board Staff shall return any incomplete forms to the complainant. An incomplete complaint may be corrected and resubmitted. The Board shall receive and notify the complainant of receipt of complaint and open a file.

(e) The Board shall not accept any anonymous complaints.

(f) Complaints and reports will be reviewed by the Executive Director and Board Chair the Board Chair and Board Executive Director shall determine if further investigation is needed.

(e) Action on a complaint, a report of a suspected violation of any provision of Chapter 90C, or a report of discipline by an employer or sanction by a credentialing organization or a professional association consists of the following:

- (1) ~~The Board shall receive and acknowledge complaints, open a file and initiate complaint tracking.~~
- (2) ~~Complaints will be screened to determine jurisdiction and the type of response appropriate for the complaint.~~
- (3) Investigation:
 - (A) ~~If the facts do not clearly indicate a Chapter 90C violation, and the complaint can be handled without an investigation, the Board shall request that the licensee cease conduct that could result in a violation.~~
 - (B) ~~If the facts clearly indicate a Chapter 90C violation, the Board shall initiate an investigation. The Board may utilize additional personnel such as licensees, law enforcement officials, or other technical personnel that may be required in a particular case. If a Board member is utilized in the investigation, care must be taken to observe due process by separating (1) investigation, (2) prosecution, and (3)~~

~~hearings and final decision making. No Board member shall participate in more than one of these three steps in the enforcement process.~~

(C) ~~A confidential report of each investigation shall be prepared for the Board's review.~~

(4) ~~Formal and Informal Hearings:~~

(A) ~~The Board, after review of an investigative file, may schedule an informal meeting.~~

(B) ~~If the matter cannot be resolved informally, then a formal hearing shall be held.~~

(C) ~~Members of the Board shall not have communication with parties outside of the hearing about the case.~~

(5) ~~Final Orders: As soon as possible, but at least within 60 days, the Board will issue its final decision in writing specifying the date on which it will take effect. The Board will serve one copy of the decision to each party to the hearing.~~

(6) ~~Compliance: The Board Chair will initiate a follow-up inquiry to determine that the orders of the Board are being obeyed.~~

(7) ~~Formal hearings shall be conducted in accordance with G.S. 150B-38 et seq~~

(f) The following disciplinary sanctions regarding recreational therapists and recreational therapy assistants may, among others, be utilized by the Board:

- (1) Denial of Application;
- (2) Letter of Reprimand;
- (3) Required remedial education;
- (4) Probation;
- (5) Suspension of license;
- (6) Refusal of License Renewal;
- (7) Revocation of license;
- (8) Injunction.

(g) ~~The Board may request information from professional associations, professional review organizations, hospitals, clinics or other institutions in which a licensee performs professional services, on possible chemical abuse, or incompetent or unethical behavior.~~

(h) ~~The Board will provide notice of sanction taken by it to other public entities as necessary to ensure that other state boards, enforcement authorities, and accrediting agencies receive the names of licensees disciplined.~~

Authority G.S. 90-24(8); 90C-32; 90C-24(a)(3).

21 NCAC 65 .1002 INVESTIGATIONS

(a) After accepting a report or complaint as referenced in Rule .1001, the Board shall require information from the licensee regarding any disciplinary action taken by an employer or any sanctions issued to the licensee by a credentialing board or by a professional association.

(b) The individual being reported shall submit the Board's Incident Form located on the Board's website www.ncbrtl.org located under the headings of Documents or Complaints:

- (1) the name of individuals (clients to be de-identified) present at the time of the incident;
- (2) a description of the alleged behavior or incident;
- (3) the individual's supervisor's name, mailing address, email address and phone number;
- (4) the copies of any written notes, or de-identified client records involved;
- (5) the date and time of the incident; and
- (6) a summary of employing agency's action in response to the incident.

(c) The Board staff shall receive the information by mail at the Board's mailing address or by email at Board's email address, open a file and assign a case number.

(d) The Board staff shall request information from professional associations, professional review organizations, facilities in which a licensee performs professional services concerning the case.

(e) The complainant may correct the incomplete complaint and resubmit to the Board.

(f) A confidential report of each investigation shall be prepared for the Board's review.

Authority G.S. 90C-24(a)(3); 90-24(8); 90C-32.

21 NCAC 65 .1003 LETTER OF NOTIFICATION

If the Board receives information that an individual may be practicing recreational therapy without a license, the Board shall issue a Letter of Notification. The Board shall inform the individual in writing that his or her practice may be considered within the recreational therapy scope of practice and they could be found in violation if he or she continues to practice recreational therapy without a license. The Board shall refer the individual to Chapter 90C, this Chapter and the NCBRTL Employment Form.

Authority G.S. 90C-22(2); 90C-32(6).

21 NCAC 65 .1004 UNAUTHORIZED PRACTICE

(a) Except as otherwise authorized in Section 34 of this Chapter non-licensed individuals shall not:

- (1) Practice, attempt to practice, supervise recreational therapy, or hold out any individual as being able to do any of these things in this State, without first having obtained a license or authorization from the Board for the individual performing services or being so held out;
- (2) Use in connection with any individual's name any letters, words, codes, or insignia indicating or implying that the individual is a recreational therapist or recreational therapy assistant, unless the individual is licensed or authorized in accordance with this Chapter;
- (3) Practice or attempt to practice recreational therapy as defined in Section 22 of Chapter 90C and referenced in the ATRA Standards of

Practice with a revoked, lapsed, or suspended license; or

- (4) Aid, abet, or assist any unlicensed individual to practice recreational therapy in violation of this Article;

(b) To determine whether an individual has engaged in the unauthorized practice of recreational therapy, the Board shall request the individual complete a NCBRTL Employment Form listing the duties performed by the individual being investigated.

(c) To the extent permitted by law, any individual found by the Board to be engaged in the unauthorized practice of recreational therapy shall be subject to the sanctions set forth in Rule .1003 of this Chapter.

Authority G.S. 90C-22(2); 90-24(a)(8); 90-32, 90C-32, 90C-36; 90C-37.

21 NCAC 65 .1005 SANCTIONS

(a) Upon the Board's determination that an applicant or licensee (if the licensee has not entered into a corrective action plan) and has violated the rules set forth in this Chapter with a Compliance or Practice Violation or engaged in any conduct set forth in G.S. Chapter 90C, the Board may impose one or more of the following disciplinary sanctions:

- (1) Denial of Application;
- (2) Letter of Reprimand;
- (3) Required Remedial Education;
- (4) Restriction by Probation;
- (5) Suspension of License;
- (6) Revocation of License; or
- (7) Request for Injunction.

(b) When it has been determined a violation has occurred, on a case by case basis, the Board may also impose restrictions and conditions on a licensee's practice including:

- (1) restriction on licensee's scope of practice;
- (2) direct supervision of licensee's practice;
- (3) requiring licensee to submit quarterly reports for a designated amount of time to the Board; or
- (4) requiring licensee to complete additional educational coursework.

(c) Information regarding disciplinary sanctions for any licensee shall be available on the Board's website, www.ncbrtl.org. The Board shall list the following:

- (1) the name of the licensee;
- (2) the agency;
- (3) the infraction(s);
- (4) the sanction(s) imposed by the Board; and
- (5) the date(s) of imposition.

Authority G.S. 90C-24(8); 90C-32; 90-36; 90C-37.

21 NCAC 65 .1006 VIOLATIONS

(a) Following an investigation, the Board shall determine whether a Compliance Violation has occurred.

- (1) As used in this Rule a "Compliance Violation" shall mean:
 - (A) A licensee's failure to pay required fee in accordance with Rule .0501 of this

- Chapter by the due date for Maintenance and Renewal;
- (B) A licensee's failure to submit Renewal/Continuing Education requirements by the Renewal due date prescribed by the Board and in accordance with Rules .0601 and .0602 of this Chapter; or
- (C) A licensee practicing with an expired license for less than one month.
- (2) The Board shall allow a licensee that it determines has committed a Compliance Violation to enter into a "Corrective Action Plan." The Corrective Action Plan shall require the licensee to submit missing documents, a Reinstatement Application and fee if license has expired in accordance with Rule .0501 of this Chapter. Each violation shall require the licensee to attend a "NCBRTL Compliance and Ethics" training session by a date specified by the Board.
- (b) Following an investigation, the Board shall determine whether a Practice Violation has occurred.
- (1) As used in this Rule a "Practice Violation" shall mean:
- (A) Practicing Recreational Therapy without a license from the Board;
- (B) Actions by a licensee that caused a client or patient actual or potential harm;
- (C) A licensee practicing beyond the scope of practice for recreational therapy;
- (D) A licensee's failure to follow the physician's orders as prescribed for a client or patient;
- (E) A licensee's violation of the ATRA Code of Ethics in the Standards of

Practice in accordance with Rules .0203 and .0204; or

- (F) A licensee continuing to practice with an expired license for a period exceeding one month.
- (2) In the event the Board determines that a licensee or other individual has committed a Practice Violation, the Board shall issue one or more of the disciplinary sanctions set forth in Rule .1005 of this Section.

Authority G.S. 90C-32; 90C-36; 90C-37.

21 NCAC 65 .1007 HEARINGS

(a) The individual may submit a request for a hearing in the Board's office. The request must be received by the Board within 30 days of the date such individual receives notice of the Board's action or proposed action.

(b) The written request must include;

- (1) a statement of request for a hearing before the Board;
- (2) the name and address of the petitioner;
- (3) a statement of the action taken by the Board that is being challenged;
- (4) a statement of reason(s) the petitioner has been aggrieved; and
- (5) a statement of any new information that may be available.

(c) The Board shall schedule the hearing within 60 days of receipt of the request.

(d) The Board shall serve one written copy of the decision to each party in the hearing.

(e) Formal hearings must be conducted in accordance with G.S. 150B-38.

Authority G.S. 90C; 150B-38.

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: *Industrial Hemp Commission*

Rule Citation: 02 NCAC 62 .0101-.0109

Effective Date: *February 24, 2017*

Date Approved by the Rules Review Commission: *February 16, 2017*

Reason for Action: *S.L. 2016-93 gave rule-making authority to the newly created Industrial Hemp Commission to promulgate rules to implement the industrial hemp pilot project. 62 .0101 spells out the approved seeds for planting.*

CHAPTER 62 – INDUSTRIAL HEMP COMMISSION

**02 NCAC 62 .0101 APPROVED SEED FOR
PLANTING**

(a) Approved seed or transplants for cultivating industrial hemp in North Carolina shall be from one of the following:

- (1) Seed or transplants produced from seed or living plant parts that meet the criteria for Breeder, Foundation, Registered, or Certified categories as defined by the North Carolina Crop Improvement Association (NCCIA), including certification by other seed agencies recognized by NCCIA. All such seed and transplants shall include a certifying tag of varietal purity issued by NCCIA (www.nccrop.com) or another official certifying agency as defined in G.S. 106-277.2(23); or
- (2) Seed or transplants produced lawfully under an industrial hemp pilot program within the United States provided that the seed or transplants have accompanying documentation of:
 - (A) Being produced by a licensed grower within the state of production; and
 - (B) Have accompanying documentation that the crop from which the seed or transplants were harvested had a THC analysis of 0.3% or less by dry weight.

(b) Growers or other organizations in North Carolina may produce seed or transplants for distribution or sale for cultivation, if the source is Subparagraph (a)(1) of this Rule, in subsequent years only if it is overseen by NCCIA and certified by NCCIA to be true to type under American Organization of Seed Certifying Associations (AOSCA) guidelines. No other seed or transplants

may be produced in North Carolina for distribution or sale in North Carolina.

(c) All seed or transplants produced in North Carolina for distribution or sale in North Carolina to be utilized for cultivation of industrial hemp shall include a certifying tag of varietal purity issued by NCCIA or another official certifying agency as defined in G.S. 106-277.2(23).

(d) A business entity, including an agricultural co-operative enterprise ("co-op") or other farm aggregator ("aggregator") who contracts with one or more permitted growers, may, upon registering with the Commission, obtaining any required permitting from the United States Drug Enforcement Agency, and pursuant to Federal and State law, obtain bulk quantities of seed or transplants approved under this Rule for distribution to permitted growers. A permitted grower may own and plant seed or transplants obtained from such registered co-ops or aggregators, who shall document quantities delivered to each named grower within 10 days of delivery.

*History Note: G.S. 106-568.53;
Temporary Adoption Eff. February 24, 2017.*

02 NCAC 62 .0102 CONTROL OF VOLUNTEERS

(a) Volunteers, or feral plants, from a previous years' planting ~~must~~ shall be monitored and destroyed immediately as soon as it is discovered for three years after cultivation.

(b) It shall be the responsibility of the license holder to monitor and destroy volunteers.

(c) The responsibilities of the license holder in this ~~provision~~ Rule may be transferred to another entity by mutual written agreement ~~in writing~~ with both parties' signatures.

*History Note: G.S. 106-568.53;
Temporary Adoption Eff. February 24, 2017.*

02 NCAC 62 .0103 SAMPLING OF THC LEVEL

(a) All plantings of industrial hemp ~~are~~ shall be subject to sampling for THC levels. Licensees to cultivate industrial hemp under these Rules are subject to sampling and analysis of THC levels at any time by the North Carolina Department of Agriculture and Consumer Services' Plant Industry Division or law enforcement agencies. The Division or law enforcement agency collecting the sample shall notify the license holder at the time the sample is collected.

(b) License holders are responsible for notifying the Division at the time of initiation of floral buds.

(c) The Division shall sample all fields, or greenhouses, prior to harvest, if practicable, or randomly and based on perceived risk at the discretion of the Division. ~~harvest, or randomly, based upon the availability of Division personnel. The sampling unit shall be defined as a distinct field, greenhouse, or variety planted within a field or greenhouse, whichever is smaller.~~

~~(d) When industrial hemp is sampled for THC levels, the sampling method shall be per guidelines adopted by the Division for collecting regulatory samples of industrial hemp.~~

~~(e)(d)~~ Representatives of the Division collecting or transporting the samples shall have the legal right to possess industrial hemp in North Carolina for purposes of collecting the sample and transporting the sample to a laboratory for analysis. The laboratory performing the analysis shall have the legal right to possess industrial hemp, perform the analysis, and retain a portion of the sample.

~~(f) The laboratory performing the analysis for THC levels shall handle the sample in a manner consistent with established regulatory protocols for maintaining the sample and reporting the results.~~

~~(g)(e)~~ The license holder shall be responsible for the cost of all laboratory analytical services of the sample, billable to the license holder by the laboratory performing the analysis.

*History Note: G.S. 106-568.53(8)(a);
Temporary Adoption Eff. February 24, 2017.*

02 NCAC 62 .0104 REPORTING OF SAMPLING

(a) As soon as it is available, the laboratory shall submit the results of the THC analysis ~~shall be reported~~ to the North Carolina Department of Agriculture and Consumer Services' Plant Industry Division and the holder of the license.

(b) Samples with a THC level equal to or below 0.3% THC shall require no further action and the area or harvested plant material from which the sample was obtained shall be released for marketing or further processing.

(c) Samples with a THC level greater than 0.3% THC shall be reported by the Division to the Industrial Hemp Commission and the licensee. The license holder may request a re-test of the sample. If no re-test is requested, or the re-tested sample is greater than 0.3% THC, the area represented by the sample, or any harvested plant parts from the area represented by the sample shall be subject to the following disposition:

- (1) Industrial hemp stalks may be harvested, ~~processed~~ processed, and used for fiber ~~and/or~~ or any other lawful purpose; ~~or~~ and
- (2) Industrial hemp seed may be harvested, processed, and rendered non-viable for food products, provided the source of the seed or transplants is seed or a ~~transplants~~ transplant produced from seed or a living plant part ~~which~~ that meets the criteria for Breeder, Foundation, Registered, or Certified categories as defined by the North Carolina Crop Improvement Association (NCCIA), including certification by other seed agencies recognized by NCCIA, and include a certifying tag of varietal purity issued by NCCIA or another official certifying agency as defined in NCGS G.S. 106-277.2(23).

(d) If industrial hemp plant parts are harvested from a field, greenhouse, or a variety within a field or greenhouse, and are co-mingled with plant parts from another field, greenhouse, or variety within a field or greenhouse, prior to having knowledge of the results of the sample, the license holder does so at his or her

own risk and with full knowledge that if an analysis of greater than 0.3% THC is returned, all co-mingled plant parts shall be destroyed.

(e) No plants parts harvested from a planting being tested shall be marketed until released by the ~~division~~. Division.

*History Note: G.S. 106-568.53(1)(8); 106-568.53A;
Temporary Adoption Eff. February 24, 2017.*

02 NCAC 62 .0105 LICENSES

(a) A license to cultivate industrial hemp in North Carolina issued by the Industrial Hemp Commission shall allow the license holder to obtain seed pursuant to these Rules for planting, possess seed for planting, cultivate the crop, harvest plant parts, possess and store harvested plant parts, and transport plant parts to a market for sale.

(b) Two types of licenses shall be issued by the Commission for cultivation of industrial hemp in North Carolina:

- (1) Research Only – for a university or government agency to cultivate industrial hemp for purposes of research only, with no intention to market the final product; and
- (2) Research with Intent to Market – for a university, government agency, or private entity working with a university to cultivate industrial hemp with intent to market a final product.

(c) Applications for cultivation of industrial hemp in North Carolina may be made at any time during the year.

(d) Applications shall be handled and processed by the North Carolina Department of Agriculture and Consumer Services' Plant Industry Division and reviewed for approval or denial at the next scheduled meeting of the Industrial Hemp Commission.

(e) Licenses may be applied for and issued for one or three years and shall be valid for twelve or 36 months after the date of issue, whichever is applicable.

(f) Failure to comply with any of these Rules or the provisions of G.S. 406-568.53(A) 106-568.53A shall result in an automatic revocation of the license for the ~~full~~ remaining period of the license.

(g) An analytical testing of THC levels greater than 0.3% shall not result in revocation of a license so long as the crop is destroyed in accordance with these ~~rules~~. Rules.

*History Note: G.S. 106-568.53(2);
Temporary Adoption Eff. February 24, 2017.*

02 NCAC 62 .0106 FEES

(a) This ~~section~~ Rule applies only to the license type "Research with Intent to Market". Market."

(b) There shall be an initial fee for first time license holders. The graduated fee shall be two hundred fifty dollars (\$250.00) for up to and including 49 acres and five hundred dollars (\$500.00) for 50 acres or more.

(c) If a license is issued for one year, an annual fee of two hundred fifty dollars (\$250.00) plus two dollars (\$2.00) per acre, or two dollars (\$2.00) per 1,000 square feet of greenhouse, whichever is applicable, shall be assessed.

- (d) If a license is issued for three years, the same fee schedule will apply as set forth in Paragraph (c) of this Rule. The annual fee assessed each licensee shall be based on a revised reporting of intended acreage or greenhouse space for industrial hemp in each year. It shall be the responsibility of the license holder to report to the ~~division~~ Division each year the intended area to be cultivated.
- (e) Fees paid for a license are not refundable once the licensee takes possession of seed or transplants or if the license is revoked for any cause over the duration of the license.
- (f) The initial and annual fees are due annually within 30 days of the date of the issuance of the license or before the licensee takes ~~possession~~ possession of the seed or transplants, whichever is earlier.
- (g) The license holder shall be responsible for the cost of all laboratory analytical services.

*History Note: G.S. 106-568.53(3);
Temporary Adoption Eff. Pending Consultation pursuant to G.S. 12-3.1.*

02 NCAC 62 .0107 APPLICATION FOR LICENSES

(a) Growers in North Carolina who wish to cultivate industrial hemp shall submit to the Industrial Hemp Commission an application for a license to do so. The application shall include the following information for consideration by the ~~commission~~ Commission:

- (1) Type of License as set forth in Rule .0105 of this Section;
- (2) Name, address, and business name and address, if applicable, of the applicant, updated annually, ~~or~~ and as needed;
- (3) ~~Duration~~ Desired duration of License (one or three years);
- (4) Intended location(s) of planting, including address, GPS coordinates, and acreage, or square feet of greenhouse space;
- (5) Intended variety name, origin, and seed or plant certifying agency for each planting. This information must conform to Rule .0101 of this Section;
- (6) Intended marketable portion of the plant (seed, fiber, hurd, cannabinoids, not including THC, or certified planting seed or propagule as set forth in Rule .0101 of this Section);
- (7) Intended market, and intended purchaser's name and address if license is of the type "Research with Intent to Market";
- (8) Written statement of the research objective and data or observations to be collected and reported to North Carolina State University (NC State) or North Carolina A&T State University (NCA&T). The research objective ~~[must]~~ shall conform to the authorized research purposes set forth in G.S. 106-568.55. The written statement in this ~~[section]~~ Part constitutes a written agreement between the license holder and NC ~~[STATE]~~ State or NCA&T;

- (9) Evidence of income from a farming operation. At least one of the following from the previous year must be included and show income from crop or animal production for the applicant:
 - (A) For individual filers, Schedule F of the Form 1040, U.S. Individual Income Tax Return;
 - (B) For S corporation filers, Page 1 and Schedule B, of the Form 1120S, U.S. Income Tax Return for S Corporation;
 - (C) For C corporation filers, Page 1 and Schedule K, of the form 1120, U.S. Corporation Income Tax Return; or
 - (D) For partnership filers, Page 1 of the Form 1065, U.S. Return of Partnership Income and Schedule F of the Form 1040, U.S. Individual Income Tax Return.
 - (10) Intended storage location (expressed in GPS coordinates) for harvested plant parts;
 - (11) Agreement to provide access to the North Carolina Department of Agriculture and Consumer Services' Plant Industry Division and law enforcement agencies at any time for sampling in the field or storage;
 - (12) Agreement to ensure the monitoring and destruction of volunteers for three years following cultivation regardless of land lease or ownership status during that period;
 - (13) Agreement to maintain all records, including ~~but not limited to~~ those for agronomics, contracts, sampling, storage, expenses, transportation and delivery, and income, while the license is valid and for three years thereafter;
 - (14) Agreement to notify the ~~division~~ Division and the ~~commission~~ Commission if there are any changes or deviations from the intentions stated in the license within one month of a known change or deviation; and
 - (15) Agreement to notify the ~~division~~ Division if there are any changes to the license holder's address within one month of a change for the duration of the license.
- (b) Applicants shall disclose the date and location of any conviction of any criminal offense (other than misdemeanor traffic offenses) committed in any jurisdiction. Failure to comply with this requirement ~~in a complete and truthful manner~~ shall be grounds for denial, suspension, or revocation of a permit, as may be determined by the Industrial Hemp Commission.
- (c) The following applicants shall not be granted a permit:
- (1) Any applicants with any felony conviction in the prior ten years or; or
 - (2) Any drug-related or controlled substance felony conviction at any time.

*History Note: G.S. 106-568.53(a)(2); 106-568.53A;
Temporary Adoption Eff. February 24, 2017.*

02 NCAC 62 .0108 REPORTING REQUIREMENTS

(a) License holders shall ~~report~~, report annually and at the time of the license ~~expiration~~, expiration to the Industrial Hemp Commission, the following information:

- (1) Acreage, or greenhouse space planted, harvested, and varieties grown;
- (2) Weight and type of plant part marketed, purchaser, and research information provided to NC State or NC A&T; and
- (3) Current industrial hemp plant parts in storage and location of storage.

(b) License holders shall report annually to NC State or NC A&T data or observations to be collected and reported in provided forms or templates from the cultivation of industrial hemp as stated on the license application set forth in Rule .0107 of this Section.

(c) Processors of industrial hemp in North Carolina shall register with the ~~commission~~ Commission and at the end of each calendar year report the total weight and type of industrial hemp processed

from the North Carolina Industrial Hemp pilot program to the Industrial Hemp Commission.

*History Note: G.S. 106-568.53A;
Temporary Adoption Eff. February 24, 2017.*

02 NCAC 62 .0109 ADOPTION BY REFERENCE

The North Carolina Industrial Hemp Commission adopts by reference Section 7606 of the Agricultural Act of 2014 (Public Law 113-79) and all subsequent ~~amendments~~, amendments and editions. The Act may be accessed at no charge at <https://www.gpo.gov/fdsys/pkg/PLAW-113publ79/pdf/PLAW-113publ79.pdf>.

*History Note: G.S. 106-568.53(8);
Temporary Adoption Eff. February 24, 2017.*

This Section contains information for the meeting of the Rules Review Commission February 16, 2017 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

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

March 16, 2017	April 20, 2017
May 18, 2017	June 15, 2017

**RULES REVIEW COMMISSION MEETING
MINUTES****February 16, 2017**

The Rules Review Commission met on Thursday, February 16, 2017, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Bobby Bryan, Jeanette Doran, Garth Dunklin, Jeff Hyde, Jeff Poley, Paul Powell, and Stephanie Simpson.

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

The meeting was called to order at 9:59 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 January 19, 2017 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS**Commission for Mental Health, Developmental Disabilities and Substance Abuse Services**

10A NCAC 27G .6702; 27H .0201, .0202, .0203, .0204, .0205, .0206, and .0207 - The review of these Rules will occur at the March meeting in accordance with G.S. 150B-21.10. No action was required by the Commission.

Social Services Commission

10A NCAC 70A .0103; 70B .0102; 70M .0402, .0603; 70P .0101, .0102, .0103, .0104, and .0105 – The rewritten rules were unanimously approved.

Department of Insurance

11 NCAC 05A .0105, .0201, .0301, .0501, .0505, .0508, .0511, .0603, .0703 and .0704 - There has been no response by the agency on these Rules pursuant to G.S. 150B-21.12. No action was required by the Commission.

Manufactured Housing Board

11 NCAC 08 .0904 – The agency is addressing the objection from the November meeting. No action was required by the Commission.

State Human Resources Commission

25 NCAC 01C .0402, .1004; 01D .0101, .0102, .0105, .0112, .0114, .0201, .0301, .0401, .0608, .0901, .1001, .2701, .2702; and 01O .0108 - The review of these Rules will occur at the March meeting in accordance with G.S. 150B-21.10. No action was required by the Commission.

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

LOG OF FILINGS (PERMANENT RULES)**Board of Agriculture**

The rules were unanimously approved with the following exceptions:

02 NCAC 09C .0507, .0703; 09G .2005, .2008; 09J .0101, .0102; 09K .0101, .0103, .0105, .0106, .0107, .0108, .0109, .0113, .0114, .0203, .0204, .0205, .0206, .0207, .0208, .0209, .0210, .0211, .0212, .0213, .0214; 09O .0101 and .0107 – 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 of review in order to allow the agency additional time to make technical changes.

The agency requested an extension of the schedule for readoption until August 31, 2017 for Rule 02 NCAC 09G .0210.

The extension request was approved, with Commissioners Doran, Dunklin, and Hyde voting against.

The Commission rescheduled the date of readoption for 02 NCAC 09G .0210. The agency will readopt this Rule no later than August 31, 2017 pursuant to G.S. 150B-21.3A(d)(2).

Christina Waggett, the rulemaking coordinator with the agency, addressed the Commission.

Historical Commission and Department of Natural Cultural Resources

All rules were unanimously approved.

Radiation Protection Commission

All rules were unanimously approved.

Department of Labor

All rules were unanimously approved.

Environmental Management Commission

15A NCAC 02L .0507 was unanimously approved.

Department of Revenue

All rules were unanimously approved.

Pursuant to SL 2016-94, s. 38.4(b), the approved rules will not be effective unless and until the General Assembly directs the Codifier to enter the rules into the Code.

Medical Board

All rules were unanimously approved.

Midwifery Joint Committee

All rules were unanimously approved.

Board of Nursing

All rules were unanimously approved.

Board of Pharmacy

21 NCAC 46 .2201 was unanimously approved.

Veterinary Medical Board

21 NCAC 66 .0106 was unanimously approved.

Building Code Council

All rules were unanimously approved.

LOG OF RULES (TEMPORARY RULES)

Industrial Hemp Commission

The Commission granted a waiver of the 210-day submission requirement upon the request of the agency.

All rules were unanimously approved.

John Lanier, General Counsel with the Department of Agriculture, addressed the Commission.

EXISTING RULES REVIEW

Department of Health and Human Services

10A NCAC 01 - The Commission unanimously approved the report as submitted by the agency.

Department of Environmental Quality

15A NCAC 01D - The Commission unanimously approved the report as submitted by the agency.

Department of Environmental Quality

15A NCAC 01E - The Commission unanimously approved the report as submitted by the agency.

HHS/Division of Health Service Regulation

10A NCAC 14F - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than August 31, 2018 pursuant to G.S. 150B-21.3A(d)(2).

Commission for Public Health

10A NCAC 43G - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than September 30, 2017 pursuant to G.S. 150B-21.3A(d)(2).

Department of Commerce

The agency requested a waiver of 26 NCAC 05 .0211 for the report for 04 NCAC 22.

The waiver request was unanimously approved. The Commission rescheduled the date of review for the report, and amended 26 NCAC 05 .0211. The Commission will review the agency's report at its August 24, 2017 meeting.

Prior to the review of the report from the Department of Commerce, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the reports because she is an employee of the Department of Employment Security under the Department of Commerce.

Tryon Palace Commission

The agency requested an extension of the filing deadline pursuant to 26 NCAC 05 .0204 for the report 07 NCAC 06.

The Commission unanimously approved the request.

Board of Funeral Service

The agency requested a waiver of 26 NCAC 05 .0211 for the report for 21 NCAC 34.

The waiver request was unanimously approved. The Commission rescheduled the date of review for the report, and amended 26 NCAC 05 .0211. The Commission will review the agency's report at its June 15, 2017 meeting.

COMMISSION BUSINESS

The Commission amended Rule 26 NCAC 05 .0211 to reflect changes in the periodic review schedule.

Commissioners Bryan and Currin were appointed to review the OAH rules coming before the Commission at the March meeting.

The Chair discussed the status of Senate Bill 16.

The meeting adjourned at 10:55 a.m.

The next regularly scheduled meeting of the Commission is Thursday, March 16th 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

February 16, 2017

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Scott Bullock	DWM/UST
Linda L. Smith	"
BARRY GUPTON	NC DOI/NCBCC
LINDA BURHAM'S	NC BON
Nadine Pfeiffer	NC DHSR
Bobby Lowery	NCBON
Jennifer Everett	DED
Curt Pinyan	NCBOP
Sandy Stewart	NCDA
Shawn Middlebrooks	DNCR
Brian Puckett	NCORR
Christina Cress	NCBFS
James Albright	NC HAS/DHSR/Reg. Protection
Chandra Graves	NCBON
Angela Ellis	NCBON
Meredith Davis	NCBON
Jane Gilchrist	NC DOL
Carla Rose	NC DOL
Chrissy Waggett	NCDA 3CS
Jon Lanier	NCDA 3CS
Lori Pfister	NCDA FSD

Rules Review Commission
Meeting
Please Print Legibly

[illegible]



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

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

February 16, 2017

Nadine Pfeiffer, Rulemaking Coordinator
Department of Health and Human Services
Division of Health Service Regulation
2701 Mail Service Center
Raleigh, North Carolina 27699-2701

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 10A NCAC 14F

Dear Ms. Pfeiffer:

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 February 16, 2017 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 August 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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fax: 919/431-3100

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

Judges and
Assistants
919/431-3000
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Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
November 17, 2016
APO Review: December 06, 2016**

**HHS - Health Service Regulation, Division of
Total: 6**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>10A NCAC 14F .1203</u>	Necessary with substantive public interest
<u>10A NCAC 14F .1301</u>	Necessary with substantive public interest
<u>10A NCAC 14F .1802</u>	Necessary with substantive public interest
<u>10A NCAC 14F .1901</u>	Necessary with substantive public interest
<u>10A NCAC 14F .1903</u>	Necessary with substantive public interest
<u>10A NCAC 14F .2101</u>	Necessary with substantive public interest



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
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Raleigh, NC 27699-6714

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

February 16, 2017

Chris Hoke, Rulemaking Coordinator
Department of Health and Human Services
Commission for Public Health
1931 Mail Service Center
Raleigh, North Carolina 27699-1931

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 10A NCAC 43G

Dear Mr. Hoke:

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 February 16, 2017 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 September 30, 2017.

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

Sincerely,

A handwritten signature in cursive script, reading "Abigail M. Hammond".

Abigail M. Hammond
Commission Counsel

cc: Bob Martin

Administration
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Division
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fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
October 20, 2016
APO Review: December 06, 2016
Public Health, Commission for
Total: 3**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>10A NCAC 43G .0108</u>	Necessary with substantive public interest
<u>10A NCAC 43G .0110</u>	Necessary with substantive public interest
<u>10A NCAC 43G .0111</u>	Necessary with substantive public interest

**LIST OF APPROVED PERMANENT RULES
February 16, 2017 Meeting**

AGRICULTURE, BOARD OF

<u>General: Current Good Manufacturing Practices</u>	02	NCAC 09C .0501
<u>Definitions</u>	02	NCAC 09C .0502
<u>Plants and Grounds</u>	02	NCAC 09C .0503
<u>Sanitary Facilities</u>	02	NCAC 09C .0504
<u>Sanitary Operations</u>	02	NCAC 09C .0505
<u>Equipment and Procedures</u>	02	NCAC 09C .0506
<u>Commingling of Shell and Egg Prohibited</u>	02	NCAC 09C .0601
<u>Scope</u>	02	NCAC 09C .0701
<u>Definitions</u>	02	NCAC 09C .0702
<u>Terms Used In Reference to Commercial Feeds</u>	02	NCAC 09E .0102
<u>Commodities Declared Exempt</u>	02	NCAC 09E .0103
<u>Adoption by Reference</u>	02	NCAC 09G .0101
<u>General - Adoption by Reference</u>	02	NCAC 09G .2001
<u>Modifications of the Adoption by Reference</u>	02	NCAC 09G .2002
<u>Definitions</u>	02	NCAC 09G .2003
<u>Permits Required</u>	02	NCAC 09G .2004
<u>Permit Suspension and Revocation</u>	02	NCAC 09G .2006
<u>Enforcement and Penalties</u>	02	NCAC 09G .2007
<u>Unavoidable Defect Levels for Cornmeal and Flour Samples</u>	02	NCAC 09H .0109
<u>General Sampling Procedures</u>	02	NCAC 09K .0102
<u>Place of Testing</u>	02	NCAC 09K .0104
<u>Sampling Cream</u>	02	NCAC 09K .0112
<u>Specific Requirements</u>	02	NCAC 09K .0201
<u>Definitions</u>	02	NCAC 09K .0202
<u>Loose Egg Displays</u>	02	NCAC 09O .0102
<u>Standards for Shell Eggs</u>	02	NCAC 09O .0103
<u>Sanitation and Materials</u>	02	NCAC 09O .0104
<u>Sale of Inedible or Loss Eggs to Consumer Prohibited</u>	02	NCAC 09O .0105
<u>Determining Grades</u>	02	NCAC 09O .0106
<u>Adoption by Reference</u>	02	NCAC 38 .0201
<u>Weighing and Measuring Devices</u>	02	NCAC 38 .0202
<u>Adoption by Reference</u>	02	NCAC 38 .0301
<u>Adoption by Reference</u>	02	NCAC 38 .0401
<u>Retail Motor Fuel Dispensers/Half-Pricing</u>	02	NCAC 38 .0601
<u>Price Posting/Cash Discounts for Retail Motor Fuel Sales</u>	02	NCAC 38 .0604
<u>Adoption by Reference</u>	02	NCAC 38 .0701

HISTORICAL COMMISSION/DEPARTMENT OF NATURAL AND CULTURAL RESOURCES

<u>Statement of Purpose</u>	07	NCAC 04R .0101
<u>Purpose</u>	07	NCAC 04R .0201
<u>Definitions</u>	07	NCAC 04R .0202

<u>Submissions for Review</u>	07 NCAC 04R .0203
<u>Underwater Archaeological Review</u>	07 NCAC 04R .0204
<u>Architectural Review</u>	07 NCAC 04R .0205
<u>Procedures for State Undertakings Affecting a National Re...</u>	07 NCAC 04R .0206
<u>National Register Advisory Committee</u>	07 NCAC 04R .0301
<u>Public Suggestions for National Register</u>	07 NCAC 04R .0302
<u>Nomination Procedures</u>	07 NCAC 04R .0303
<u>Review and Processing</u>	07 NCAC 04R .0304
<u>National Register Nomination Priorities</u>	07 NCAC 04R .0305
<u>Review of Commission Reports</u>	07 NCAC 04R .0501
<u>Review of Appeals</u>	07 NCAC 04R .0502
<u>Certificates of Appropriateness</u>	07 NCAC 04R .0503
<u>Adequate Information</u>	07 NCAC 04R .0504
<u>Statement of Purpose</u>	07 NCAC 04R .0601
<u>General Application Process; Criteria for Designation</u>	07 NCAC 04R .0602
<u>Criteria for Designation</u>	07 NCAC 04R .0603
<u>Designating Buildings as Historic for Building Code Purposes</u>	07 NCAC 04R .0604
<u>Documentation Required</u>	07 NCAC 04R .0605
<u>Appeals Procedure</u>	07 NCAC 04R .0606
<u>Operating Hours</u>	07 NCAC 04R .0801
<u>Disposition of Artifacts; Loans</u>	07 NCAC 04R .0802
<u>Curation of Archaeological Collections</u>	07 NCAC 04R .0803
<u>Deaccessions</u>	07 NCAC 04R .0804
<u>Access to Archaeological Collections</u>	07 NCAC 04R .0805
<u>Archaeological Site Files</u>	07 NCAC 04R .0806
<u>Public Access to Excavations</u>	07 NCAC 04R .0807
<u>Archaeological Survey and Evaluation Report Guidelines</u>	07 NCAC 04R .0808
<u>Definitions</u>	07 NCAC 04R .1002
<u>Department Authorized to Grant Permits and Licenses</u>	07 NCAC 04R .1003
<u>Exceptions</u>	07 NCAC 04R .1004
<u>Permit for Exploration: Recovery or Salvage</u>	07 NCAC 04R .1005
<u>Terms and Conditions of Permits</u>	07 NCAC 04R .1006
<u>Appeals Relating to Permits</u>	07 NCAC 04R .1007
<u>Ownership and Division of Recovered Items</u>	07 NCAC 04R .1008
<u>Protected Areas</u>	07 NCAC 04R .1009
<u>Special Areas for Sport and Hobby Operations</u>	07 NCAC 04R .1010
<u>Reporting Requirements</u>	07 NCAC 04R .1011
<u>Report Review</u>	07 NCAC 04R .1012
<u>Termination of Permit</u>	07 NCAC 04R .1013
<u>Operating Hours</u>	07 NCAC 04R .1501
<u>Historic Structure Site Files and Maps</u>	07 NCAC 04R .1502
<u>Visitation Policy</u>	07 NCAC 04R .1503
<u>Definitions</u>	07 NCAC 04R .1601
<u>Archaeological Investigations on State Lands</u>	07 NCAC 04R .1602
<u>Applications for Archaeological Permits</u>	07 NCAC 04R .1603
<u>Requirements for Issuance of Permits</u>	07 NCAC 04R .1604
<u>Duration, Extension, and Renewal of Permits</u>	07 NCAC 04R .1605

<u>Terms and Conditions of Permits</u>	07 NCAC 04R .1606
<u>Permit Denial, Suspension, Revocation</u>	07 NCAC 04R .1607
<u>Emergency Archaeological Investigations</u>	07 NCAC 04R .1609
<u>Reporting Requirements for General Permits; Review</u>	07 NCAC 04R .1611
<u>Reporting Requirements for Specific Reports; Review</u>	07 NCAC 04R .1612
<u>Custody of Resources Under Terms of Permits</u>	07 NCAC 04R .1613
<u>Criteria</u>	07 NCAC 04T .0104

RADIATION PROTECTION COMMISSION

<u>Exemptions for Source Material</u>	10A NCAC 15 .0302
<u>Exempt Quantities: Other than Source Material</u>	10A NCAC 15 .0304
<u>Exempt Item Containing Other than Source Material</u>	10A NCAC 15 .0305
<u>General Licenses: Source Material</u>	10A NCAC 15 .0307
<u>General Licenses: Other than Source Material</u>	10A NCAC 15 .0308
<u>General Licenses: Measuring Gauging: Controlling Devices</u>	10A NCAC 15 .0309
<u>General Licenses: Manufacture, Transfer, Install, General...</u>	10A NCAC 15 .0310
<u>General Licenses: Transportation</u>	10A NCAC 15 .0316
<u>Specific Licenses: Filing Application and General Require...</u>	10A NCAC 15 .0317
<u>Specific Licenses: Exempt Gas and Aerosol Detectors</u>	10A NCAC 15 .0327
<u>Specific Licenses: Manufacture Devices to Persons Licensed</u>	10A NCAC 15 .0328
<u>Specific Licenses: Luminous Safety Devices in Aircraft</u>	10A NCAC 15 .0329
<u>Specific Licenses: Manufacture of Calibration Sources</u>	10A NCAC 15 .0330
<u>Specific Licenses - Manufacture of In Vitro Test Kits</u>	10A NCAC 15 .0331
<u>Specific Licenses: Manufacture of Ice Detection Devices</u>	10A NCAC 15 .0332
<u>Specific Licenses: Products Containing Depleted Uranium</u>	10A NCAC 15 .0335
<u>Issuance of Specific Licenses and Sealed Source and Devic...</u>	10A NCAC 15 .0337
<u>Specific Terms and Conditions of Licenses</u>	10A NCAC 15 .0338
<u>Transfer of Material</u>	10A NCAC 15 .0343
<u>Modification Revocation: and Termination of Licenses and ...</u>	10A NCAC 15 .0344
<u>Financial Assurance and Record-Keeping for Decommissioning</u>	10A NCAC 15 .0353
<u>Methods of Financial Assurance for Decommissioning</u>	10A NCAC 15 .0354
<u>Financial Tests: Self-And Parent Co. Guarantees: Decommis...</u>	10A NCAC 15 .0355
<u>Reporting Requirements</u>	10A NCAC 15 .0357
<u>Measurements/Dosages of Unsealed Radioactive Material for...</u>	10A NCAC 15 .0359
<u>Performance Requirements for Radiography Equipment</u>	10A NCAC 15 .0521
<u>Notifications and Reports to Individuals</u>	10A NCAC 15 .1004
<u>Surveys</u>	10A NCAC 15 .1613
<u>Reports of Theft or Loss of Licensed Radioactive Material</u>	10A NCAC 15 .1645
<u>Radiological Requirements for License Termination</u>	10A NCAC 15 .1653

SOCIAL SERVICES COMMISSION

<u>Reports of Neglect, Abuse or Dependency</u>	10A NCAC 70A .0103
<u>Eligibility</u>	10A NCAC 70B .0102
<u>Eligibility Requirements for Regular Monthly Cash Assista...</u>	10A NCAC 70M .0402
<u>Requirements</u>	10A NCAC 70M .0603
<u>Scope</u>	10A NCAC 70P .0101

<u>Purpose</u>	10A NCAC 70P .0102
<u>Definitions</u>	10A NCAC 70P .0103
<u>Guardianship Assistance Program Eligibility</u>	10A NCAC 70P .0104
<u>Guardianship Assistance Program Requirements</u>	10A NCAC 70P .0105

LABOR, DEPARTMENT OF

<u>Definitions</u>	13 NCAC 13 .0101
<u>North Carolina Commission</u>	13 NCAC 13 .0203
<u>Owner-User Inspection Agency</u>	13 NCAC 13 .0205

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Reclassification of Risk Levels</u>	15A NCAC 02L .0507
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REVENUE, DEPARTMENT OF

<u>Scope</u>	17 NCAC 05G .0101
<u>Definitions</u>	17 NCAC 05G .0102
<u>Assignment of Receipts from Sales of Other than Tangible ...</u>	17 NCAC 05G .0201
<u>In General</u>	17 NCAC 05G .0301
<u>Approximation Based Upon Known Sales</u>	17 NCAC 05G .0302
<u>Related Entity Transactions</u>	17 NCAC 05G .0303
<u>Allocated Gross Receipts</u>	17 NCAC 05G .0401
<u>Unassignable Gross Receipts</u>	17 NCAC 05G .0402
<u>Alternative Apportionment</u>	17 NCAC 05G .0501
<u>Original Returns</u>	17 NCAC 05G .0502
<u>Secretary's Authority to Adjust a Taxpayer's Return</u>	17 NCAC 05G .0503
<u>Taxpayer Authority to Change a Method of Assignment on a ...</u>	17 NCAC 05G .0504
<u>Secretary Authority to Change a Method of Assignment on a ...</u>	17 NCAC 05G .0505
<u>Examples</u>	17 NCAC 05G .0601
<u>In General</u>	17 NCAC 05G .0701
<u>In General</u>	17 NCAC 05G .0801
<u>Assignment of Receipts from Sale of In-Person Services</u>	17 NCAC 05G .0802
<u>Reasonable Approximation</u>	17 NCAC 05G .0803
<u>In General</u>	17 NCAC 05G .0901
<u>Assignment of Receipts from Sales of Services Delivered t...</u>	17 NCAC 05G .0902
<u>Delivery to or on Behalf of a Customer by Physical Means...</u>	17 NCAC 05G .0903
<u>Delivery to a Customer by Electronic Transmission</u>	17 NCAC 05G .0904
<u>Services Delivered Electronically Through or on Behalf of...</u>	17 NCAC 05G .0905
<u>In General</u>	17 NCAC 05G .1001
<u>Overlap with Other Categories of Services</u>	17 NCAC 05G .1002
<u>Assignment of Receipts</u>	17 NCAC 05G .1003
<u>Professional Services Other than Architectural or Enginee...</u>	17 NCAC 05G .1004
<u>Architectural or Engineering Services with Respect to Rea...</u>	17 NCAC 05G .1005
<u>Related Entity Transactions</u>	17 NCAC 05G .1006
<u>In General</u>	17 NCAC 05G .1101
<u>License of a Marketing Intangible</u>	17 NCAC 05G .1102
<u>License of a Production Intangible</u>	17 NCAC 05G .1103

<u>License of a Mixed Intangible</u>	17	NCAC 05G .1104
<u>License of Intangible Property When Substance of the Tran...</u>	17	NCAC 05G .1105
<u>Assignment of Receipts</u>	17	NCAC 05G .1201
<u>Software Transactions</u>	17	NCAC 05G .1301
<u>Sales of Licenses of Digital Goods and Services</u>	17	NCAC 05G .1302
<u>Telecommunications Companies</u>	17	NCAC 05G .1303

MEDICAL BOARD

<u>Annual Renewal</u>	21	NCAC 32M .0106
<u>Continuing Education (CE)</u>	21	NCAC 32M .0107
<u>Prescribing Authority</u>	21	NCAC 32M .0109

MIDWIFERY JOINT COMMITTEE

<u>Application</u>	21	NCAC 33 .0103
<u>Nurse Midwife Applicant Status</u>	21	NCAC 33 .0107
<u>Continuing</u>	21	NCAC 33 .0111

NURSING, BOARD OF

<u>Annual Renewal</u>	21	NCAC 36 .0806
<u>Continuing Education (CE)</u>	21	NCAC 36 .0807
<u>Prescribing Authority</u>	21	NCAC 36 .0809

PHARMACY, BOARD OF

<u>Hours: Records: Providers: Correspondence: Reciprocity</u>	21	NCAC 46 .2201
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VETERINARY MEDICAL BOARD

<u>Current Information Required by the Board</u>	21	NCAC 66 .0106
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LIST OF APPROVED TEMPORARY RULES
February 16, 2017 Meeting

INDUSTRIAL HEMP COMMISSION

<u>Approval Seed for Planting</u>	02	NCAC 62 .0101
<u>Control of Volunteers</u>	02	NCAC 62 .0102
<u>Sampling of THC Level</u>	02	NCAC 62 .0103
<u>Reporting of Sampling</u>	02	NCAC 62 .0104
<u>Licenses</u>	02	NCAC 62 .0105
<u>Fees</u>	02	NCAC 62 .0106
<u>Application for Licenses</u>	02	NCAC 62 .0107
<u>Reporting Requirements</u>	02	NCAC 62 .0108
<u>Adoption by Reference</u>	02	NCAC 62 .0109

**RRC Determination
Periodic Rule Review
February 16, 2017
Necessary with substantive public interest**

Health and Human Services, Department of	10A NCAC 01E .0206	15A NCAC 01E .0103
10A NCAC 01E .0101	10A NCAC 01E .0207	15A NCAC 01E .0104
10A NCAC 01E .0102	10A NCAC 01E .0208	15A NCAC 01E .0105
10A NCAC 01E .0103	10A NCAC 01E .0301	15A NCAC 01E .0106
10A NCAC 01E .0104	10A NCAC 01E .0302	15A NCAC 01E .0107
10A NCAC 01E .0105	10A NCAC 01E .0303	15A NCAC 01E .0108
10A NCAC 01E .0106	10A NCAC 01E .0304	15A NCAC 01E .0109
10A NCAC 01E .0107	10A NCAC 01E .0305	15A NCAC 01E .0110
10A NCAC 01E .0108	Environmental Quality, Department of	15A NCAC 01E .0111
10A NCAC 01E .0201	15A NCAC 01D .0102	15A NCAC 01E .0112
10A NCAC 01E .0202	15A NCAC 01D .0302	15A NCAC 01E .0113
10A NCAC 01E .0203	15A NCAC 01D .0303	15A NCAC 01E .0114
10A NCAC 01E .0204	15A NCAC 01E .0101	
10A NCAC 01E .0205	15A NCAC 01E .0102	

**RRC Determination
Periodic Rule Review
February 16, 2017
Necessary without substantive public interest**

Health and Human Services, Department of	10A NCAC 01A .0701	10A NCAC 01B .0304
10A NCAC 01A .0101	10A NCAC 01A .0702	10A NCAC 01B .0305
10A NCAC 01A .0102	10A NCAC 01A .0703	10A NCAC 01C .0201
10A NCAC 01A .0103	10A NCAC 01A .0801	10A NCAC 01C .0202
10A NCAC 01A .0104	10A NCAC 01A .0901	10A NCAC 01C .0203
10A NCAC 01A .0105	10A NCAC 01A .0902	10A NCAC 01C .0205
10A NCAC 01A .0106	10A NCAC 01A .1001	10A NCAC 01C .0301
10A NCAC 01A .0107	10A NCAC 01A .1002	10A NCAC 01C .0302
10A NCAC 01A .0108	10A NCAC 01A .1003	10A NCAC 01C .0303
10A NCAC 01A .0501	10A NCAC 01A .1101	10A NCAC 01C .0304
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10A NCAC 01A .0603	10A NCAC 01B .0301	10A NCAC 01G .0103
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	10A NCAC 01B .0303	

**RRC Determination
Periodic Rule Review
February 16, 2017
Unnecessary**

Health and Human Services, Department of	10A NCAC 01A .0401	10A NCAC 01C .0102
10A NCAC 01A .0201	10A NCAC 01B .0101	10A NCAC 01C .0103
10A NCAC 01A .0202	10A NCAC 01B .0102	10A NCAC 01C .0206
10A NCAC 01A .0203	10A NCAC 01B .0201	10A NCAC 01D .0101
10A NCAC 01A .0204	10A NCAC 01B .0202	10A NCAC 01D .0102
10A NCAC 01A .0301	10A NCAC 01B .0203	10A NCAC 01D .0103
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10A NCAC 01D .0106
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10A NCAC 01D .0108
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15A NCAC 01D .0201
15A NCAC 01D .0202
15A NCAC 01D .0203

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This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

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*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter Don Overby J. Randall May David Sutton	A. B. Elkins II Selina Brooks J. Randolph Ward Stacey Bawtinheimer
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