

NORTH CAROLINA REGISTER

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April 15, 2021

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PUBLISHED BY

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

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

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NORTH CAROLINA REGISTER
Publication Schedule for January 2021 – December 2021

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
35:13	01/04/21	12/08/20	01/19/21	03/05/21	03/22/21	04/15/21	05/01/21	10/01/21
35:14	01/15/21	12/21/20	01/30/21	03/16/21	03/22/21	04/15/21	05/01/21	10/12/21
35:15	02/01/21	01/08/21	02/16/21	04/05/21	04/20/21	05/20/21	06/01/21	10/29/21
35:16	02/15/21	01/25/21	03/02/21	04/16/21	04/20/21	05/20/21	06/01/21	11/12/21
35:17	03/01/21	02/08/21	03/16/21	04/30/21	05/20/21	06/17/21	07/01/21	11/26/21
35:18	03/15/21	02/22/21	03/30/21	05/14/21	05/20/21	06/17/21	07/01/21	12/10/21
35:19	04/01/21	03/11/21	04/16/21	06/01/21	06/21/21	07/15/21	08/01/21	12/27/21
35:20	04/15/21	03/24/21	04/30/21	06/14/21	06/21/21	07/15/21	08/01/21	01/10/22
35:21	05/03/21	04/12/21	05/18/21	07/02/21	07/20/21	08/19/21	09/01/21	01/28/22
35:22	05/17/21	04/26/21	06/01/21	07/16/21	07/20/21	08/19/21	09/01/21	02/11/22
35:23	06/01/21	05/10/21	06/16/21	08/02/21	08/20/21	09/16/21	10/01/21	02/26/22
35:24	06/15/21	05/24/21	06/30/21	08/16/21	08/20/21	09/16/21	10/01/21	03/12/22
36:01	07/01/21	06/10/21	07/16/21	08/30/21	09/20/21	10/21/21	11/01/21	03/28/22
36:02	07/15/21	06/23/21	07/30/21	09/13/21	09/20/21	10/21/21	11/01/21	04/11/22
36:03	08/02/21	07/12/21	08/17/21	10/01/21	10/20/21	11/18/21	12/01/21	04/29/22
36:04	08/16/21	07/26/21	08/31/21	10/15/21	10/20/21	11/18/21	12/01/21	05/13/22
36:05	09/01/21	08/11/21	09/16/21	11/01/21	11/22/21	12/16/21	01/01/22	05/29/22
36:06	09/15/21	08/24/21	09/30/21	11/15/21	11/22/21	12/16/21	01/01/22	06/12/22
36:07	10/01/21	09/10/21	10/16/21	11/30/21	12/20/21	01/20/22	02/01/22	06/28/22
36:08	10/15/21	09/24/21	10/30/21	12/14/21	12/20/21	01/20/22	02/01/22	07/12/22
36:09	11/01/21	10/11/21	11/16/21	01/03/22	01/20/22	02/17/22	03/01/22	07/29/22
36:10	11/15/21	10/22/21	11/30/21	01/14/22	01/20/22	02/17/22	03/01/22	08/12/22
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36:12	12/15/21	11/22/21	12/30/21	02/14/22	02/21/22	03/17/22	04/01/22	09/11/22

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

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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



State of North Carolina

ROY COOPER
GOVERNOR

March 18, 2021

EXECUTIVE ORDER NO. 202

DECLARATION OF A STATE OF EMERGENCY AND TEMPORARY SUSPENSION OF MOTOR VEHICLE REGULATIONS TO ENSURE RESTORATION OF UTILITY SERVICES

WHEREAS, the National Weather Service has forecast a severe weather event for the State of North Carolina with significant potential for damaging winds, tornadoes, hail and other weather-related hazards (the "Storm") which may cause significant impacts to public and private property in the State of North Carolina and may disrupt essential utility services and systems; and

WHEREAS, the impacts from the Storm may result in extensive damage including widespread power outages throughout the state, requiring the transportation of vehicles bearing equipment and supplies for utility restoration and debris removal to be moved through North Carolina on the interstate and intrastate highways; and

WHEREAS, the uninterrupted supply of electricity, fuel oil, diesel oil, gasoline, kerosene, propane, liquid petroleum gas, food, water, and medical supplies to residential and commercial establishments is essential after the Storm and interruptions in the delivery of those commodities threatens the public welfare; and

WHEREAS, the prompt restoration of utility services is essential to the safety and well-being of the state's residents; and

WHEREAS, N.C. Gen. Stat. § 166A-19.1(4) provides that it is the responsibility of the undersigned, state agencies, and local governments to "provide for cooperation and coordination of activities relating to emergency mitigation preparedness, response, and recovery among agencies and officials of this state and with similar agencies and officials of other states, with local and federal governments, with interstate organizations, and with other private and quasi-official organizations"; and

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

WHEREAS, the necessity in movement of vehicles transporting equipment and supplies to respond to the widespread power outages as a result of the severe weather and damage to the infrastructure constitutes a state of emergency for the State of North Carolina as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19); and

WHEREAS, the emergency area, as defined in N.C. Gen. Stat. §§ 166A-19.3(7) and 166A-19.20(b), is the entire State of North Carolina; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(3), the undersigned, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the

concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency which restricts the immediate relief of human suffering; and

WHEREAS, the undersigned has found that residents may suffer losses and further widespread damage within the meaning of N.C. Gen. Stat. §§ 166A-19.3(3) and 166A-19.21(b); and

WHEREAS, 49 C.F.R. § 390.23 allows the Governor of a state to suspend the rules and regulations under 49 C.F.R. Parts 390-399 for up to thirty (30) days if the Governor determines that an emergency condition exists; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.70(g), upon the recommendation of the North Carolina Commissioner of Agriculture and the existence of an imminent threat of severe economic loss of livestock, poultry or crops ready to be harvested, the Governor shall direct the North Carolina Department of Public Safety ("DPS") to temporarily suspend weighing vehicles used to transport livestock, poultry or crops ready to be harvested; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.70, the Governor may declare that the health, safety, or economic well-being of persons or property requires that the maximum hours of service for drivers prescribed by N.C. Gen. Stat. § 20-381 should be waived for (1) persons transporting essential fuels, food, water, medical supplies, feed for livestock and poultry, (2) persons transporting livestock, poultry, and crops ready to be harvested and (3) vehicles used in the restoration of utility services; and

WHEREAS, with the concurrence of the Council of State, the undersigned hereby waives the registration requirements of N.C. Gen. Stat. §§ 20-86.1 and 20-382, the fuel tax requirements of N.C. Gen. Stat. § 105-449.47, and the size and weight requirements of N.C. Gen. Stat. §§ 20-116, 20-118 and 20-119 that would apply to vehicles carrying emergency relief supplies or services or to assist with the restoration of utility services.

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

Section 1.

I hereby declare that a state of emergency, as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19), exists in the State of North Carolina due to the anticipated significant impacts from the Storm.

For purposes of this Executive Order, the emergency area is the entire State of North Carolina ("the Emergency Area").

Section 2.

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

Section 3.

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

Section 4.

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

Section 5.

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

Section 6.

DPS, in conjunction with the North Carolina Department of Transportation ("DOT"), shall waive the maximum hours of service for drivers prescribed by DPS pursuant to N.C. Gen. Stat. § 20-381.

Section 7.

DPS, in conjunction with DOT, shall waive certain size and weight restrictions and penalties arising under N.C. Gen. Stat. §§ 20-116, 20-118, and 20-119, certain registration requirements and penalties arising under N.C. Gen. Stat. §§ 20-86.1 and 20-382, and certain registration and filing requirements and penalties arising under N.C. Gen. Stat. §§ 105-449.45, 105-449.47, and 105-449.49 for vehicles transporting equipment and supplies for the restoration of utility services, and vehicles carrying essentials and equipment for any debris removal in support of emergency relief efforts in the Emergency Area.

Furthermore, pursuant to N.C. Gen. Stat. § 20-118.1, DPS shall temporarily suspend weighing vehicles used to transport livestock, poultry, or crops ready to be harvested and feed to livestock and poultry in the Emergency Area.

Section 8.

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer ("GVWR") or 90,000 pounds gross weight, whichever is less.
- b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- c. When a vehicle and vehicle combination exceed twelve (12) feet in width and the total overall vehicle combination's length exceeds seventy-five (75) feet from bumper to bumper.
- d. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having (A) a yellow banner on the front and rear that is seven (7) feet long and eighteen (18) inches wide and bears the legend "Oversized Load" in ten (10) inch black letters, 1.5 inches wide and (B) red flags measuring eighteen (18) inches square on all sides at the widest point of the load. In addition, when operating between sunset and sunrise, a certified escort shall be required for loads exceeding eight (8) feet six (6) inches in width.

Section 9.

Vehicles referenced under Sections 7 and 8 of this Executive Order shall be exempt from the following registration requirements:

- a. The requirement to obtain a temporary trip permit and payment of the associated \$50.00 fee listed in N.C. Gen. Stat. § 105-449.49.
- b. The requirement of filing a quarterly fuel tax return as the exemption in N.C. Gen. Stat. § 105-449.45(b)(1) applies.
- c. The registration requirements under N.C. Gen. Stat. §§ 20-382.1 and 20-382 concerning interstate for-hire authority are waived; however, vehicles shall maintain the required limits of insurance as required.
- d. Non-participants in North Carolina's International Registration Plan and International Fuel Tax Agreement will be permitted to enter North Carolina in accordance with the exemptions identified by this Executive Order.

Section 10.

The size and weight exemption for vehicles will be allowed on all DOT designated routes, except those routes designated as light traffic roads under N.C. Gen. Stat. § 20-118. This order shall not be in effect on bridges posted pursuant to N.C. Gen. Stat. § 136-72.

Section 11.

The waiver of regulations under Title 49 of the Code of Federal Regulations does not apply to the Commercial Drivers' License and Insurance Requirements. This waiver shall be in effect for thirty (30) days or the duration of the emergency, whichever is less.

Section 12.

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 6 through 11 of this Executive Order in a manner that does not endanger North Carolina motorists.

Section 13.

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish that their loads are being used for bearing equipment and supplies for utility restoration, debris removal, carrying essentials in commerce, in support of emergency relief efforts in the Emergency Area.

Furthermore, upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish that there are being used to transport livestock, poultry, or crops ready to be harvested and feed to livestock and poultry in the Emergency Area.

Section 14.

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

Section 15.

Pursuant to N.C. Gen. Stat. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C. Gen. Stat. §§ 75-37 and 75-38 in the Emergency Area.

Section 16.

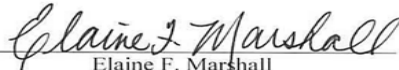
This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 18th day of March in the year of our Lord two thousand and twenty-one.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State





State of North Carolina

ROY COOPER
GOVERNOR

March 22, 2021

EXECUTIVE ORDER NO. 203

NOTICE OF TERMINATION OF EXECUTIVE ORDER NO. 202

WHEREAS, on March 18, 2021, the State of North Carolina was threatened by a potential severe weather event with chances of damaging winds, tornadoes, hail and other weather-related hazards; and

WHEREAS, Executive Order No. 202, *Declaration of a State of Emergency and Temporary Suspension of Motor Vehicle Regulations to Ensure Restoration of Utility Services*, was issued on March 18, 2021; and

WHEREAS, this emergency declaration and transportation waiver is no longer necessary.

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

Pursuant to N.C. Gen. Stat. § 166A-19.20(c) Executive Order No. 202 is hereby terminated immediately.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 22nd day of March in the year of our Lord two thousand and twenty-one.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State



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

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

Commission, please call a Commission staff attorney at 984-236-1850.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to adopt the rules cited as 02 NCAC 60B .1033-.1036, and amend the rules cited as 02 NCAC 60B .1001-.1015, .1017-.1022 and .1024-.1032.

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

Proposed Effective Date: August 1, 2021

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rule by submitting a request in writing no later than 4/30/2021 to Tina Hlabse, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.*

Reason for Proposed Action: *The proposed rule adoptions and amendments are intended to make the State Forest rules easier to read and understand by the public and easier to enforce by N.C. Forest Service. They are also intended to update the rules of use of the State Forests to better protect and preserve the forests while allowing the public to be able to enjoy the forests. Furthermore, the rule adoptions and amendments are necessary due to changing technologies and emerging issues. Moreover, the adoptions and amendments are needed to make sure existing rules are consistent and contacts and websites updated.*

Comments may be submitted to: Tina Hlabse, Secretary, Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001; email tina.hlabse@ncagr.gov

Comment period ends: June 14, 2021

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

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

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

CHAPTER 60 - DIVISION OF FOREST RESOURCES

SUBCHAPTER 60B - DIVISION PROGRAMS

SECTION .1000 - ~~DUPONT STATE FOREST~~ FORESTS

02 NCAC 60B .1001 SCOPE

(a) This ~~section~~ Section coordinates the use of ~~all the North Carolina's Carolina Forest Service's State Forests and Forests, State Recreational Forests, and Educational State Forests. Forests into one combined set of rules. This is in In~~ keeping with the Division of North Carolina Forest Resources Service's mission to develop, protect and protect, manage the multiple manage, and promote forest resources of North Carolina's forests through professional stewardship, enhancing for the quality of life for our citizens while ensuring the continuity of these vital resources. Educational State Forests and other citizens of North Carolina, each State Forest, State Recreational Forest, and Education State Forest shall have a mission statement and shall be managed sustainably. State Forests will each have a mission statement and will be sustainably managed under a State Forest Management Plan.

(b) All ~~North Carolina Educational State Forests and State Forest rules rules of this Section~~ are effective within and upon the properties defined as Educational State Forests and all State Forests, State Recreational Forests, and Educational State Forests. Forests under the jurisdiction of the Department.

Authority G.S. 106-22; 106-870; 106-877.

02 NCAC 60B .1002 DEFINITIONS OF TERMS

As used in this ~~Rule~~ Section the following terms have the following meanings:

- (1) "Bike Trail" means any road or trail maintained for bicycles.
- (2) "Bridle Trail" means any road or trail maintained for persons riding on horseback.
- (3) "Commissioner" means the Commissioner of the North Carolina Department of Agriculture and Consumer Services.

- (3)(4) "Department" means the NC North Carolina Department of Environment Agriculture and Natural Resources- Consumer Services.
- (4) "~~Division~~" means the NC Division of Forest Resources.
- (5) "Educational State Forest" refers to any ~~state forest~~ State Forest property operated by the North Carolina Forest Service Division of Forest Resources for the purpose of educating schoolchildren and the public.
- (6) "Emergency Aircraft" means aircraft operated by an emergency response agency.
- (6)(7) "Forest Supervisor" means an employee of the ~~Division of North Carolina Forest Resources Service~~ who is a forest supervisor and provides supervision to other ~~DFR North Carolina Forest Service~~ employees of the forest.
- (7)(8) "Group" means a number of individuals related by a common factor, having structured organization, defined leadership, and activities directed by a charter or written bylaws.
- (8)(9) "Hiking Trail" means any road or trail maintained for pedestrians.
- (9)(10) "Multi-use Trail" means any road or trail maintained for use by the following: horseback riding, bicycle ~~or pedestrian~~ riding, and hiking or other foot traffic.
- (10)(11) "Hunting" means the lawful hunting of game animals as defined by the ~~N.C.~~ North Carolina Wildlife Resources Commission.
- (11)(12) "Motorized vehicle" means ~~every~~ any vehicle which is self-propelled, or which is pulled by a self-propelled vehicle, ~~vehicle (such such as a camping trailer, fifth-wheel travel trailer, motor home, travel trailer, and truck camper, camper).~~ A self-propelled vehicle shall include include, but is not limited to passenger automobiles, mopeds, off-road vehicles (ORV), golf carts, motorcycles, mini-bikes, all-terrain vehicles, Segways, 2 or 3 wheeled personal transporters, battery assisted bicycles (E-Bikes), and go-carts. This does not include accommodations made in accordance with the Americans with Disabilities Act of 1990 and Chapter 168A of the North Carolina General Statutes, ~~motorized wheel chairs or other similar vehicles designed for and used by persons with disabilities.~~ (G.S. 20-4.01)
- (13) "Registered Motor Vehicle" is any vehicle that has been legally registered and tagged from a state department of motor vehicles or department of transportation.
- (12)(14) "Permit" means any written license issued by or under the authority of the ~~Division of North Carolina Forest Service~~ or Department permitting the performance of a specified act or acts.
- (13)(15) "Permittee" means any person, corporation, ~~company~~ company, or association in possession of a valid permit.
- (14)(16) "Person" means any individual, firm, partnership, corporation, company, association, public or private institution, political subdivision, or government agency. (~~G.S. 143-60.22(4)~~)
- (15)(17) "Public building" means a climate-controlled structure primarily for human habitation or use, and does not include barns, ~~shelters~~ shelters, or sheds.
- (16)(18) "Public nudity" means a person's intentional failure to cover with an a fully opaque covering the person's genitals, pubic area, anal area, or areola on female breasts except for breastfeeding below a point from the top of the areola while in a public place.
- (19) "State Recreational Forest" is a State Forest designation that refers to any State Forest property operated by the North Carolina Forest Service primarily for natural resource preservation, scenic enjoyment and recreational purposes, while also managing for the purposes of education, demonstration, training, forest research, wildlife habitat, and forest products, including the DuPont State Forest.
- (17)(20) "Rock climbing" means traversing a rock face that is steep enough to require the use of hands and feet to get up or down.
- (18) "~~Secretary~~" means ~~the Secretary of the Department.~~
- (19)(21) "State Forest" means any land owned by the State of North Carolina, under the jurisdiction of the ~~Division of North Carolina Forest Service, Forest Resources,~~ that is sustainably managed under a State Forest Management Plan approved by the Division Director for the purposes of education, demonstration, training, forest research, wildlife habitat, forest products and recreation, recreation as identified in the approved forest management plan.
- (20) "State Forest Management Plan" is a plan prepared by a forester of the N.C. Division of Forest Resources and approved by the Division Director. Such plan shall include management practices to ensure forest productivity and environmental protection of the land to be treated under the management plan.
- (21) "Swimming area" means any beach or water area designated by the Division as a swimming, wading and bathing area.

Authority G.S. 106-22; ~~106-900;~~ 106-877; 106-887; 143-116.8.

02 NCAC 60B .1003 PERMITS

(a) Any violation of ~~the~~ a permit constitutes grounds for its revocation by the Department. In case of a permit revocation the permit holder shall forfeit to the Department all ~~money~~ monies

paid for the permit. Furthermore, the ~~department~~ Department shall consider the permit holder, together with ~~his~~ the permit holder's agents and employees who violated such terms, jointly and severally liable to the Department for all damages suffered in excess of money so forfeited. However, neither the forfeiture of such money, nor the recovery of such damages, ~~nor both~~, relieves such ~~person~~ persons from statutory punishment for any violation of a ~~provision of any State Forest, State Recreational Forest, or Educational State Forest rule.~~ Forest, State recreational forest, or Educational State Forest rule.

(b) Applications for ~~commercial use~~ permits shall be ~~made through~~ submitted to the State North Carolina Forest Service's Forest, Recreational State Forest, or Educational State Forest office during business hours, hours. Applications ~~which~~ may be found at <http://www.ncesf.org/>, <https://ncforestservice.gov/>, and approved by the Forest Supervisor or his or her designee in advance of the act permitted. The ~~commercial use~~ permit application shall include the company or organization name, address, contact with title, phone number, ~~fax number~~, email address, description of the activity or the event with the location to be permitted, access areas to be used, timeframe of the activity or event, estimated number of participants, liability insurance, and medical plan. Applications shall be approved by the Forest Supervisor or designee in advance of the act permitted.

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1004 ROCK OR CLIFF CLIMBING AND REPELLING RAPPELLING

A person shall not engage in rock climbing, cliff climbing, or rappelling within the boundaries of a ~~state forest, State recreational forest, or Educational State Forest, State Recreational Forest, or Educational State Forest~~ except at designated areas and only after obtaining a permit.

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1005 BATHING OR SWIMMING

(a) A person shall not ~~dive~~ dive, jump, or jump slide from any waterfalls or rocks or overhangs into any body of ~~water.~~ water within any State Forest, State Recreational Forest, or Educational State Forest.

(b) ~~A person shall not wade, bathe, or swim in any body of water in an Educational State Forest, except in designated swimming areas.~~

(c) ~~A person may wade, bathe, or swim at his or her own risk in any body of water in any State Forest, except within 300 feet upstream of the top of a waterfall, and in other designated non-swimming areas.~~ Wading, bathing, and swimming is allowed at a person's own risk in any body of water in and upon any State Forest, State Recreational Forest, or Educational State Forest, except such activities are prohibited within 300 feet upstream of the top of a waterfall or areas designated as non-swimming.

(d)(c) Public Nudity:

- (1) Public nudity is prohibited in and upon all State Forest, ~~State Recreational Forest, State Recreational Forest,~~ and Educational State Forest lands or waters. This Rule does not apply

to the enclosed portions of bathhouses, restrooms, tents, and recreational vehicles.

- (2) ~~Children under the age of five are exempt from this restriction.~~

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1006 HUNTING

(a) ~~A person shall not hunt on any Educational State Forest lands without obtaining a permit and must obey all State hunting laws set forth in G.S. 113 and rules in effect.~~ Hunting in and upon all State Forests, State Recreational Forests, and Educational State Forests shall be by permit, license, or stamp only, or a combination thereof, depending on the requirements of the individual State Forest, State Recreational Forest, or Educational State Forest. Interested parties shall contact the State Forest office, State Recreational Forest, or Educational State Forest in question. The contact and additional information for each State Forest, State Recreational Forest, or Educational State Forest office can be found at <https://www.ncforestservice.gov/>.

(b) ~~A person hunting in and upon State Forests, State Recreational Forests, or Educational State Forests under the Game Lands Program may hunt on a State Forest or State recreational forest that is in the Game Land program if the person obtains shall first obtain~~ a Game Land permit from a ~~NC~~ North Carolina Wildlife Resources Commission designated licensing agent and shall obey ~~obeys~~ all State hunting laws set forth in ~~G.S. Chapter 113 of the North Carolina General Statutes~~ and rules in effect for the applicable Game Land, pursuant to 15A NCAC 10D .0102 and .0103. ~~.0103, which are incorporated by reference including subsequent amendments, and may be accessed free of charge at <http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2010%20-%20wildlife%20resources%20and%20water%20safety/subchapter%20d/subchapter%20d%20rules.html>.~~

(c) For State Forests, State Recreational Forests, and Educational State Forests that are not in the Game Lands Program, hunting shall be allowed only if a person first obtains a permit from the Forest Supervisor's office and complies with all State hunting laws and rules in effect, including Chapter 113 of the North Carolina General Statutes and 15A NCAC 10D .0102 and .0103.

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1007 FISHING

(a) ~~Except in areas designated as non-fishing, A~~ a person may fish in any waters in State Forests, State Recreational Forests, or Educational State Forests ~~Forests or State recreational forests if the person obeys all State fishing laws as set forth in G.S. 113.~~

(b) ~~A person may fish in any waters of any Educational State Forest if the person first obtains a permit from the Forest Supervisor's office and provided the person obeys all State fishing laws as set forth in G.S. 113.~~ Chapter 113 of the North Carolina General Statutes.

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1008 ANIMALS AT LARGE

(a) ~~Except in designated areas, no~~ No person shall have any dog, cat, or other pet upon a State Forest, State Recreational Forest, or Educational State Forest unless the animal is on a physical leash and under the control of the owner or some other person. person possessing the animal.

(b) Hunting dogs used in accordance with NC North Carolina Wildlife Commission Game Land Rules pertaining to State Forests pursuant to 15A NCAC 10D .0102 and .0103 shall be exempt from Paragraph (a) of this Rule.

~~(b)(c)~~ No dog, cat, or other pet shall be allowed to enter any public building on State Forests, State Recreational Forest, or Educational State Forest, or designated swimming areas, except assistance service animals for persons with disabilities in accordance with the Americans with Disabilities Act of 1990 and Chapter 168 of the North Carolina General Statutes, as set forth in G.S. 14-163.1.

(d) Any owned animal or pet causing a threat or nuisance within any State Forest, State Recreational Forest, or Educational State Forest shall be removed.

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1009 BOATING

~~(a) A person shall not operate a boat, canoe, kayak, or other watercraft in any waters on Educational State Forests without obtaining a permit.~~

~~(b)(a)~~ Except in areas designated as non-boating. Boats, boats, canoes, kayaks, or and other watercraft watercraft, including flotation devices, may shall be operated allowed on the waters of State Forests, State Recreational Forests, and Educational State Forests, Forests or State recreational forests, provided they are operated or propelled by means of oars, paddles, or electric trolling motors.

(b) Boats and other watercraft with gas motors attached are prohibited on any waters of State Forests and Educational State Forests Forests, State Recreational Forests, and Educational State Forests, except for use by rescue squads, diving teams, or similar organizations conducting training or emergency operations or by the Department or the North Carolina Wildlife Resources Commission. operations, or forest staff conducting maintenance operations

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1010 CAMPING

(a) No person shall spend the night or maintain a camp in a State Forest, Forest, State Recreational Forest, State recreational forest, or Educational State Forest, except in designated areas or under permit.

(b) A person camping in a designated area shall not stay more than one 24-hour period without a valid permit.

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1011 SPORTS AND GAMES

No games or athletic contests shall be allowed in a State Forest, Forest, State Recreational Forest, State recreational forest, or

Educational State Forest, except in places as may be designated places or under permit.

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1012 HORSES

~~(a) In a State Forest, State recreational forest, or Educational State Forest, no~~ No person shall use, ride, or drive a horse except to, from, or along a designated bridle path, multi-use trail designated for horses horses, or designated watering point.

(b) Each equestrian user person bringing a horse in or upon any State Forest, State Recreational Forest, or Educational State Forest shall remove from designated parking areas, areas sidewalks, covered bridges, paved surfaces, and wooden surfaces all residues residues, including manure, (including manure) generated by his or her their horse.

(c) When dismounted, horses shall be tied in such a manner as to prevent damage to trees and other plants. Anytime a horse is constrained in a State Forest, State Recreational Forest, or Educational State Forest, it shall be done in a manner so as to prevent damage to trees or plants nearby.

(d) Horses shall not be steered or led across cross rivers and streams using bridges or culverts if available. preexisting crossings along designated trails.

(e) Horses shall not be allowed to wade in lakes.

(f) Equestrian users A person bringing a horse in or upon any State Forest, State Recreational Forest, or Educational State Forest shall possess valid negative Equine Infectious Anemia test, also known as a Coggins papers test for each horse and make them available for inspection upon request. request by North Carolina Forest Service employees or employees of the Department.

(g) No horse-drawn carts, carriages, or other apparatus shall be allowed in or upon State Forests, State Recreational Forests, or Educational State Forests except by permit.

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1013 BICYCLES

~~(a) In a State Forest, State recreational forest, or Educational State Forest, no~~ No person shall use or ride a bicycle in or upon State Forest, State Recreational Forest, or Educational State Forest grounds except on a road or trail authorized for public use by motor vehicles or designated as a bicycle bike trail or multi-use trail.

(b) When crossing Persons riding bicycles shall cross rivers or and streams streams, bicycle use shall be confined to bridges or culverts if available using preexisting crossings along designated trails.

(c) Motorized bicycles or battery assisted bicycles, also known as E-Bikes, are allowed only on motor vehicle roads open to public vehicular traffic and not allowed on bike trails, bridle trails, hiking trails, or multiuse trails.

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1014 SKATES, BLADES AND BOARDS

No person shall use or ride roller skates, in-line skates, roller blades, skate boards, skateboards, or any similar device on in or upon any State Forest, State Recreational Forest, State

~~recreational forest, or Educational State Forest. Forest road or trail.~~

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1015 EXPLOSIVES

No person shall carry or possess any explosives or explosive substances including fireworks in or upon State Forests, State Recreational Forests, or Educational State Forests. ~~Forests, State recreational forests, or Educational State Forests. This does not apply to employees of the department when they engage in construction or maintenance activities.~~

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1017 FIRES AND GRILLS

(a) No person shall build or start a fire in any area of a State ~~Forest, Forest, State Recreational Forest, State recreational forest,~~ or Educational State Forest, unless that area is designated for such purpose.

(b) Tree planters and logging crews may build warming fires if they obtain a permit and confine the fire to an area designated for such purpose.

(c) ~~Fires ignited for forest management purposes under the provisions of a prescribed Prescribed burning plan as defined in G.S. 106-966, conducted by the North Carolina Forest Service or approved by the North Carolina Forest Supervisor or his or her designee, are Service pursuant to G.S. 106-966 is exempt from this Rule.~~

(d) Except in designated areas, cooking fires, grills, ovens, stoves, burners, or other devices that ignite natural gas or other petroleum products are prohibited. Likewise, the burning of wood, charcoal or paper is also prohibited except in designated areas.

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1018 DISORDERLY CONDUCT

(a) No person visiting ~~on a State Forest, State Recreational Forest, Forest, State recreational forest,~~ or Educational State Forest shall disobey a lawful order of a ~~Division employee, Forest Ranger,~~ law enforcement officer, or any other Department official or endanger him or herself or endanger or disrupt others, as defined in G.S. 14-288.4, 14-288.4 and G.S. 14-132.

(b) No person shall use, walk, or run on or along a road or trail that is designated closed for maintenance, tree removal or any other purpose, ~~or nor shall they enter an area that is designated "No Entry," "Do Not Enter," or "Authorized Personnel Only," except for Division North Carolina Forest Service employees or employees, contractors working under the direction of a Division the North Carolina Forest Service, employee, volunteers volunteers under the direction of the North Carolina Forest Service, or and individuals or groups under permit, permit, and at such places and for such periods as may be designated in order to protect public safety, peace, or natural resources.~~

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1019 INTOXICATING BEVERAGES AND DRUGS

(a) No person shall possess, consume, use, or be under the influences influence of intoxicants, any malt beverage, fortified wine, unfortified wine or spirituous liquor as defined in G.S. 18B-101, while in or upon a State Forest, State Recreational Forest, or Educational State Forest.

(b) No person shall possess, consume, use, or be under the influence of any non-prescribed controlled substance as defined in G.S. 90-87, including marijuana, or non-prescribed narcotic drugs as defined in G.S. 90-87, while on in or upon a State Forest, State Recreational Forest, Forest, Recreational State Forest, or Educational State Forest. The public display or use of alcoholic beverages, marijuana or non-prescribed narcotic drugs is prohibited.

Authority G.S. 106-22; 106-870; 106-877.

02 NCAC 60B .1020 DAMAGE TO BUILDINGS, STRUCTURES AND SIGNS

No person shall injure, deface, disturb, destroy, or disfigure any State ~~Forest, State Recreational Forest, Forest, State recreational forest,~~ or Educational State Forest building, structure, sign, fence, vehicle, machine, ~~or any equipment, road, parking lot, or any improvements, equipment.~~

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1021 COMMERCIAL ENTERPRISES

(a) No person shall ~~shall, while in or on a State Forest, or Educational State Forest,~~ sell or offer for sale, hire or lease, any object or merchandise, property, privilege, service or any other thing, or engage in any business ~~except under permit. Sales from which proceeds are used in support of the forest or sales conducted or contracted by the Department are exempt from this Rule. in or upon a State Forest, State Recreational Forest, or Educational State Forest except under permit.~~

(b) Sales by the Department or sales that are contracted by the Department or by an entity that is under agreement with the Department are exempt from this Rule.

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1022 NOISE REGULATIONS

The production or emission of ~~noises noises, speech, music, or other sound, that is annoying, disturbing, or frightening to a reasonable person over the level of 85 decibels, at a distance of 10 feet, on in or upon a State Forest, State Recreational Forest, or Educational State Forest Forest, State recreational forest,~~ by a person or Educational State Forest animal under the control of a person is prohibited.

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1024 ALMS AND CONTRIBUTIONS

A person shall not solicit contributions for any purpose ~~within in or upon a State Forest, Forest, State Recreational Forest, or Educational State Forest, State recreational forest, or Educational State Forest,~~ unless permitted by the ~~Division Department~~ and

such contributions are used to benefit the ~~State Forest, State recreational forest, or Educational State Forest.~~ Forest, State Recreational Forest, or Educational State Forest.

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1025 AVIATION

(a) Except as provided in Paragraphs (b) and (c) of this Rule, a person shall not voluntarily bring, land, or cause to descend or alight, ascend, or take off within or upon any State Forest, ~~State recreational forest, State Recreational Forest, or Educational State Forest~~ Forest or area any airplane, flying machine, balloon, parachute, glider, hang glider, unmanned aerial vehicle ("UAV"), drones, or other apparatus for aviation. "Voluntarily" for this Rule means anything other than a forced landing.

(b) ~~In forest areas where~~ Where aviation activities are part of the planned forest activities or military, law enforcement, or rescue training, a permit for aviation use shall be required.

(c) ~~Emergency aircraft such as air ambulances~~ North Carolina Forest Service and aerial search helicopters, and Division emergency aircraft are exempt from this Rule.

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1026 EXPULSION

For violation of any ~~rule in this Section, the Division rule in this Subchapter, Department law enforcement officers, other sworn law enforcement, or Forest Rangers~~ rule in this Subchapter, Department law enforcement officers, other sworn law enforcement, or Forest Rangers shall withdraw the right of a ~~person or persons~~ the violator to remain on a ~~State Forest, State recreational forest, or Educational State Forest.~~ Forest, State Recreational Forest, or Educational State Forest, and shall verbally direct the violator to leave the premises. If the violator does not or is not able to comply, then the violator shall be escorted off the premises.

Authority G.S. 106-22; 106-870; 106-877; 106-887; 106-898; 106-900.

02 NCAC 60B .1027 MOTORIZED VEHICLES

(a) ~~A person shall not drive a motorized vehicle in a State Forest, State recreational forest, or Educational~~ Motorized vehicles shall not be operated in or upon a State Forest Forest, State Recreational Forest, or Educational State Forest ~~within or, upon a safety zone, hiking trail, bike trail, bridle trail, multi-use trail, fire trail, service road, or any part of the forest not designated for such purposes, except by permit.~~

(b) ~~Motor bikes, mini-bikes, all terrain vehicles, and any other unlicensed motor vehicle are prohibited within the forest except by permit.~~ Emergency responders and construction or service vendors are exempt from Paragraph (a) of this Rule.

(c) ~~A person shall not park a motorized vehicle in a manner that blocks forest roads or gates. Unless otherwise posted, the speed limit on graveled forest roads is 20 miles per hour; hour on graveled forest roads and on dirt roads is 10 miles per hour. hour on dirt forest roads.~~

(e) ~~Vehicles exempt from this Rule are: Department vehicles, authorized vendors, vehicles used in conjunction with forest and emergency operations, and vehicles of employees and resident family members.~~

Authority G.S. 106-22; 106-870; 106-877; 106-887; 143-116.8.

02 NCAC 60B .1028 FLOWERS, PLANTS, MINERALS, ETC.

(a) A person shall not remove, destroy, cut down, scar, mutilate, take, gather, or injure any tree, flower, artifact, fern, shrub, rock, fungi, or other plant or mineral in or upon any ~~State Forest, State recreational forest, or Educational State Forest Forest, State Recreational Forest, or Educational State Forest.~~ area. ~~Silvicultural activities performed in accordance with an approved State Forest Management Plan are exempt from this Rule.~~

(b) A person shall not collect plants, animals, minerals, fungi, or other artifacts from any State Forest, State Recreational Forest, State recreational forest, or Educational State Forest ~~area~~ without first having obtained a ~~permit.~~ permit from the Forest Supervisor or designee.

(c) The use of metal detectors on a State Forest, State Recreational Forest, or Educational State Forest is prohibited without a permit.

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1029 TRASH AND DEBRIS

(a) A person shall not deposit paper or plastic products, bottles, cans, or any other ~~refuse, or~~ debris in or upon a ~~State Forest, State recreational forest, or Educational State Forest, Forest, State Recreational Forest, or Educational State Forest~~ except in receptacles designated for the materials. Where trash receptacles are not provided, persons shall ~~pack~~ take their trash out of the forest.

(b) No one shall dispose of household or business trash or garbage in any State Forest, State Recreational Forest, or Educational State Forest.

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1030 FEES AND CHARGES

(a) ~~The following fee schedule shall apply at DuPont State Recreational Forest and the Community Building at Jordan Lake Educational State Forest:~~

(1) **CAMPING.**

- (A) ~~Primitive, unimproved campsite with portable toilets and fresh water available, \$9.00 per campsite, daily.~~
- (B) ~~Primitive group tent camping, unimproved campsite with portable toilets, \$1.00 per person, daily, with \$9.00 minimum.~~
- (C) ~~Improved group camping with water, restrooms and shower facilities available, \$40.00 per day, and maximum capacity of 35 people.~~

(2) **PICNIC SHELTER RENTALS.**

- (A) ~~Are by reservations only.~~
- (B) ~~Rate: 1-2 tables, \$25.00; 3-4 tables, \$40.00; 5-8 tables, \$60.00.~~

(3) **CLASSROOM OR COMMUNITY BUILDING (DuPont State Recreational Forest and Jordan Lake Educational State Forest).**

- (A) ~~Fee may be waived for government agencies and natural resource related non-profit groups.~~
- (B) ~~Rates: One half day, \$75.00; Full day, \$150.00.~~

(4) **EQUESTRIAN FACILITIES.**

- (A) ~~Barn or paddocks (fee may be waived for volunteer work groups), \$10.00 per horse, daily.~~
- (B) ~~Use is limited to non-profit groups and area summer camps.~~

(5) **PERMITS FOR SPECIAL EVENTS.** Permits for use of the forest for events involving large groups or special privileges and requiring staff assistance. Rate: \$1.00 per person plus the cost of staff time and equipment use involved in monitoring the permit.

(6)(a) **PERMITS FOR THE REMOVAL OF FIREWOOD, VEGETATIVE MATERIAL, ROCKS, ETC.** Fees for these items are based on the value of the material as determined by local market conditions. Admission fees or related activity fees at State Forests, State Recreational Forests, and Educational State Forests, including permits, facility use, special events, or the removal of firewood or vegetative material, may be obtained online at <https://www.ncforestservice.gov/> or by contacting the office of each State Forest. The contact information for each State Forest, State Recreational Forest, and Educational State Forest may be found online at <https://www.ncforestservice.gov/>.

(b) Payment of the ~~appropriate fee~~ required fees shall be a prerequisite for the use of the public service facility or convenience provided.

(c) ~~Unless otherwise provided in this Rule, the~~ The number of persons camping at a particular site may be limited by the forest supervisor or designee depending upon the size of the group and the size and nature of the campsite.

(d) Reservations ~~must~~ shall be canceled 30 days prior to the event in order to receive a refund. ~~Permit~~ Activity fees are non-refundable.

Authority G.S. 106-22; 106-870; 106-877; 106-887; 150B-1(d)(26).

02 NCAC 60B .1031 HOURS OF OPERATION

(a) Hours of operation ~~may vary for individual forests.~~ Hours of operation for each State Forest, State Recreational Forest, and State recreational forest, or Educational State Forest shall be posted at the forest entrance, the forest office, and on the ~~Division's North Carolina Forest Service's web site.~~ website at <https://www.ncforestservice.gov/>. Hours are subject to change depending on seasonal, emergency, and natural resource protection by the Forest Supervisor or designee.

(b) No person except ~~forest~~ Department employees and authorized persons shall be allowed ~~within~~ in or upon State Forests, State Recreational Forest, or Educational State Forest ~~the forest~~ between closing and opening hours except in designated areas or under permit.

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1032 ENFORCEMENT

Departmental forest law enforcement officers, ~~Forest Rangers, and other sworn law enforcement, and Forest Rangers enforcement~~ may enforce the rules of this Section.

Authority G.S. 106-22; ~~106-900;~~ 106-887; 106-897; 106-899; 106-900.

02 NCAC 60B .1033 PARKING

(a) There shall be no parking in State Forest, State Recreational Forest, or Educational State Forest areas designated as "No Parking" and "Authorized Vehicles Only." Additionally:

- (1) vehicles shall be parked in areas designated for that vehicle type; and
- (2) visitors shall not park a vehicle, trailer, or other object in a manner that blocks, or restricts access, ingress, or egress to a parking area, road, gate, or access point.

(b) Vehicles, trailers, or other objects blocking or restricting emergency or Department personnel or visitors' access, ingress, or egress to any parking area, road, gate, or access point shall be removed at the owners' expense and without notice.

(c) Vehicles parked in areas not designated for that vehicle type or in areas designated as "No Parking" or "Authorized Vehicles Only" shall be removed at the owners' expense and without notice.

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1034 ABANDONED PROPERTY

Any property left unattended for a period of 24 hours or more on a State Forest, State Recreational Forest, or Educational State Forest shall be considered abandoned property and shall be subject to removal at the owner's expense, or in the case ownership cannot be established, disposed of by the Department without notice.

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1035 MINORS

Parents, guardians, and custodians, of minor children shall ensure the minor comply with all North Carolina Forest Service rules.

Authority G.S. 106-22; 106-870; 106-877; 106-887.

02 NCAC 60B .1036 FIREARMS

All applicable federal, State, and local laws regarding firearms shall apply in or upon State Forests, State Recreational Forests, and Educational State Forests.

Authority G.S. 106-22; 106-870; 106-877.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

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 adopt the rules cited as 10A NCAC 70M .0102, .0701, .0702, readopt with substantive changes the rules cited as 10A

NCAC 70M .0201, .0301, .0302, .0304, .0401, .0402, .0501, .0601, .0602, .0604, *readopt without substantive changes the rule cited as 10A NCAC 70M .0403, and repeal through re adoption the rules cited as 10A NCAC 70M .0404, .0405, .0502 and .0603.*

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

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

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncdhhs.gov/divisions/social-services/about-dss/social-services-commission/rules>

Proposed Effective Date: August 1, 2021

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A public hearing can be requested by contacting Joel Johnson at the Office of General Counsel: Email: joel.johnson@dhhs.nc.gov; Fax: (919)733-3854; Mailing Address: 2001 Mail Service Center, Raleigh, NC 27699-2001.*

Reason for Proposed Action: *Pursuant to GS 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review these rules were determined to be "Necessary with Substantive Public Interest" requiring re adoption by August 31, 2021.*

The following rules are being proposed for re adoption with substantive changes: 10A NCAC 70M .0201, .0301, .0302, .0304, .0401, .0402, .0501, .0601, .0602, and .0604;

The following rules are being proposed for re adoption without substantive changes: 10A NCAC 70M .0101 and .0403;

The following rules are being proposed for repeal through re adoption: 10A NCAC 70M .0404, .0405, .0502 and .0603;

The following rules are being proposed for adoption to clarify programmatic procedures: 10A NCAC 70M .0102, .0701 and .0702.

Comments may be submitted to: Paris Penny, 2401 Mail Service Center, Raleigh, NC 27699; phone (919) 527-7257; email paris.penny@dhhs.nc.gov

Comment period ends: June 14, 2021

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 984-236-1850.

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

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

CHAPTER 70 - CHILDREN'S SERVICES

SUBCHAPTER 70M - ADOPTION STANDARDS

SECTION .0100 - GENERAL

10A NCAC 70M .0102 DEFINITIONS

The following definitions shall apply to the rules in this Subchapter:

- (1) "Adoption assistance agreement" means a signed written agreement that is developed by the Department ("North Carolina Adoption Assistance Agreement" Form DSS-5123 which can be found at <https://www.ncdhhs.gov/divisions/dss>) that is binding upon the public adoption agency and the prospective adoptive parents of a minor child and, at a minimum, the agreement shall:
 - (a) specify payments that meet the requirements in 42 USC 673(a)(3), and any subsequent amendments, and specifies the nature and amount of any payments, services, and assistance to be provided under the agreement;
 - (b) stipulates that the agreement shall remain in effect regardless of the state of which the adoptive parents are residents of at any given time;
 - (c) require each adoptive parent to inform the public adoption agency of any circumstances that would make the parent ineligible for the payments or eligible for a different amount;
 - (d) if applicable, require the adoptive parents to provide receipt of vendor payments; and
 - (e) contain provisions for the protection of the interests of the child in cases

- where the adoptive parents and child move to another state while the agreement is effective.
- (2) "Applicable child" means a child who meets the requirements in 42 U.S.C. 673(e) which is incorporated herein by reference along with any subsequent amendments.
- (3) "Child with special needs" or "children with special needs" means a child who meets the requirements in 42 USC 673(c) which is incorporated herein by reference along with any subsequent amendments. The public adoption agency, or the North Carolina Department of Health and Human Services for the Special Needs Adoptions Incentive Fund assistance, shall make the specified determinations for the state in 42 USC 673(c) and any subsequent amendment. A child cannot or should not be returned to the home of the child's parent if there is a court order terminating parental rights, a relinquishment to a public or private child-placing agency, a consent for adoption by the parent, a finding from the court in an adoption proceeding that a parent's consent is not required, or verification of the death of a parent. For a child to meet the requirement in 42 USC 673(c)(2)(B)(ii), the child must have a letter from the Social Security Administration that approves the child for Social Security Insurance benefits. For purposes of 42 USC 673(c)(1)(B) and 42 USC 673(c)(2)(B)(i), and any subsequent amendments, the child shall present one or more of the following specific factors or conditions:
- (a) six years of age or older;
 - (b) two years of age or older and a member of a minority race or ethnic group;
 - (c) a member of a sibling group of three or more children who will all be placed in the same adoptive home;
 - (d) a member of a sibling group of two children who will be placed in the same adoptive home and the child's sibling meets one of the factors or conditions in Sub-items (a), (b), (e), (f), (g) or (h) of this Item;
 - (e) a medically diagnosed disability which substantially limits one or more major life activities, requires professional treatment, requires assistance in self-care, or requires the purchase of special equipment;
 - (f) diagnosed by a medical professional, who is qualified to make the diagnosis, as having a psychiatric condition which impairs the child's mental, intellectual, or social functioning, and
- for which the child requires professional services;
- (g) diagnosed by a medical professional, who is qualified to make the diagnosis, as having a behavioral or emotional disorder characterized by inappropriate behavior which deviates substantially from behavior appropriate to the child's age or significantly interferes with child's intellectual, social and personal functioning; or
- (h) diagnosed by a medical professional, who is qualified to make the diagnosis, as being intellectually or developmentally disabled;
- (i) at risk, as opined by a qualified medical professional, for one of the factors or conditions in Sub-items (e) through (h) of this Item due to:
- (i) prenatal exposure to toxins;
 - (ii) a history of abuse or serious neglect; or
 - (iii) genetic history.
- (4) "Department" means the North Carolina Department of Health and Human Services.
- (5) "Nonrecurring adoption expense" means the same as "nonrecurring adoption expenses" found in 42 U.S.C. 673(a)(6)(A) along with any subsequent amendments of the phrase.
- (6) "Public adoption agency" means any county department of social services, consolidated human services, or regional department of social services in North Carolina that is authorized by law to place children for adoption or that provides adoption services.
- (7) "Supplemental Agreement" means a signed written agreement that is developed by the Department ("North Carolina Special Children Adoption Incentive Fund Supplemental Adoption Assistance Agreement" Form DSS-5212 which can be found at <https://www.ncdhhs.gov/divisions/dss>) that is binding upon the public adoption agency and the prospective adoptive parents of a minor child and at a minimum:
- (a) specifies the nature and amount of any Special Children's Adoption Incentive Fund payment, and
 - (b) includes an acknowledgement by the prospective adoptive parents that the payments are not an entitlement and are limited to available funds in the Special Children's Adoption Incentive Fund.

Authority G.S. 143B-153; 42 U.S.C. 673; 45 C.F.R. 1356.41(i).

SECTION .0200 - ORGANIZATION AND ADMINISTRATION

10A NCAC 70M .0201 PUBLIC ADOPTION AGENCIES

- (a) Except for the requirements relating to an executive director, public adoption agencies must comply with 10A NCAC 70H .0401 governs the policies for public agencies providing adoption services in determining the qualifications and job responsibilities for personnel and in the recruitment, retention, and effective performance of qualified personnel.
- (b) Public adoption agencies must comply with 10A NCAC 70F .0207 governs the policies for public agencies in the hiring of staff, use of clerical staff, staff and use of volunteers.
- (c) The caseload size of social workers providing adoption services shall be in compliance with requirements set forth in 10A NCAC 70H .0401.

Authority G.S. 48-1-101; 48-1-109.; 143B-153.

SECTION .0300 - FUNCTIONS OF AN A PUBLIC ADOPTION AGENCY

10A NCAC 70M .0301 GENERAL

Public child placing adoption agencies shall perform the following functions:

- (1) provision of casework and other supportive services to biological parents considering adoption;
- (2) provision of casework and other supportive services to the child considered for adoption;
- (3) provision of casework and other supportive services to adoptive applicants through pre-placement studies;
- (4) selection of home and placement process;
- (5) supervision after placement;
- (6) fulfillment of social and legal responsibilities;
- (7) compilation and preservation of complete case records;
- (8) provision of post-adoption consultation services. services, including, but not limited to, coordination and referrals for educational enrollment for children seven to sixteen years of age, and for therapeutic and physical health needs;
- (9) when this Subchapter requires, determine whether eligibility requirements have been met for adoption assistance in this Subchapter that is available for children with special needs who are in custody of the public adoption agency or who have been placed by a private child-placing agency in an adoptive home within its jurisdiction;
- (10) administer adoption assistance agreements for which it entered into pursuant to this Subchapter;
- (11) notify adoptive parents of tax credits that may be available for adoptive parents;
- (12) make current information available for prospective adoptive families that describes the

kinds of children needing placement, the availability of adoption assistance, and procedures for referring families they are unable to serve to other child placing agencies; and

- (13) recruit potential foster and adoptive families in accordance with the Multiethnic Placement Act (MEPA) of 1994 as amended by the Interethnic Adoption Provisions of 1996 requirements.

Authority G.S. 48-1 et seq.; 48-2-502; 48-3-203; 48-3-204; 48-3-303; 143B-153.

10A NCAC 70M .0302 SERVICES TO ADOPTIVE APPLICANTS

- (a) Public adoption agencies must comply with 10A NCAC 70H .0404, .0405, .0406, .0407, 0408 and .0409 shall govern the policies for public agencies providing adoption services in determining the procedures for, for the application process, preplacement assessment, notification to adoptive applicants of acceptance or denial of application, services to adoptive applicants and families, legal process and record retention.
- (b) A county department of social services shall prepare or contract for the preparation of a preplacement assessment for an adoptive applicant who has identified a prospective adoptive child and has been unable to obtain a preplacement assessment. An applicant is deemed unable to obtain a preplacement assessment if the applicant is unable to obtain an assessment at the fee the county department of social services is permitted to charge under 10A NCAC 70M .0303. Except as provided in this Subchapter, no county department of social services is required to conduct a preplacement assessment unless it agrees to do so.

Authority G.S. 48-1-100; 48-1-101; 48-1-102; 48-1-103; 48-1-106; 48-1-109; 48-2-205; 48-2-301; 48-2-302; 48-2-304; 48-2-305; 48-2-501; 48-2-502; 48-2-503; 48-2-504; 48-2-601; 48-2-602; 48-2-603; 48-2-604; 48-2-605; 48-2-606; 48-2-607; 48-3-100; 48-3-201; 48-3-202; 48-3-203; 48-3-204; 48-3-205; 48-3-301; 48-3-302; 48-3-303; 48-3-304; 48-3-305; 48-3-306; 48-3-307; 48-3-308; 48-3-30; 48-3-501; 48-4-100; 48-4-101; 48-4-102; 48-4-103; 48-5-100; 48-5-101; 48-6-100; 48-6-102; 48-9-101; 48-9-102; 48-10-104; 48-10-105; 131D-10.5; 143B-153.

10A NCAC 70M .0304 MULTIETHNIC PLACEMENT ACT REQUIREMENTS FOR ADOPTIVE HOME RECRUITMENT

The agency shall have a written plan for on-going recruitment of adoptive homes for the children it places or plans to place for adoption. The plan shall adhere to the provisions of the Multiethnic Placement Act of 1994 as amended by the Interethnic Adoption Provisions of 1996 and shall be submitted to the Division of Social Services, Adoption Unit, to ensure compliance with the Act. If the plan is found to be out of compliance, it shall be returned to the agency for corrections. A copy of the Multiethnic Placement Act of 1994 as amended may be obtained from the U. S. Department of Health and Human Services, Children's Bureau, 300 C Street SW, Washington, D.C. 20447.

- (a) Public adoption agencies shall recruit potential adoptive and foster families that reflect the ethnic and racial diversity of children in the state.
- (b) Public adoption agencies shall not deny any person the opportunity to become an adoptive or a foster parent on the basis of the race, color, or national origin of the person or of the child involved.
- (c) Public adoption agencies shall not delay or deny the placement of a child for adoption or foster care, on the basis of the race, color, or national origin of the adoptive or foster parent or the child involved.
- (d) Public adoption agencies shall not violate provisions of the Multiethnic Placement Act of 1994 as amended by the Interethnic Adoption Provisions of 1996 that apply to state or local agencies.

Authority G.S. 48-3-204; 131D-10.5; 143B-153.

**SECTION .0400 – REGULAR MONTHLY CASH
ADOPTION ASSISTANCE: ~~GENERAL ASSISTANCE~~
AND VENDOR PAYMENTS**

**10A NCAC 70M .0401 REGULAR MONTHLY CASH
ADOPTION ASSISTANCE ~~DEFINED~~ AND VENDOR
PAYMENTS**

- (a) Regular monthly cash assistance payments are monthly payments made based on ~~means~~ the graduated rates set by the General Assembly. ~~Assembly~~ and reflected in the executed adoption assistance agreement. The payments may be made to children who meet the requirements set out in Rule .0402 of this Section.
- (b) Vendor payments are made directly to the a child's provider, including which may include the adoptive parents, for ~~medical~~ medical, therapeutic, psychological, and remedial services not covered by Medicaid, Medicaid ~~therapeutic, psychological, and remedial services for children who meet the eligibility criteria set out in Rule .0402 of this Section.~~ or another source if the requirements in this Subchapter are met.
- (c) Special Children Adoption Incentive Fund payments may be made to children who meet the requirements as set out in Rule .0404 of this Section.

Authority G.S. 108A-49; 108A-50; 143B-153.

**10A NCAC 70M .0402 ELIGIBILITY REQUIREMENTS
FOR REGULAR MONTHLY CASH ASSISTANCE
PAYMENTS OR VENDOR PAYMENTS**

- (a) Adoption assistance in the form of regular monthly cash assistance payments based on graduated rates set by the General Assembly and vendor payments may be made when ~~The~~ the child shall meet ~~meets~~ the following eligibility criteria:
 - (1) The child is ~~legally clear for adoption, or was~~ legally adopted;
 - (2) The child is, ~~or was,~~ the placement responsibility of a North Carolina agency authorized to place children for adoption at the time of adoptive placement; ~~meets at least one of the following criteria:~~
 - (A) is not an applicable child and meets the requirements in 42 USC

673(a)(2)(A)(i) and any subsequent amendments. The public adoption agency shall make the determination in 42 USC 673(a)(2)(A)(i)(II) for the state. 42 USC 673(a)(2)(B) is applicable when appropriate;

- (B) is an applicable child and meets the requirements in 42 USC 673(a)(2)(A)(ii) and any subsequent amendments. The public adoption agency shall make the determination in 42 USC 673(a)(2)(A)(ii)(II) for the state. 42 USC 673(a)(2)(B) is applicable when appropriate; or
- (C) the requirements set forth in 42 USC 673(a)(2)(C) and any subsequent amendments.

- (3) The child has special needs that create a financial barrier to adoption; or the child was legally adopted and the child's special needs, though pre-existing, were detected after the adoption has been finalized and if known would have created a financial barrier to adoption; ~~An~~ applicable child is not eligible if he or she meets the three conditions in 42 U.S.C. 673(a)(7)(A)(i) through (iii), unless 42 U.S.C. 673(a)(7)(B) is applicable and the public adoption agency makes the requisite determination for the state;
- (4) Reasonable but unsuccessful efforts have been made to place the child for adoption without the benefits of adoption assistance;
- (5) The child is under 18 years of age; and was adopted after reaching the age of 16 but prior to reaching the age of 18;
- (6) The child may continue to receive adoption assistance payments after his or her 18th birthday until his or her 21st birthday if an adoption assistance agreement was entered into on or after his or her 16th birthday and meets any of the following conditions:
 - (A) Completing secondary education or a program leading to an equivalent credential;
 - (B) Enrolled in an institution that provides post secondary or vocational education;
 - (C) Participating in a program or activity designed to promote or remove barriers to employment;
 - (D) Employed for at least 80 hours per month; or
 - (E) Is incapable of doing any of the previously described educational or employment activities due to a medical condition or disability.

(b) In order for the child to receive regular monthly cash assistance payments, the adoptive parents must have entered into an agreement with the child's agency prior to entry of the Decree

of Adoption. The agreement shall have set forth the respective responsibilities of the agency and the adoptive parents during the time of the child's eligibility for this assistance.

(c) A child's eligibility for vendor payments shall further be determined on the basis of documentation of a known and diagnosed medical, mental, or emotional condition that will require periodic treatment or therapy of a medical or remedial nature.

A child's eligibility for vendor payments may be determined by the agency administering adoption assistance benefits at any time during the child's minority if the medical, mental, or emotional condition, congenital problem, birth injury, or other documented problem is determined to have been pre-existing at the time of his or her placement into an adoptive home. Prior to the child's receipt of vendor payments, the adoptive parents must enter into an agreement with the child's agency to indicate the extent to which they desire the child to participate in this component of the program.

(d) North Carolina residency of the child and adoptive parents is not a requirement for the child to be eligible to receive regular monthly cash assistance payments or vendor payments.

(b) For vendor payments, in addition to the criteria in Paragraph (a) of this Rule, the child shall also meet the following criteria:

- (1) at or prior to the issuance of the adoption decree, have a known and diagnosed medical, mental, or emotional condition that is documented by a medical professional that will require ongoing treatment or therapy of a medical or remedial nature; or
- (2) after the issuance of the adoption decree but while still under the age of 18, have been determined by the public adoption agency administering adoption assistance benefits to have a medical, mental, or emotional condition, congenital problem, birth injury, or other documented problem that is determined by a medical professional to have been preexisting at the time of his or her placement into an adoptive home.

(c) The prospective adoptive parents must meet the following criteria:

- (1) Enter into an adoption assistance agreement with a public adoption agency at the time of or prior to the issuance of an adoption decree;
- (2) Have a child placed with them in accordance with applicable state and local laws for purposes of an adoption who meets the requirements in Paragraph (a) of this Rule;
- (3) are legally responsible for the support of the child and is providing support to the child, if the child is under the age of 18;
- (4) entered into an adoption assistance agreement with the public adoption agency prior to entry of the decree of adoption. The adoption assistance agreement shall identify the specific services for the child that the parents want to be covered by vendor payments;
- (5) Shall have a completed criminal history investigated pursuant to G.S. 48-3-303 and 48-

3-309 and shall not have a criminal history, as defined by G.S. 48-1-101(5b), or any other criminal conviction that would cause the prospective adoptive parent to be unfit to have responsibility for the safety and well-being of children as determined by the public adoption agency pursuant to G.S. 48-3-309.

(6) Shall provide the public adoption agency with the results of the criminal back history investigation.

(7) Shall have a completed check of the North Carolina's Responsible Individuals List and have a check of the results of child abuse and neglect central registry of states where the applicant has resided the past five years and not be placed on the North Carolina's Responsible Individuals List or any other state's child abuse and neglect central registry. The public adoption agency shall maintain a copy of the results in their file.

(8) For vendor payments when the child meets the criteria in Sub-item (b)(2) of this Rule, shall enter into an adoption assistance agreement amendment on a form provided by the Department ("North Carolina Division of Social Services Adoption Assistance Agreement Amendment" DSS-5307, which can be found at <https://www.ncdhhs.gov/divisions/dss>) that identifies and includes supporting documentation of the child's preexisting condition and allows the parents to be reimbursed for vendor services related to the child's preexisting condition.

(d) All individuals 18 years of age or older who reside in the prospective adoptive home shall have a completed a criminal history investigated pursuant to G.S. 48-3-303 and 48-3-309 and shall not have a criminal history, as defined by G.S. 48-1-101(5b), or any other criminal conviction that would cause the prospective adoptive parent is unfit to have responsibility for the safety and well-being of children as determined by the public adoption agency pursuant to G.S. 48-3-309.

(e) Prior to the adoption, all individuals 18 years of age or older who reside in the prospective adoptive home shall have a completed check of the North Carolina's Responsible Individuals List and have a check of the results of child abuse and neglect central registry of states where the applicant has resided the past five years and not be placed on the North Carolina's Responsible Individuals List or any other state's child abuse and neglect central registry. The public adoption agency shall maintain a copy of the results in their file.

(f) Upon adoption, the adoptive parents shall comply with all the terms of the adoption agreement assistance and notify the public adoption agency of any change in their legal or financial responsibility of the adopted child, address or contact information.

(g) The public adoption agency shall:

- (1) prior to the adoption, make a determination as to whether the requirements of this Rule have

been met on a form created by the Department ("Adoption Assistance Eligibility Checklist" Form DSS-5012 which can be found at <https://www.ncdhhs.gov/divisions/dss>) that shall identify the reasons that the eligibility requirements have been met and inform the prospective adoptive parents of the right to appeal the decision.

- (2) maintain a copy of the results of the criminal investigation of the foster parents and any individual 18 years of age or older who resides in the prospective adoptive home.

- (3) after the adoption:

(A) annually send to the adoptive parents a letter reminding them to report any changes in their legal or financial responsibility of the adopted child;

(B) issue to the adoptive parents a notice if the adoption assistance payments are to be suspended ("North Carolina Division of Social Services Adoption Assistance Suspension Notice" Form DSS-5306 which can be found on the Department's website at <https://www.ncdhhs.gov/divisions/dss>) that shall identify the reason for the suspension and how to appeal the suspension.

(C) issue to the adoptive parents a notice if the adoption assistance payments are to be terminated ("North Carolina Division of Social Services Adoption Assistance Termination Notice" Form DSS-5308 which can be found at <https://www.ncdhhs.gov/divisions/dss>) that shall identify the reason for the termination and how to appeal the termination.

- (4) In order for vendor services to be reimbursed the vendor must obtain prior approval by submitting to the public adoption agency completed and signed forms provided by the Department ("Adoption Assistance Vendor Payment Request Form" Form DSS-5112 and "Adoption Assistance Vendor Payment Instructions for Providers" Form DSS-5115 which can be found at <https://www.ncdhhs.gov/divisions/dss>) that includes documentation of the child's diagnosis, the child's special needs related to the diagnosis, how the is service related to the special needs, what the goals of the service is to accomplish, how achievement of goals be measured, the projected duration of treatment or service, the projected total cost and two copies of the provider's bill after all health insurance claims have been processed.

Authority G.S. 48-1-101; ~~108A-48~~; 108A-49; 108A-50; 143B-153.

10A NCAC 70M .0403 PROCEDURES /REIMBURSEMENT OF ADOPTION ASSISTANCE BENEFITS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 70M .0404 ELIGIBILITY REQUIREMENTS FOR THE SPECIAL CHILDREN ADOPTION INCENTIVE FUND AND EFFECTIVE DATE

Authority G.S. 108A-49; 108A-50; 143B-153; S.L. 2000-67, s. 11.16.

10A NCAC 70M .0405 PAYMENTS FROM THE SPECIAL CHILDREN ADOPTION INCENTIVE FUND

Authority G.S. 108A-49; 108A-50; 143B-153; S.L. 2000-67, s. 11.16.

SECTION .0500 - OUT-OF-STATE ADOPTION FEES ~~-GENERAL~~

10A NCAC 70M .0501 PURPOSE OF OUT-OF-STATE ADOPTION SERVICE FEES

(a) ~~Out of state adoption service fees are established as part of the state wide permanency planning effort for the purpose of providing services to foster children to assist in finding permanent adoptive homes for them.~~

(b) ~~This adoption service fee is provided to county departments of social services for payment of service fees to obtain adoption services from out of state adoption agencies, including assisting with the costs of:~~

- (1) ~~recruiting and securing an adoptive home for the child;~~
- (2) ~~pre placement services to family and child;~~
- (3) ~~post placement services to family and child;~~
- (4) ~~post finalization services.~~

(c) ~~The adoption service fee is designed to provide financial assistance to enable county departments of social services having legal placement and consenting authority of children to expand their adoptive family recruitment through referrals to out of state adoption agencies that specialize in hard to place children.~~

(d) ~~The Division of Social Services will provide a maximum of one thousand eight hundred dollars (\$1800) per child for adoption service fees contracted for between a county department of social services and an authorized out of state adoption agency.~~

(a) When the requirements in this Rule have been met, with prior approval, the Department may reimburse in part or in full a fee incurred by a public adoption agency for adoption services provided by an out-of-state adoption agency. Public adoption agencies shall pay the out-of-state adoption provider directly and provide proof of payment to the Department once payment is made.

(b) The requirements of this Rule are met when the child:

- (1) is a child with special needs;
- (2) is registered on the North Carolina Adoption Resource Exchange;

- (3) has parents who have each had one of the following occur:
- (A) a court order that terminated parental rights;
 - (B) executed a relinquishment of the child to a public or private child-placing agency;
 - (C) consented to the adoption;
 - (D) a finding by the court in the adoption proceeding that the parent's consent to the adoption is not required; or
 - (E) has died.
- (c) Out-of-state adoption agencies shall be licensed by their respective states and as approved by conditions of the Interstate Compact on the Placement of Children (ICPC) Article 38 of G.S. 7B to provide adoptive services for children with special needs.
- (d) The service fee charged by the specialized out-of-state adoption agency is:
- (1) for one of the following services provided by the specialized adoption service agency:
 - (A) recruiting and securing an adoptive home for the child;
 - (B) pre-placement services for the family and child;
 - (C) post-placement services for the family and child; and
 - (D) post-finalization services.
 - (2) when an available adoptive family has not been identified in North Carolina.
- (e) The public adoption agency:
- (1) shall have custody and placement responsibility of the child and have the legal authority to consent to the child's adoption;
 - (2) shall make a written request to the Department for reimbursement for the out-of-state adoption service fee at the time that a decision has been made to place the child with a specific adoptive parent or parents who have had an approved home study that was conducted by the specialized out-of-state adoption agency;
 - (3) shall include in its reimbursement request to the Department written documentation that verifies the following:
 - (A) the public adoption agency has legal placement;
 - (B) the public adoption agency has the authority to legally consent to the adoption of the child;
 - (C) the child meets the requirements of this Rule;
 - (D) the out-of-state adoption agency meets the requirements of this Rule;
 - (E) the service fee to be charged meets the requirements of this Rule; and
 - (F) a quote for the service fee that includes the specific nature of the service to be provided and the amount of the fee;

- (4) shall obtain prior approval from the Department prior to initiating contracted services where reimbursement is expected;
 - (5) Upon the Department's prior approval for an out-of-state adoption service fee, the public adoption agency shall enter into an agreement with the out-of-state adoption agency on a form provided by the Department ("North Carolina Division of Social Services Purchase of Out-of-State Adoption Services Agreement" Form DSS-5305 which can be found at <https://www.ncdhhs.gov/divisions/dss>) and provide a copy of the agreement to the Department. The agreement shall include the type and nature of the service to be provided, the fee amount to be charged, an agreement by the out-of-state adoption agency to provide the identified service and an agreement by the public adoption agency to pay for the identified service; and
 - (6) shall pay any amount of the out-of-state adoption agency service fee that is not approved by the Department.
- (f) To the extent funds are available and the fee for services is not above the maximum allowable amount of one thousand eight hundred dollars (\$1,800) per child, the Department shall approve the public adoption agency's request for prior approval for reimbursement of the out-of-state adoption service fee if it meets the requirements in this Rule and the Department notifies the public adoption agency in writing of the approval.
- (g) The Department shall not reimburse a public adoption agency for any amount over one thousand eight hundred dollars (\$1,800) per child in out-of-state adoption service fees that are approved pursuant to this Rule.
- (h) In order for the public adoption agency to receive reimbursement for a fee that has been approved pursuant to this Rule, the public adoption agency shall notify the Department of the date that payment of the fee is due and provide the Department with a copy of the bill for the out-of-state adoption service fee.
- (i) Upon the public adoption agency's payment of the out-of-state adoption service fee, the public adoption agency shall provide the Department with a copy of the receipt of payment for the out-of-state adoption agency fee.

Authority G.S. 48-1; 143B-153.

10A NCAC 70M .0502 GENERAL ELIGIBILITY REQUIREMENTS

Authority G.S. 143B-153.

SECTION .0600 - NON-RECURRING ADOPTION COSTS: GENERAL COSTS

10A NCAC 70M .0601 PURPOSE OF REIMBURSEMENT OF NON-RECURRING ADOPTION EXPENSES PUBLIC ADOPTION AGENCY REQUIREMENTS

Reimbursement of non-recurring adoption expenses incurred by adoptive parents shall be provided by county departments of social services in accordance with requirements set forth in this Section to facilitate the adoption of children with special needs, and in accordance with procedures established by the State Division of Social Services.

(a) Public adoption agencies shall:

- (1) at the time of or prior to the final decree of adoption, enter into an agreement for the reimbursement of nonrecurring adoption expenses with parents who adopt a child with special needs;
- (2) prior to entering into an agreement for the reimbursement of nonrecurring adoption expenses, the public adoption agency shall:
 - (A) Make a determination that the child is a child with special needs; and
 - (B) Make a determination that the child has been placed for adoption in accordance with applicable laws;
- (3) make payments for reimbursement of nonrecurring adoption expenses incurred by or on behalf of parents in connection with the adoption of a child with special needs if it enters into an agreement for the reimbursement of nonrecurring adoption expenses;
- (4) retain copies of the complete application for reimbursement of nonrecurring adoption expenses, along with supporting document and receipts, and the agreement for the reimbursement of nonrecurring adoption expenses for auditing purposes; and
- (5) upon receipt of a completed nonrecurring adoption expense reimbursement application, the public adoption agency shall submit the application to the Department.

(b) When there is an interstate placement of the child with special needs, the public adoption agency that agency that entered into an adoption assistance agreement shall also reimburse for the nonrecurring adoption expenses. When there has been an interstate placement of a child with special needs for the purpose of adoption and there is no adoption assistance agreement from the sending state, then the public adoption agency that is responsible for reimbursing for entering into an agreement for non-recurring adoption expenses shall be the public adoption agency where petitioner resides.

Authority G.S. 108A-49; 108A-50; 143B-153.

10A NCAC 70M .0602 DEFINITIONS ELIGIBLE NON-RECURRING ADOPTION EXPENSES

Non-recurring costs for which reimbursement can be claimed are those costs associated with the adoption that are incurred prior to or at the time of the adoption and which include:

- (1) reasonable and necessary adoption fees;

- (2) court costs;
- (3) attorney's fees;
- (4) adoptive home study;
- (5) physical examinations;
- (6) psychological examinations, when required by an agency;
- (7) supervision of the placement prior to entry of the final order of adoption; and
- (8) transportation and costs of lodging and food for the child and adoptive parents when necessary to complete the adoptive process.

An adoptive parent shall receive reimbursement for non-recurring adoption expenses not to exceed two thousand dollars (\$2,000) when:

- (1) The child placed with the parent for the purpose of adoption is a child with special needs;
- (2) The adoptive parents have submitted a signed application for non-recurring adoption expenses on a form provided by the Department ("State of North Carolina Application For Reimbursement of Nonrecurring Adoption Costs" Form DSS-5145 which can be found at <https://www.ncdhhs.gov/divisions/dss>). The application shall:
 - (a) demonstrate that the child is a child with special needs;
 - (b) include acknowledgements by the adoptive parents that:
 - (i) non-recurring adoption expenses are limited to a reimbursement of two-thousand dollars (\$2,000) per child and are contingent on the child being a child with special needs;
 - (ii) the expenses that they are seeking reimbursement for were actually incurred by them;
 - (iii) the expenses that they are seeking reimbursement for are reasonable and necessary adoption expenses which were directly related to the legal adoption of the child; and
 - (iv) the expenses that they are seeking reimbursement for have not and will not be reimbursed by another source.
- (C) if the placement was an interstate placement, include an acknowledgement by the adoptive parents that the placement was made in accordance with the Interstate Compact on the Placement of Children adopted by both the sending and receiving state and any other

- applicable federal, state or local laws or rules related to the interstate adoptive placement of a child;
- (D) the type and amount of the expense that will be incurred by the adoptive parents; and
- (E) include documentation that verifies the information in the application and receipts for any non-recurring service for which the parent is seeking reimbursement.
- (3) The foster parents and all individuals 18 years of age or older who reside in the prospective adoptive home shall have a completed a criminal history investigated pursuant to G.S. 48-3-303 and 48-3-309 and shall not have a criminal history, as defined by G.S. 48-1-101(5b), or any other criminal conviction that would cause the prospective adoptive parent is unfit to have responsibility for the safety and well-being of children as determined by the public adoption agency pursuant to G.S. 48-3-309.
- (4) The foster parents shall provide the public adoption agency with the results of the criminal history investigation, and the public adoption agency shall maintain a copy of the results.
- (5) The adopting parents and all individuals 18 years of age or older who reside in the home shall have a completed check of the North Carolina's Responsible Individuals List and have a check of the results of child abuse and neglect central registry of states where the applicant has resided the past five years and not be placed on the North Carolina's Responsible Individuals List or any other state's child abuse and neglect central registry. The public adoption agency shall maintain a copy of the results in their file.
- (6) Upon approval of the application in Item (2) of this Rule, the adoptive parents shall enter into a binding written agreement with a public adoption agency for the reimbursement of non-recurring expenses on a form provided by the Department ("State of North Carolina Agreement for Reimbursement of Non-recurring Adoption Costs" Form DSS-5146 which can be found at <https://www.ncdhhs.gov/divisions/dss>) that meets the requirements in 42 USC 673(a)(3) and any subsequent amendments, and is signed at the time of or prior to the final decree of adoption.
- (7) The application for reimbursement was filed in accord with the quarter rule outlined in CFR 45 1356.41. E2 adoption.

Authority G.S. 108A-49; 108A-50; 143B-153.

10A NCAC 70M .0603 REQUIREMENTS

Authority G.S. 108A-49; 108A-50; 143B-153; 42 U.S.C. 673.

10A NCAC 70M .0604 REIMBURSEMENT FOR NON-RECURRING ADOPTION EXPENSES PROHIBITION ON REIMBURSEMENT CAPS

~~(a) The maximum amount for which adoptive parents will be reimbursed for all non-recurring adoption expenses shall not exceed two thousand dollars (\$2,000).~~

~~(b) No maximum rates for specific reimbursable services shall be established by the State Division of Social Services or by any county department of social services.~~

The Department and any public adoption agencies are prohibited from establishing a maximum allowable reimbursement amount for any single eligible nonrecurring adoption expense.

Authority G.S. 108A-49; 108A-50; 143B-153.

SECTION .0700 – SPECIAL NEEDS ADOPTION INCENTIVE FUND

10A NCAC 70M .0701 ELIGIBILITY REQUIREMENTS FOR THE SPECIAL NEED ADOPTION INCENTIVE FUND AND EFFECTIVE DATE

Within the limits of available funding, the Department may approve and provide assistance in the form of monthly cash payments from the Special Need Adoption Incentive Fund when the following requirements have been met:

- (1) Requirements for the child:
 - (a) Shall be a child with special needs and either has at least one of the factors or conditions listed in Rule .0102(e) through (h) of the definition in this Chapter of a child with special needs or meets the requirement in 42 USC 673(c)(2)(B)(ii).
 - (b) Shall meet the requirements for monthly cash adoption assistance in this Chapter;
 - (c) The child was in the custody and placement responsibility of an adoption agency for at least six consecutive months prior to the finalization of the adoption;
 - (d) The special needs condition from Item (1) of this Rule is expected to limit the child's ability, both currently and throughout childhood, to function in the home, school or community absent eight or more hours of direct daily supervision or care for personal health care or prevention of self-destructive or assaultive behavior;
 - (e) The child will have resided in the foster parent's home for six consecutive months prior to the finalization of the adoption; and

- (f) The child will have been legally adopted on or after January 1, 2001.
- (2) The requirements for each foster parent are:
 - (a) licensed as a foster parent;
 - (b) have been receiving monthly cash assistance from any governmental source, such as federal, state or local, above the state adoption assistance rate established by the General Assembly for the previous six consecutive months prior to the finalization of the adoption to provide the direct care or supervision required for the child's health condition that meets the requirement in Item (4) of this Rule;
 - (c) prior to the entry of the adoption decree, the foster parent made a request for financial assistance in addition to the state adoption assistance rate established by the General Assembly in order to provide the care required for the child's health condition that meets the requirement in Item (4) of this Rule.
 - (d) prior to the entry of the adoption decree, the foster parent provided the public adoption agency with a signed letter that truthfully and accurately details the daily supervision needs of the child.
 - (e) shall only be willing to adopt the child if the monthly cash assistance from any other governmental source, such as federal, State or local, is above the state adoption assistance rate received for foster parents and is not terminated upon the adoption of the child;
 - (f) shall enter into an adoption assistance agreement with a public adoption agency prior to the decree of adoption;
 - (g) entered into a supplemental agreement with a public adoption agency prior to the adoption decree;
 - (h) agree to provide the public adoption agency with a copy of the adoption decree once the adoption has been finalized.
 - (i) shall have a completed criminal history investigated pursuant to G.S. 48-3-303 and 48-3-309 and shall not have a criminal history, as defined by G.S. 48-1-101(5b), or any other criminal conviction that would cause the prospective adoptive parent is unfit to have responsibility for the safety and well-being of children as determined by the public adoption agency pursuant to G.S. 48-3-309.
- (j) shall require all individuals eighteen years of age or older who reside in the prospective adoptive home to undergo a criminal history investigated pursuant to G.S. 48-3-303 and 49-3-309; and
- (k) shall provide the public adoption agency with the results of the criminal back history investigation.
- (3) All individuals 18 years of age or older who reside in the prospective adoptive home shall have a completed a criminal history investigated pursuant to G.S. 48-3-303 and 48-3-309 and shall not have a criminal history, as defined by G.S. 48-1-101(5b), or any other criminal conviction that would cause the prospective adoptive parent is unfit to have responsibility for the safety and well-being of children as determined by the public adoption agency pursuant to G.S. 48-3-309.
- (4) The requirements for the public adoption agency having custody of the child are:
 - (a) it voluntarily agrees to participate in the Special Need Adoption Incentive Fund and agrees to assume fifty percent of the payment above the State adoption assistance rate established by the General Assembly.
 - (b) entered into an adoption assistance agreement as provided in this Rule.
 - (c) entered into a supplement agreement as provided in this Rule.
 - (d) maintains a record for the child that contains written documentation that the child and foster parent(s) have met or will meet the requirements for the foster child and the foster parents in this Rule at the time of the adoption decree and shall specifically include the following:
 - (i) written statement on a form provided by the Department ("Special Children Adoption Incentive Fund Agency Verification of Legal Custody and Child's Living Arrangement For Past Six Months" Form DSS-5214, which can be found at <https://www.ncdhhs.gov/divisions/dss>) signed by the Director of the public adoption agency that verifies:
 - (A) each foster parent is licensed;
 - (B) the public adoption agency has legal custody and

- (C) placement authority of the child;
the child has lived with the foster family for six consecutive months prior to the adoption;
- (D) that the foster parent(s) have received monthly cash assistance from a governmental source in excess of the standard board rate established by the General Assembly for the previous six months on a continuous basis and the amount of the payments; and
- (E) the foster parent(s) have stated a willingness to adopt this child if the monthly cash assistance that they have received as foster parents is not terminated.
- (ii) written statement on a form provided by the Department ("Special Children Adoption Incentive Fund Verification of Child's Health Condition" Form DSS-5213 which can be found at <https://www.ncdhhs.gov/divisions/dss>) signed by a medical professional qualified to diagnose the child's condition prior to the adoption that demonstrates that the child meets all the requirements in Item (4) of this Rule;
- (iii) written statement on a form provided by the Department ("Special Children Adoption Incentive Fund Verification of Child's Need for Daily Supervision" Form DSS-5215 which can be found at <https://www.ncdhhs.gov/divisions/dss>) signed by the foster parent(s) prior to the adoption that demonstrates
- (iv) a letter from the foster parent(s) detailing the daily needs of the child.
- (v) signed adoption assistance agreement;
- (vi) signed supplement agreement
- (vii) a copy of the foster parent's license;
- (viii) copy of the decree of adoption once it has been received pursuant to this Rule;
- (ix) a copy of the results of the criminal investigation of the foster parents and any individual 18 years of age or older who resides in the prospective adoptive home.
- (x) It makes a request, on behalf of the foster parent(s), prior to the adoption decree to the Department for Special Need Adoption Incentive Fund assistance for the foster parents.
- Authority G.S. 108A-49; 108A-50; 108A-50.1; 143B-153; S.L. 2000-67, s. 11.16.*
- 10A NCAC 70M .0702 PAYMENTS FROM THE SPECIAL NEED ADOPTION INCENTIVE FUND**
- (a) Payments from the Special Need Adoption Incentive Fund will be made by the Division of Social Services to the adoptive parent(s).
- (b) Participating county departments of social services shall submit claims for payments to the Division of Social Services.
- (c) The initial payment claim must include the following items:
- (1) verification of child's placement authority;
 - (2) verification that the child has lived with the foster family six consecutive months;
 - (3) copy of written statement from a licensed physician regarding the child's health condition;
 - (4) copy of written statement from a licensed health, mental health, or developmental disability professional regarding the status of the child's condition;
 - (5) copy of signed adoption assistance agreement;
 - (6) copy of signed supplemental assistance agreement; and
 - (7) copy of Decree of Adoption.
- (d) Monthly payment claims shall be submitted on the "Request for Special Children Adoption Incentive Fund Payment" form developed by the Division of Social Services.

Authority G.S. 108A-49; 108A-50; 108A-50.1; 143B-153; S.L. 2000-67, s. 11.16.

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Social Services Commission intends to repeal through readoption the rules cited as 10A NCAC 71K .0101 and .0102.

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

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncdhhs.gov/divisions/social-services/about-dss/social-services-commission/rules>

Proposed Effective Date: August 1, 2021

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A public hearing can be requested by contacting Joel Johnson at the Office of General Counsel: Email: joel.johnson@dhhs.nc.gov; Fax: (919)733-3854; Mailing Address: 2001 Mail Service Center, Raleigh, NC 27699-2001.*

Reason for Proposed Action: *Pursuant to GS 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review these rules were determined to be "Necessary with Substantive Public Interest" requiring readoption by August 31, 2021.*

The following rules are being proposed for repeal through readoption: 10A NCAC 71K .0101 and .0102.

Comments may be submitted to: *Paris Penny, 2401 Mail Service Center, Raleigh, NC 27699; phone (919) 527-7257; email paris.penny@dhhs.nc.gov*

Comment period ends: June 14, 2021

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 984-236-1850.

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

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

SUBCHAPTER 71K – PROBLEM PREGNANCY SERVICES

10A NCAC 71K .0101 METHODS OF PROVISION

Authority G.S. 143B-153.

10A NCAC 71K .0102 FREEDOM OF CHOICE

Authority G.S. 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 adopt the rules cited as 10A NCAC 71L .0106, .0107, readopt with substantive changes the rules cited as 10A NCAC 71L .0101-.0103, .0105 and repeal through readoption the rule cited as 10A NCAC 71L .0104.

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

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncdhhs.gov/divisions/social-services/about-dss/social-services-commission/rules>

Proposed Effective Date: August 1, 2021

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A public hearing can be requested by contacting Joel Johnson at the Office of General Counsel: Email: joel.johnson@dhhs.nc.gov; Fax: (919)733-3854; Mailing Address: 2001 Mail Service Center, Raleigh, NC 27699-2001*

Reason for Proposed Action: *Pursuant to GS 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review these rules were determined to be "Necessary with Substantive Public Interest" requiring readoption by August 31, 2021.*

The following rules are being proposed for readoption with substantive changes: 10A NCAC 71L .0101, .0102, .0103, and .0105.

The following rules are being proposed for repeal through readoption: 10A NCAC 71L .0104.

The following rules are being proposed for adoption for additional clarification to programmatic procedures: 10A NCAC 71L .0106 and .0107.

Comments may be submitted to: Paris Penny, 2401 Mail Service Center, Raleigh, NC 27699; phone (919) 527-7257; email paris.penny@dhhs.nc.gov

Comment period ends: June 14, 2021

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 984-236-1850.

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

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

SUBCHAPTER 71L – MATERNITY HOME FUND

10A NCAC 71L .0101 NATURE AND SCOPE

The State Maternity Home Fund is supported by state and federal funds and is administered by the North Carolina Division of Social Services. The State Maternity Fund is a resource for any North Carolina residents experiencing ~~problem pregnancies who for various reasons are unable to remain in their own homes during the prenatal period.~~ an unplanned pregnancy, regardless of age or marital status, who is unable to remain in her own home during the pre-natal period and whose financial resources have been determined to be inadequate to meet residential costs in an approved living arrangement.

- (1) ~~The Maternity Home Fund is administered by the state division of social services and funded under Title IV-B of the Social Security Act.~~
- (2)(1) Application for A State Maternity Home Funds Fund application, form DSS-6187, for an individuals individual needing out-of-home care during pregnancy must be submitted ~~experiencing problem pregnancies must be~~

~~made~~ by a county department of social services or a North Carolina licensed private adoption agency. ~~agency to the North Carolina Division of Social Services for review and approval.~~ The ~~state North Carolina division~~ Division of social Social services Services is responsible for monitoring the services of both the county departments of social services and the North Carolina licensed private adoption agencies.

- (3)(2) ~~The State Maternity Home Fund may assist with residential housing costs for up to six months183 days, including up to two weeks of post-partum care for the mother only. following delivery, as needed by pregnant women in a living arrangement approved for Maternity Home Fund reimbursement.~~

- (4)(3) ~~The State Maternity Home Fund cannot be utilized for hospitalization and delivery services or other medical services services. received outside the auspices of a licensed maternity home. Medical services supervision that is provided as a part of the regimen of services by a licensed maternity home are is included in the per diem cost of care. All medical services for State Maternity Fund clients residing in alternate living arrangements must be provided through other resources.~~

- (4) The State Maternity Fund may be used to pay for residential care for a pregnant minor who is in the protective custody of a county department of social services when the minor is placed in a facility that is not approved to receive foster care funds.

- (5) Living arrangements for which State Maternity Home Funds Fund payments may be utilized to pay for the cost of residential care include:

- (a) A maternity home; licensed by or meeting the maternity home standards of the licensing authority in the state in which the facility is located; the State of North Carolina;
- (b) A foster family home for children licensed in North Carolina; Carolina and used in accordance with the license issued for that home;
- (c) The home of a non-legally responsible relative in North Carolina; Carolina jointly approved for a specific client by the North Carolina Division of Social Services and the agency requesting State Maternity Fund payments; or
- (d) For individuals 18 and over, a boarding arrangement in North Carolina; Carolina jointly approved for a specific client by the North Carolina Division of Social Services and the referring agency.

Authority G.S. 143B-153.

10A NCAC 71L .0102 APPROVAL CRITERIA

(a) A county department of social services or a North Carolina licensed private adoption agency is responsible for social work services and planning for pregnant clients for whom they are requesting State Maternity Home Funds. Fund payments. Social work services include assisting the client to decide to release the baby for adoption or continue parenting the baby.

(b) Marital status and age do not affect eligibility for State Maternity Home Funds. Fund payments.

(c) The client must be a resident of the State of North Carolina to be eligible for State Maternity Home Funds Fund payments.

(d) State Maternity Home Funds Fund payments shall supplement any other funds available from applicants, county departments of social services, families or private agencies. The agency requesting State Maternity Fund payments must review all financial resources available to the client. The agency must establish that resources available to the client are not adequate to meet residential costs.

(e) State Maternity Home Funds Fund payments to licensed maternity homes is based on the actual per diem cost of care. A maternity home shall maintain a valid maternity home license for a consecutive one year period and submit an audited financial statement to the North Carolina Department of Health and Human Services, Controller's Office (2019 Mail Service Center, Raleigh, NC 27699-2019) before the per diem rate is assigned. A licensed maternity home is eligible for reimbursement from maternity home funds in the second year of operation if this criteria is met and maternity home funds are available.

(f) State Maternity Home Funds Fund payments for care in a foster home is the North Carolina standard board rate for foster care assistance set by the General Assembly. The current standard board payment for foster care assistance can be obtained from the North Carolina Division of Social Services (952 Old U.S. 70 Highway, Black Mountain, NC 28711).

(g) State Maternity Home Funds Fund payments for care in the home of a non-legally responsible relative or in a boarding arrangement shall not exceed the North Carolina standard board rate for foster care assistance.

Authority G.S. 143B-153.

10A NCAC 71L .0103 APPLICATION PROCESS

(a) County departments of social services and North Carolina licensed private adoption agencies are responsible for submitting applications to the family services section of the state division of social services for those clients for whom they accept basic casework responsibility. for the State Maternity Fund. Applications must be made in writing and the original must be submitted to the State Maternity Fund Coordinator, Family Support and Child Welfare Services Section, Division of Social Services. Applications should not be delayed because the actual admission date has not been confirmed. The service agency must notify the North Carolina Division of Social Services when the admission date is confirmed so that review and action on the application can be completed. Incomplete applications will not be processed. Funds will not be approved to offset residential costs incurred prior to the North Carolina Division of Social Services'

receipt of the actual application with original signatures and all information necessary to make a decision regarding approval.

~~(b) Licensed private adoption agencies are responsible for submitting applications directly to the family services section for those needy clients for whom they accept basic casework responsibility.~~

~~(c) Application for funds shall be made prior to admission to the Maternity Home Fund approved living arrangement. Emergency situations may be submitted for special consideration.~~

~~(d)(b) The following information must accompany requests for funds. funds:~~

- ~~(1) social study and service plan; This information must include the reason the individual experiencing the problem pregnancy is unable to remain in her own home, a description of the recommended living arrangement, the plan of services for the natural parents and their infant and a description of financial resources to be considered;~~
- ~~(2) notice of acceptance of the client by a maternity home or another recommended living arrangement;~~
- ~~(3) anticipated placement date and expected date of delivery.~~
- (1) the reasons the client cannot remain in her own home (own home includes a foster care facility in which a child resides);
- (2) a description of the client's financial resources;
- (3) household gross monthly income(s), names and ages of other minor children in household, and statement of US citizenship or immigration status;
- (4) a description of the recommended living arrangement and why it is appropriate;
- (5) the proposed plan of services for the biological parents and the child;
- (6) an explanation of why the necessary services cannot be obtained for the client in a community-based living arrangement;
- (7) a tentative agreement to accept the client by the individual responsible for maintaining the recommended living arrangement;
- (8) the anticipated date of admission and the expected date of delivery (month, day, and year for both).

~~(e)(c) Upon receipt of notice that funds have been approved, unless the placement is to be in a licensed maternity home, the agency requesting funds must negotiate with the individual responsible for maintaining the living arrangement a written agreement setting out mutually agreed upon responsibilities.~~

(d) Payments shall not exceed the amount initially approved.

Authority G.S. 143B-153.

10A NCAC 71L .0104 ADDITIONAL REQUIREMENTS FOR THE PRIVATE AGENCY

Authority G.S. 143B-153.

10A NCAC 71L .0105 PROCEDURE FOR APPROVAL AND PAYMENT

(a) All State Maternity Fund forms, correspondence, and monthly billing statements shall be addressed to the State Maternity Fund Coordinator, whose contact information can be found on the Application for State Maternity Fund DSS-6187.

~~(a)(b)~~ Upon receipt of a completed Application for State Maternity Fund DSS-6187 form, the social study, and related information, the North Carolina Division of social services Social Services will shall make a decision regarding approval for State Maternity Home Funds Fund payments and the recommended type of living arrangement based on individual circumstances. per the application. Notice of action taken will shall be promptly communicated to the county department of social services or to the private adoption agency submitting the application with a copy routed to the applicable maternity home, if maternity home care is the approved living arrangement.

~~(b)(c)~~ County departments of social services and North Carolina licensed private adoption agencies will shall submit a designated voucher form to the family services section of notification to the state division of social services when the client is admitted to or discharged from the approved living arrangement; arrangement, and if the approved living arrangement is other than a maternity home, a copy of the written agreement negotiated with the individual responsible for maintaining the living arrangement.

~~(c)~~ One check will be written each month for each approved living arrangement as appropriate identifying the names of the clients to whom the payment should be credited.

~~(d)~~ If the approved living arrangement is other than a maternity home, the service agency shall submit a completed copy of the DSS-6189, State Maternity Fund Residential Care Provider Agreement, negotiated with the individual responsible for maintaining the living arrangement, to the North Carolina Division of Social Services before payment may be made to the residential care provider.

~~(e)~~ At the end of each month the State Maternity Fund Coordinator will generate a monthly reimbursement worksheet for each maternity home. After the worksheet is reviewed, corrected and verified, an authorized official from the home shall certify that all information reported is correct by signing the signature block of the worksheet. The worksheet is then mailed to the North Carolina Division of Social Services for a signature by the State Maternity Fund Coordinator for approval and submission to the Controller's Office.

Authority G.S. 143B-153.

10A NCAC 71L .0106 DEVELOPMENT OF SERVICE PLAN

(a) The service agency's plan for providing services to the client and her child shall be transmitted to the North Carolina Division of Social Services as a part of the DSS-6187 Application for State Maternity Fund.

(b) A thorough needs assessment shall be completed at services intake or by the Pregnancy Services caseworker, in conjunction with alternative counseling. If during the process of assessing the needs of a pregnant minor, abuse and/or neglect is suspected, the Pregnancy Services caseworker shall notify the agency's Child Protective Services Unit. After the assessment is completed, the

caseworker and the client shall jointly finalize a specific plan for services, building in time frames for action and identifying channels for accessing resources to be provided by outside agencies.

(c) As needed and appropriate, the plan shall address the following:

- (1) Counseling needs;
- (2) Medical Care;
- (3) Medical Assistance;
- (4) Nutritional Needs;
- (5) Residential or Housing needs;
- (6) Educational needs;
- (7) Employment Training;
- (8) Parenting Education;
- (9) Financial planning;
- (10) Child Care; or
- (11) Family Planning.

(d) While the client is in residential care, the supervising agency shall maintain periodic contact with the client.

Authority G.S. 143B-153.

10A NCAC 71L .0107 ASSESSING THE APPROPRIATENESS OF ALTERNATIVE TYPES OF LIVING ARRANGEMENTS FOR INDIVIDUAL CLIENTS

(a) The Pregnancy Services caseworker is responsible for evaluating the appropriateness of any community living arrangement for which the State Maternity Fund is requested, whether it is a boarding arrangement, the home of a non-legally responsible relative, or a licensed family foster home.

(b) When residential care in a family foster home is being considered for a minor, the Pregnancy Services caseworker shall request the assistance of the Foster Care Services staff in determining whether a home is available, and complete an assessment of the placement for the pregnant client and for all other persons residing in the home. A decision shall be reached by the Foster Care worker and the Pregnancy Services caseworker as to the individual assuming responsibility for case management.

(c) The following aspects of a community living arrangement shall be explored in determining the appropriateness for individual placements:

- (1) Location and surroundings;
- (2) Physical environment;
- (3) Emotional environment;
- (4) Stability of living arrangement;
- (5) Emergency transportation.

(d) Living arrangements for an expectant mother for whom the State Maternity Fund is being requested shall be selected on the basis of an assessment of the client's individual circumstances and service needs.

Authority G.S. 143B-153.

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Social Services Commission intends to readopt with substantive changes the rules cited as 10A NCAC

710 .0102-.0104 and readopt without substantive changes the rule cited as 10A NCAC 710 .0101.

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

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncdhhs.gov/divisions/social-services/about-dss/social-services-commission/rules>

Proposed Effective Date: August 1, 2021

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): A public hearing can be requested by contacting Joel Johnson at the Office of General Counsel: Email: joel.johnson@dhhs.nc.gov; Fax: (919)733-3854; Mailing Address: 2001 Mail Service Center, Raleigh, NC 27699-2001.

Reason for Proposed Action: Pursuant to GS 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review these rules were determined to be "Necessary with Substantive Public Interest" requiring readoption by August 31, 2021.

The following rules are being proposed for readoption with substantive changes: 10A NCAC 710 .0102, .0103 and .0104;

The following rules are being proposed for readoption without substantive changes: 10A NCAC 710 .0101.

Comments may be submitted to: Paris Penny, 2401 Mail Service Center, Raleigh, NC 27699; phone (919) 527-7257; email paris.penny@dhhs.nc.gov

Comment period ends: June 14, 2021

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 984-236-1850.

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

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

SUBCHAPTER 710 – REGUGEE ASSISTANCE SERVICES

10A NCAC 710 .0101 SERVICES AVAILABILITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 710 .0102 SERVICE GOALS

Goals toward which the services are directed Service goals are as follows:

- (1) ~~Achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;~~ Provide for the effective resettlement of refugees and to assist them to achieve economic self-sufficiency;
- (2) Achieving or maintaining self-reliance to prevent, reduce, or eliminate dependency; Establish under the authority of the Immigration and Nationality Act the provision of employment services and English language training as a priority in accomplishing the purposes of this program; and
- (3) ~~Preventing Prevent or remedying~~ neglect, abuse, or exploitation of children and adults unable to protect their own ~~interests, interests or~~ by preserving, rehabilitating assimilating or and reuniting families.

Authority G.S. 143B-153; P.L. 94-23.

10A NCAC 710 .0103 METHODS OF SERVICE PROVISION

- (a) Refugee assistance services as described in ~~P.L. 96-212 and P.L. 96-422~~ 8 U.S.C. 1522 may be provided directly or purchased under vendor agreements by county departments of social services, may be provided directly or arranged for as appropriate by the Division of Social Services, or may be purchased by the ~~division~~ Division from public or private providers.
- (b) Purchase of refugee assistance services will be made in accordance with state law and federal regulations governing such purchases, and in accordance with rules specific to purchases by the ~~division~~ Division as set forth in 10A NCAC 67B.

Authority G.S. 143B-153; P.L. 96-110; 96-212; 96-422.

10A NCAC 710 .0104 ELIGIBILITY

- (a) Refugee assistance services as described in ~~P.L. 96-212 and P.L. 96-422~~ 8 U.S.C. 1522 are available only to individuals who are determined to be refugees as defined in ~~these laws. this law.~~
- (b) ~~Any refugee assistance service may be provided to any refugee who is receiving cash assistance, including supplementary assistance, or whose gross family income is not more than 90 percent of the state's median income as issued by the administration for public services and adjusted for family size;~~

~~except that vocational training may not be provided to a refugee who is not 16 years of age or older. To receive Refugee Support Services the client must be a Refugee, admitted under INA 207; Asylees, granted asylum under INA 208; Cuban and Haitian Entrants, as defined under federal regulations (45 CFR 401.2); Certain Amerasians; Trafficking Victims who have been issued an Office of Refugee Resettlement certification letter; Special Immigrant Visa holders from Iraq and Afghanistan; or Legal Permanent Residents (LPR) who were admitted originally as one of the previous statuses.~~

~~(c) Certain refugee assistance services may be provided in accordance with special eligibility criteria as follows: The Refugee Assistance Program (RAP) Support Services Program provides specifically defined and designated services to refugees to facilitate achieving self-support and self-sufficiency as quickly as possible following their arrival in North Carolina. The program provides funding for refugee-specific support services that are linguistically and culturally appropriate. Refugee service providers may be public or private, not-for-profit agencies that provide direct services specifically designed to:~~

- ~~(1) Outreach services and social adjustment services may be provided to refugees without regard to age or family income; Assist refugees in obtaining the skills to achieve economic self-sufficiency, including job readiness, skills training, vocational education, job placement employment follow-up, and other employment services;~~
- ~~(2) English as a second language (ESL) instruction, and career counseling, job orientation, and job placement and follow up components of manpower employment services, may be provided without regard to family income to refugees who are 16 years of age or older and who are not full-time students in elementary or secondary school. Provide training in English language instruction;~~
- ~~(3) Assessment services, and development of an individual employability plan as a component of manpower employment services may be provided without regard to family income to any unemployed refugee who is 16 years of age or older and who is not a full-time student in elementary or secondary school. Provide social adjustment services such as case management, cultural orientation, health management, and support services such as interpretation, translation, and transportation; and~~
- ~~(4) Offer assessment services and development of an individual employability plan as a component of employment services which may be provided without regard to family income to any unemployed refugee who is 16 years of age or older and who is not a full-time student in elementary school or secondary school.~~

(d) For purposes of determining eligibility, "family" is defined as one or more adults and children, if any, related by blood, or law, and residing in the same household. Emancipated minors and children living under the care of individuals not legally

responsible for that care are considered one person families. Where adults reside together, each may be considered a separate family, or all adults, living in the same household may be considered as a family unit, whichever is more beneficial to a refugee in determining ~~his~~ their eligibility on the basis of family size and income; provided that spouses must be considered a family unit.

(e) Eligibility for refugee assistance services may be determined by county departments of social services, ~~or by~~ the Division of Social Services, or by provider agencies from which the ~~division~~ Division is purchasing services under a purchase agreement or contract which specifies the provider agency's responsibility for eligibility determination. The agency that determines eligibility shall be responsible for case management for refugee assistance services and for meeting program requirements for reporting and case documentation.

Authority G.S. 143B-153; P.L. 96-110; 96-212; 96-422.

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Social Services Commission intends to readopt with substantive changes the rules cited as 10A NCAC 71U .0101, .0201, .0213, readopt without substantive changes the rules cited as 10A NCAC 71U .0204-.0207, .0209, .0210, .0212, .0215, .0302, .0303, .0401, and repeal through readoption the rules cited as 10A NCAC 71U .0203, .0211, .0214, .0216 and .0402.

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

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

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncdhhs.gov/divisions/social-services/about-dss/social-services-commission/rules>

Proposed Effective Date: *August 1, 2021*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A public hearing can be requested by contacting Joel Johnson at the Office of General Counsel: Email: joel.johnson@dhhs.nc.gov; Fax: (919)733-3854; Mailing Address: 2001 Mail Service Center, Raleigh, NC 27699-2001.*

Reason for Proposed Action: *Pursuant to GS 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review these rules were determined to be*

"Necessary with Substantive Public Interest" requiring readoption by August 31, 2021.

The following rules are being proposed for readoption with substantive changes: 10A NCAC 71U .0101, .0201, and .0213;

The following rules are being proposed for readoption without substantive changes: 10A NCAC 71U .0204, .0205, .0206, .0207, .0209, .0210, .0212, .0215, .0302, .0303, and .0401;

The following rules are being proposed for repeal through readoption: 10A NCAC 71U .0203, .0211, .0214, .0216, and .0402.

Comments may be submitted to: Paris Penny, 2401 Mail Service Center, Raleigh, NC 27699; phone (919) 527-7257; email paris.penny@dhhs.nc.gov

Comment period ends: June 14, 2021

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 984-236-1850.

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

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

SUBCHAPTER 71U – FOOD ASSISTANCE

SECTION .0100 – IDENTIFYING INFORMATION

10A NCAC 71U .0101 ADMINISTRATION AND SUPERVISION

The counties shall administer the food stamp program under the supervision of the food assistance branch. The North Carolina Department of Health and Human Services (DHHS), Division of Social Services (DSS) oversees and supervises the Food and Nutrition Services (FNS) program which is administered through county departments of social services.

Authority G.S. 143B-138(b)(5); G.S. 108A-51; 143B-137.1; 143B-138.1(a)(5); 7 U.S.C. 2011 to 2026.

SECTION .0200 - MANUAL

10A NCAC 71U .0201 INTENTIONAL PROGRAM VIOLATION DISQUALIFICATION

(a) An administrative disqualification hearing (ADH) or referral for prosecution shall be initiated by the ~~county department~~ local agency whenever there is ~~documented~~ clear and convincing evidence to substantiate that a currently participating household member has committed ~~one or more acts of~~ an intentional program violation ~~[as defined in 7 CFR 273.16(c)]~~, as defined in 7 CFR 273.16(c). If a referral for prosecution is made, an ADH shall not be initiated unless the referral is declined or a reasonable amount of time has passed and the local agency withdraws the referral.

(b) ~~The hearing officer for administrative disqualification hearings shall be the county director. The director may delegate this function to a specifically designated impartial employee of the county department.~~ The Hearing Officer for local ADH hearings is the local Agency Director. The Director may delegate this function to a designated impartial employee of the local agency. An impartial employee is one who is not a fraud Investigator, is not directly connected with the case, does not supervise an employee directly connected with the case, and has not discussed the facts of the case with any local agency staff outside of the hearing.

(c) ~~The household member has the right to appeal to a state level hearing. The hearing shall be before a state hearing officer who represents the State Director, Division of Social Services. The local agency must provide the FNS unit with an Advance Notice of Your Disqualification Hearing Form DSS-8556 at least 30 days prior to the hearing date. The local agency must also provide the FNS unit with a notice of their right to waive the ADH. The local agency shall ensure that all letters and notices are in the primary language of the individual charged with an intentional program violation (IPV), and ensure that a qualified translator is present for an ADH when requested by an individual with limited English proficiency as defined in 7 CFR 273.16(c).~~

(d) The local hearing officer shall render a decision within five business days of the hearing.

(e) The FNS unit may appeal the local hearing officer's decision within 15 calendar days to a State Disqualification Hearing. The hearing shall be held before a state hearing officer on behalf of the Director of the Division of Social Services. The state hearing officer shall provide notice to the FNS unit and the local agency at least 10 calendar days before the hearing. The state hearing officer shall render a decision within 60 days of the State Disqualification Hearing.

Authority G.S. 108A-51; 143B-153; 7 CFR 273.16; 7 U.S.C. 2011-2027.

10A NCAC 71U .0203 FAIR HEARINGS

Authority G.S. 108A-51; 143B-153; 7 CFR 273.15; 7 U.S.C. 2011-2027.

10A NCAC 71U .0204 DENIAL OF ZERO BENEFIT HOUSEHOLDS (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 71U .0205 IMMEDIATE TERMINATION OR REDUCTION OF ASSISTANCE (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 71U .0206 SIMPLIFIED UTILITY ALLOWANCES (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 71U .0207 SOCIAL SECURITY NUMBERS (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 71U .0209 SECOND PARTY REVIEW (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 71U .0210 INCOME EXCLUSIONS (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 71U .0211 VEHICLE DETERMINATIONS

Authority G.S. 108A-51; 143B-153; H.R.4461; CFR 273.8.

10A NCAC 71U .0212 TRANSITIONAL FOOD STAMP BENEFITS (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 71U .0213 SEMI-ANNUAL SIMPLIFIED REPORTING

~~(a) The county department shall require households with earned or unearned income that are assigned six month certification periods to report only changes in the amount of gross monthly income that result in their gross monthly income exceeding 130 percent of the monthly poverty income guideline for their household size. The agency shall assign a certification period of six months to all households subject to semi annual reporting requirements. The following households are excluded from semi annual reporting requirements:~~

- ~~(1) Households that contain a homeless individual;~~
- ~~(2) Households that contain a migrant;~~
- ~~(3) Households that contain an Able Bodied Adult Without a Dependent, as defined in 7 CFR 273.24;~~
- ~~(4) Households whose only member(s) is/are Supplemental Security Income (SSI) applicants or recipients who do not receive any other types of fluctuating income;~~
- ~~(5) Households whose only income is stable Social Security Income and/or SSI;~~
- ~~(6) Households with no income;~~
- ~~(7) Households receiving transitional Food Stamp benefits; or~~
- ~~(8) Any other household not subject to semi annual reporting requirements as determined by the United States Department of Agriculture, Food and Nutrition Services.~~

~~(b) Households with income and not excluded in Paragraph (a) of this Rule must not be required to report changes in household circumstances during the certification period for the following:~~

- ~~(1) Changes in sources or amounts of gross monthly income unless the change results in the gross monthly income exceeding 130 percent of the monthly poverty income guideline for the household size;~~
- ~~(2) Changes in household composition;~~
- ~~(3) Changes in residence and the resulting change in shelter costs;~~
- ~~(4) The acquisition of a licensed vehicle;~~
- ~~(5) When cash on hand, stocks, bonds, and money in a bank account or savings institution reach or exceed a total of two thousand dollars (\$2,000); and~~
- ~~(6) Changes in the legal obligation to pay child support.~~

~~(c) The county agency must act on any change reported by such households that would increase benefits. The county agency must not act on changes that would result in a decrease in benefits unless:~~

- ~~(1) The household has voluntarily requested that its case be closed; or~~
- ~~(2) The agency has received information about the household's circumstances from a provider who is the primary source of the information such as:~~
 - ~~(A) Beneficiary Data Exchange (BENDEX), from the Social Security Administration;~~
 - ~~(B) State Data Exchange (SDX), from the Social Security Administration;~~
 - ~~(C) Systematic Alien Verification for Entitlements (SAVE), from the Immigration and Naturalization Service;~~
 - ~~(D) Employment and Training (E&T) information, received from the Employment Security Commission; or~~
 - ~~(E) Intentional Program Disqualifications (IPV's), received from county Program Integrity staff.~~

~~(d) A copy of the CFR may be obtained by contacting the State Division of Social Services, Economic Independence Section, 2420 Mail Service Center, Raleigh, NC 27699 2420.~~

~~(a) The simplified reporting category applies to all FNS units except the following:~~

- ~~(1) A Simplified Nutrition Assistance Program (SNAP) unit;~~
- ~~(2) A Transitional FNS Unit.~~

~~(b) Certification periods are determined based upon the following household situations:~~

- ~~(1) FNS units that contain only specified individuals who are without earned income are certified for a period of 12 months. A specified individual is an individual 60 years of age or older, or one of the following:~~
 - ~~(A) A person who receives supplemental security income benefits under Title~~

- XVI of the Social Security Act or disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act.
- (B) A person who receives federally or State administered supplemental benefits under Section 1616(a) of the Social Security Act provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under Title XVI of the Social Security Act.
- (C) Receives disability benefits from a governmental agency based on permanent Social Security disability requirements.
- (D) Is a Veteran who receives 100 percent Veterans Administration (VA) disability payments (service or non-service connected) or is rated as 100 percent disabled but receives less than 100 percent disability payment.
- (E) Is a Veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the U. S. Code.
- (F) Is a disabled surviving spouse or disabled surviving child of a veteran and in need of regular aid and attendance or permanently housebound or considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a nonservice-connected death under Title 38 of the U. S. Code.
- (G) Receiving Railroad Retirement and determined to be eligible for Medicare.
- (H) Receiving Interim Assistance Payments (DSS General Assistance to applicants for SSI that is repaid by SSA upon approval of the SSI application).
- (I) Receiving Medicaid based on disability.
- (J) Benefits under the Federal Employees Compensation Act (FECA) based on Social Security disability requirements.
- (2) FNS units that contain an Able-Bodied Adult Without Dependents (ABAWD) are certified for a period of six months. These FNS units will be issued a Notice of Adverse Action DSS-8553 during the second month of the certification period notifying the FNS unit that the local agency will terminate benefits after the third month unless the ABAWD satisfies the work requirements or meets an exception as set forth in 7 C.F.R. 274.24. The certification may be for a period of six months if the county is currently under an ABAWD waiver.
- (3) All other units are certified for a period up to six months.
- (c) FNS units subject to Simplified Reporting are required to report to the local agency any of the following changes that occur during the certification period:
- (1) FNS units that include an ABAWD shall report when the ABAWD stops working an average of 80 hours per month. This only applies in non-waiver counties.
- (2) FNS units whose income is at or below the 130 percent maximum allowable gross income limit are required to report an increase in unit income that causes it to exceed the 130 percent maximum allowable gross income limit for its unit size at certification. Ineligible or disqualified persons are not considered in determining the FNS unit size.
- (3) FNS units are required to report if any member of the FNS unit receives lottery/gambling winnings of three thousand five hundred dollars (\$3,500) or more. The receipt of lottery/gambling winnings of three thousand five hundred dollars (\$3,500) or more results in loss of eligibility for the entire FNS unit. The unit remains ineligible until they reapply for benefits and meet all non-categorical eligibility financial resource and income eligibility requirements.
- (d) FNS units are required to report changes by the 10th of the month following the month in which the change occurs. FNS units completing an application or recertification that experience changes prior to disposition of the application or recertification are required to report such changes by the 10th of the month following the month in which the Notice of Eligibility is received.
- (e) Changes are considered reported at the earliest of the following times:
- (1) The date the Change Report is received;
- (2) The date the change is reported by the FNS unit by telephone, email or fax. If received during non-business hours the date reported will be the next business day;
- (3) The date the FNS unit made an in-person office visit to report the change;
- (4) The date the change is reported to Work First;
- (5) The date the changed information is entered into NC FAST; or
- (6) The date the change is reported by a third party.
- (f) A local agency shall evaluate, verify and act upon a change within 10 calendar days, except for the following changes:
- (1) Changes in medical expenses of units eligible for the medical deduction when the source of the change in information is from a third party and requires household contact for verification;
- (2) A decrease in the unit's gross monthly income of less than fifty dollars (\$50.00); or

- (3) A change in income that is not expected to continue for longer than one month beyond the month in which the change is reported.

(g) If a change is reported and the local agency fails to act on the change within the 10 calendar days, the local agency shall determine if an over issuance has occurred. If it is determined that an over issuance occurred, the local agency shall establish an Administrative Error (AE) claim.

(h) If a reported change terminates eligibility or decreases a unit's benefit amount, a Notice of Adverse Action shall be issued to the FNS unit within 10 calendar days.

(i) If a reported change does not affect eligibility or benefit amount, an Effect of Change Notice shall be issued to the FNS unit.

(j) If a reported change will increase benefit amount, the local agency shall verify the reported change.

(k) If an FNS unit fails to report a required change, the local agency shall establish a claim against the FNS unit and issue a Notice of Adverse Action if the change would result in a reduction or termination of benefits.

Authority G.S. 108A-51; 143B-153; P.L. 107-171.

10A NCAC 71U .0214 DEDUCTIONS

Authority G.S. 108A-51; 143B-153; P.L. 107-171.

10A NCAC 71U .0215 RESOURCE EXCLUSIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 71U .0216 MEDICAL DEDUCTIONS FOR MEDICARE PRESCRIPTION DRUG CARD BENEFITS

Authority 143B-153; P.L. 108-173.

SECTION .0300 - FORMS

10A NCAC 71U .0302 HOUSEHOLD APPLICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 71U .0303 AUTHORIZED REPRESENTATIVE FORM (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0400 – ELECTRONIC BENEFIT TRANSFER (EBT) CARD

10A NCAC 71U .0401 ELECTRONIC BENEFIT TRANSFER (EBT) CARD REPLACEMENT FEE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 71U .0402 FAIR HEARINGS

Authority G.S. 108A-25; 143B-153; 7 U.S.C. 2016 (i)(8); 7 C.F.R. 274.12 (f)(5)(v).

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Social Services Commission intends to readopt with substantive changes the rules cited as 10A NCAC 71V .0102, .0103, .0105-.0107, .0201-.0204, and repeal through readoption the rules cited as 10A NCAC 71V .0104, .0108 and .0205.

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

Link to agency website pursuant to G.S. 150B-19.1(c):
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Proposed Effective Date: *August 1, 2021*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A public hearing can be requested by contacting Joel Johnson at the Office of General Counsel: Email: joel.johnson@dhhs.nc.gov; Fax: (919)733-3854; Mailing Address: 2001 Mail Service Center, Raleigh, NC 27699-2001.*

Reason for Proposed Action: *Pursuant to GS 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review these rules were determined to be "Necessary with Substantive Public Interest" requiring readoption by August 31, 2021.*

The following rules are being proposed for readoption with substantive changes: 10A NCAC 71V .0102, .0103, .0105, .0106, .0107, .0201, .0202, .0203 and .0204;

The following rules are being proposed for repeal through readoption: 10A NCAC 71V .0104, .0108, and .0205.

Comments may be submitted to: *Paris Penny, 2401 Mail Service Center, Raleigh, NC 27699; phone (919) 527-7257; email paris.penny@dhhs.nc.gov*

Comment period ends: *June 14, 2021*

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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 984-236-1850.

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

- ☐ State funds affected
☐ Local funds affected
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☐ Approved by OSBM
☒ No fiscal note required

CHAPTER 71 - ADULT AND FAMILY SUPPORT

SUBCHAPTER 71V - LOW INCOME ENERGY ASSISTANCE PROGRAM

10A NCAC 71V .0102 GROUPS COVERED

The state ~~will~~ shall make direct payments to the household household's energy vendor if ~~they~~ the household make makes an application and ~~meet~~ meets the eligibility requirements for this program.

Authority G.S. 143B-153.

10A NCAC 71V .0103 ELIGIBILITY REQUIREMENTS

A household must meet the following requirements to be eligible for the Low Income Energy Assistance Program:

- (1) ~~Income: A household's income for the base period used to establish eligibility cannot exceed 110 percent of the current non farm poverty level. The North Carolina Department of Health and Human Services (DHHS) determines the maximum eligibility requirements annually, not to exceed 150 percent of the federal poverty level. DHHS shall consider the economic status of the state of North Carolina and availability of funding in determining the annual income eligibility criteria. The income eligibility criteria shall be included in each annual block grant application that is submitted for public review and approved by the Governor prior to submission to the United States Department of Health and Human Services (HHS) for approval. The income eligibility criteria shall be posted on the DHHS website within 10 business days of application approval by HHS. Income will shall be defined as gross income less less:~~
 (a) the standard medical deduction of eighty five dollars (\$85.00) for each specified person. A specified person is an individual 60 years of age or older, or one of the following: for household members with only unearned income;
 (i) A person who receives SSI or disability or blindness

- payments under Titles I, II, XIV or XVI of the Social Security Act; these individuals may have been approved but may have not received their initial payment;
 (ii) A person who receives VA disability benefits for a 100 percent service or non-service connected disability;
 (iii) A person who is a disabled surviving spouse or disabled surviving child of a Veteran;
 (iv) A person who receives disability retirement benefits from a State, county, or local government agency due to a disability considered permanent under Section 221 of the Social Security Act;
 (v) A person who is receiving a pension from the Railroad Retirement Act of 1974 and is determined to be eligible to receive Medicare;
 (vi) A person who receives Federal Employees Compensation Act payments due to a disability considered permanent under the Social Security Act;
 (vii) A person who receives Medicaid due to a qualifying disability;
 (viii) A person who receives SSI based on presumptive eligibility.
 (b) a deduction of the actual out of pocket child or dependent care costs paid by the household; up to the maximum allowed in the Food Stamp Program per child or dependent; and
 (c) a standard deduction for work related expense as set forth in the below table: (a table shall be used to determine the appropriate amount to deduct).

<u>Gross Income Level</u>	<u>Standard Deduction</u>
<u>\$1-50</u>	<u>\$10</u>
<u>\$51-100</u>	<u>\$20</u>
<u>\$101-150</u>	<u>\$30</u>
<u>\$151-200</u>	<u>\$40</u>
<u>\$201-300</u>	<u>\$60</u>
<u>\$310-400</u>	<u>\$80</u>
<u>\$401-UP</u>	<u>20%</u>

Earned and unearned income shall be counted or excluded as mandated by federal laws, federal regulations, and ~~Administrative Procedure Act~~ administrative rules in 10A NCAC 71U that govern the Food Stamp Food and Nutrition Services Program. 7 CFR 273.9 is hereby adopted by reference under G.S. 150B-14(e).

- (2) Assets: A household shall not have assets exceeding two thousand, two hundred and fifty dollars ~~(\$2,200); (\$2,250).~~ All assets ~~will~~ shall be counted ~~with the exception of; except:~~
- (a) Household or personal belongings ~~(includes~~ (including essential and non-essential personal property);
 - (b) Cars;
 - (c) Primary residence (including mobile home) and all contiguous property;
 - (d) Income producing real property;
 - (e) Insurance (including burial, term and whole life cash values);
 - (f) Value of prepaid burial contracts;
 - (g) Value of burial plots;
 - (h) Savings of a student under age 18 who is saving his money for school expenses;
 - (i) Relocation assistance payments;
 - (j) That portion of monthly income deposited in a checking or savings account to meet monthly needs;
 - (k) Non-salable life estate or remainder interests;
 - (l) Heir property;
 - (m) HUD community development block grants;
 - (n) Any of a lump sum payment for the month received or the following month.
- (3) Vulnerability: A household must be vulnerable to rising costs of energy. A household that is vulnerable to ~~energy cost increases~~ rising costs of energy is one that is not protected against such increases under any other ~~program~~ program of assistance.
- (4) Citizenship: ~~Individuals who~~ A household in which all individuals are illegal aliens undocumented immigrants ~~are~~ is not eligible for the Low Income Energy Assistance Program.

Authority G.S. 108A-25; 143B-153; 42 U.S.C. 8621(a); 8622(2); 8624(b); 7 C.F.R. 273.9.

10A NCAC 71V .0104 BENEFIT LEVELS

Authority G.S. 143B-153.

10A NCAC 71V .0105 METHOD OF PAYMENT

Energy assistance checks will be mailed directly to ~~recipients~~ home energy suppliers. Payments to suppliers are completed by

the local county department of social services. Each participating household shall be notified of the amount of assistance paid to the supplier on behalf of the household.

Authority G.S. 143B-153; 42 U.S.C. 8624(b)(7).

10A NCAC 71V .0106 DUPLICATE PAYMENTS AND OVERPAYMENTS

~~There can~~ shall be no duplicate payments to a household. Erroneous duplicate payments shall be treated as an overpayment and corrected pursuant to the procedures set forth for Correction of Overpayments in 10A NCAC 71W.

Authority G.S. 143B-153.

10A NCAC 71V .0107 OVERPAYMENTS AND SUSPECTED FRAUD

~~The rules in 10A NCAC 71W .0604 and 71W .0606 will govern for overpayments and suspected fraud.~~ Instances of suspected fraud shall be governed by the procedures set forth for Client Fraud and Intentional Program Violations in 10A NCAC 71W.

Authority G.S. 143B-153.

10A NCAC 71V .0108 APPEALS

Authority G.S. 108A-25; 143B-153.

SECTION .0200 – CRISIS INTERVENTION PROGRAM

10A NCAC 71V .0201 ELIGIBILITY REQUIREMENTS

A household must meet the following requirements to be eligible for the Crisis Intervention Program:

- (1) Income: A household must have income at or below 150 percent of the federal poverty income guidelines. The rules in 10A NCAC 71V .0103 will govern for the definition and computation of income.
- (2) Crisis: A household must be in a heating or cooling related ~~crises~~ crisis to be eligible for assistance. A household is in a crisis if it is experiencing or is in danger of experiencing a life threatening or health-related emergency and sufficient, timely and appropriate assistance is not available from any other source. A timely energy crisis means that a household is in immediate danger of experiencing a disconnection with their primary heating or cooling source, or a household is presently without a heating or cooling source due to disconnection, inoperable equipment, or insufficient fuel.
- (3) Citizenship: ~~Individuals who~~ Households in which all members are illegal aliens undocumented immigrants are not eligible for the Crisis intervention Program.

Authority G.S. 108A-25; 143B-153; 42 U.S.C. 82621(a); 8622(2); 8624(b); P.L. 93-66; P.L. 93-233; P.L. 96265.

10A NCAC 71V .0202 BENEFIT LEVELS

Payments to a household shall not exceed six hundred dollars (\$600.00) in a state fiscal year. ~~Counties may set lower maximums in their annual business plans for operating Low Income Home Energy Assistance Programs.~~ Assistance shall be based upon the needs of the community, the severity of the crisis and the services needed.

Authority G.S. 108A-25; 143B-153.

10A NCAC 71V .0203 METHOD OF PAYMENT

Methods of payment include direct payments to ~~recipients~~ vendors, fuel payments on behalf of recipients, provision of in-kind services or temporary shelter and minor home repairs. Energy assistance payments shall be made directly to vendors. Payments to vendors are completed by the local county department of social services.

Authority G.S. 143B-153; 150B-13.

10A NCAC 71V .0204 OVERPAYMENTS AND SUSPECTED FRAUD

~~The rules in 10A NCAC 71W .0604 and 71W .0606 will govern for overpayments and suspected fraud.~~ Instances of overpayments or suspected fraud shall be governed by the procedures set forth in 10A NCAC 71W.

Authority G.S. 143B-153; 150B-13.

10A NCAC 71V .0205 APPEALS

Authority G.S. 143B-153; 150B-13.

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Social Services Commission intends to readopt with substantive changes the rules cited as 10A NCAC 71W .0101, .0302, .0404, .0405, .0407, .0408, .0410, .0601, .0604, .0606, .0704, readopt without substantive changes the rules cited as 10A NCAC 71W .0303, .0304, .0403, .0502, .0503, .0605, and repeal through readoption the rules cited as 10A NCAC 71W .0412, .0413, .0602, .0603 and .0607.

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

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

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncdhhs.gov/divisions/social-services/about-dss/social-services-commission/rules>

Proposed Effective Date: *August 1, 2021*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A public hearing can be requested by contacting Joel Johnson at the Office of General Counsel: Email: joel.johnson@dhhs.nc.gov; Fax: (919)733-3854; Mailing Address: 2001 Mail Service Center, Raleigh, NC 27699-2001.*

Reason for Proposed Action: *Pursuant to GS 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review these rules were determined to be "Necessary with Substantive Public Interest" requiring readoption by August 31, 2021.*

The following rules are being proposed for readoption with substantive changes: 10A NCAC 71W .0101, .0302, .0404, .0405, .0407, .0408, .0410, .0601, .0604, .0606 and .0704;

The following rules are being proposed for readoption without substantive changes: 10A NCAC 71W .0303, .0304, .0403, .0502, .0503 and .0605;

The following rules are being proposed for repeal through readoption: 10A NCAC 71W .0412, .0413, .0602, .0603 and .0607.

Comments may be submitted to: *Paris Penny, 2401 Mail Service Center, Raleigh, NC 27699; phone (919) 527-7257; email paris.penny@dhhs.nc.gov*

Comment period ends: *June 14, 2021*

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 984-236-1850.

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

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

CHAPTER 71 - ADULT AND FAMILY SUPPORT

**SUBCHAPTER 71W – GENERAL PROGRAM
ADMINISTRATION**

**SECTION .0100 – GENERAL PROGRAM
ADMINISTRATION**

10A NCAC 71W .0101 DEFINITIONS

The following definitions apply to this Chapter:

- (1) "Adjusted Payment" means a payment to the recipient to correct a county-responsible underpayment.
- (2) "Appeal" means an oral or written request from ~~a an client~~ applicant, recipient, or former recipient for a hearing to review the action of a county Department of Social Services when the ~~client~~ applicant, recipient, or former recipient is dissatisfied with the decision in his case.
- (3) "Applicant" means a person or assistance unit who has applied for Work First.
- ~~(3)~~(4) "Application Process" means a series of actions beginning with a signed application (written or electronic) and ending the date a check payment is authorized or a denial notice is mailed.
- ~~(4)~~(5) "Assistance Unit" means the total number of persons whose needs are considered in determining the payment amount.
- ~~(5)~~(6) "Budget Unit" means all those persons for whom application has been made plus anyone in the home who is liable for the support of a member of the assistance unit or whose income is counted as available to the assistance unit.
- ~~(6)~~(7) "Client" means member of the assistance unit. It may be used interchangeably with participant, payee, recipient and applicant.
- ~~(7)~~(8) "Collateral" means a person or organization that can substantiate or verify information necessary to establish eligibility.
- ~~(8)~~(9) "Determination" means the process of verifying eligibility factors for persons applying for ~~AFDC~~. Work First.
- (10) "Disaster" means periods of natural disaster or other emergencies as declared by state or federal authorities.
- ~~(9)~~(11) "Disregard of Earned Income" means the procedure for exempting certain portions of earned income ~~as a resource~~ when determining the amount of payment.
- ~~(10)~~(12) "Effective Date" means the date for which the benefit is ~~authorized~~. authorized or activated.
- (13) "Electronic Funds Transfer" or "EFT" means the method by which Work First payment is issued. It may be used interchangeably with direct deposit or Electronic Benefit Transfer (EBT) Card.
- ~~(11)~~(14) "Eligibility, Initial" means the state of eligibility at time of application.
- ~~(12)~~(15) ~~"Essential Person" means a person who gives an essential service to a client, and, if in need, is eligible to be included in the assistance unit.~~ "ePass" means the North Carolina Electronic Pre-Assessment Screening Service portal through which applications for benefits may be made.
- ~~(13)~~(16) "Excluded Income" means money received by a member of the budget unit which is not counted in determining eligibility for assistance.
- ~~(14)~~(17) "Father, Alleged" means the man who is said without proof to be the father of a child. This includes a father who has admitted paternity when paternity has not been established in a court of law.
- ~~(15)~~(18) "Father, Legal" means:
 - (a) The man who is married to the mother of child at the time of birth of the child, regardless of whether they are living together. The legal father is not necessarily the natural father, but is legally responsible for support; or
 - (b) A man who has been determined by the court to be the father of the child through a paternity suit or by act of legitimation; or
 - (c) A man who has legally adopted the child.
- ~~(16)~~(19) "Father, Natural" means the biological father of the child. He may be the alleged or legal father.
- ~~(17)~~(20) "Full-Time Student" means a student so designated by the school in which ~~he~~ the student is enrolled.
- (21) "Kinship" means relationship to a child by blood, marriage, or adoption.
- ~~(18)~~(22) "Minor Mother" means a mother who is under the age of 18 ~~who may be payee for an assistance unit or a recipient included in another assistance unit.~~ 18.
- (19) ~~"Needy Spouse" means the husband or wife of a specified relative (other than a parent) who is eligible to be included in the assistance unit if he applies for assistance and meets the requirements of an essential person.~~
- ~~(20)~~(23) "Payee" means the person in whose name the AFDC payment is made.
- ~~(21)~~(24) "Payment Month" means the month for which the payment is made.
- ~~(22)~~(25) "Prospective Budgeting" means the best estimate of income in the payment month.
- ~~(23)~~(26) "Reapplication" means a subsequent application when a case has been ~~terminated or suspended.~~ terminated.
- (24) ~~"Recipient" means an eligible person whose needs are included in the assistance payment.~~
- ~~(25)~~(27) "Remainder Interest" means property which will be inherited in full at a life estate interest holder's death.

- ~~(26)~~(28) "Revocable Trust" means funds held in trust which are available for the client's use.
- ~~(27)~~(29) "Verification" means the confirmation of facts and information used in determining eligibility.
- (30) "Work First Benefits" or "WFB" means the assistance payments made to adults who are required to work or participate in work-related activities.

Authority G.S. 108A-25; 143B-153; 45 C.F.R. 233.

SECTION .0300 - APPLICATION PROCESS

10A NCAC 71W .0302 INITIAL INTERVIEW

The applicant shall be allowed to have any person(s) of ~~his~~ their choice participate in the interview. ~~The applicant shall be informed of the following:~~

- (1) ~~He~~ The applicant must provide:
 - (a) the names of collaterals, such as landlords, employers, and others with knowledge of ~~his~~ the applicant's situation;
 - (b) information about ~~his~~ the applicant's resources;
 - (c) verification of ~~his~~ the applicant's earned income and any operational expenses;
 - (d) ~~his Social Security number unless he has lost his card;~~
 - ~~(e)~~(d) medical forms when appropriate;
 - ~~(f)~~ work registration card from ESC;
 - ~~(g)~~ statement from a dealer when verified equity of a motor vehicle is disputed;
 - ~~(h)~~(e) evidence of good cause claim for non-cooperation with the child support enforcement agency;
 - ~~(i)~~ verification of the amount of a lump sum payment and other required information regarding the lump sum;
 - ~~(j)~~ verification of stepparent's income and verification of income of a minor parent's parent or legal guardian; and
 - ~~(k)~~(f) signed statement from a doctor or medical facility substantiating a pregnancy and the expected due ~~date.~~ date; and
 - (g) a signed consent or declination to complete drug testing requirements.
- (2) It is the county's responsibility to use collateral sources to substantiate or verify information necessary to establish eligibility. Collateral sources of information include knowledgeable individuals, business organizations, public records, and other documentary evidence. If the applicant does not wish necessary collateral contacts to be made, ~~he~~ the applicant may withdraw the application. If ~~he~~ the applicant denies permission to contact necessary

collaterals, the application shall be rejected due to failure to cooperate in establishing eligibility. A worker ~~will~~ may visit ~~his~~ the applicant's home at the county's option. The county's decision to make a home visit will be based on error-prone characteristics defined by the state using quality control and other management data.

The applicant has the right to:

- ~~(a)~~ receive assistance if found eligible;
 - ~~(b)~~(a) be protected against discrimination on the grounds of ~~race, creed, or national origin by Title VI of the Civil Rights Act of 1964. He may appeal such discrimination;~~ race, color, national origin, age, disability, or sex;
 - ~~(e)~~(b) spend ~~his~~ assistance ~~payment~~ payments as ~~he wishes;~~ desired; however, ~~but it use of assistance payments must be made in his the best interest and that of his family. of the applicant and the applicant's family. A substitute payee may be appointed for those individuals who cannot manage the payments;~~
 - ~~(d)~~(c) receive ~~his monthly check in advance~~ assistance payments until the payment assistance payments are is terminated by appropriate action; pursuant to lawful authority;
 - ~~(e)~~(d) have any information given to the agency kept in confidence;
 - ~~(f)~~(c) ~~appeal, if his assistance will be denied, changed or terminated, his payment is incorrect based on the agency's interpretation of state regulations, or his request for a change in the amount of assistance was delayed beyond 30 days or rejected; appeal denials, changes, or terminations of assistance payments; appeal assistance payments which the applicant believes were incorrectly calculated; or, if the applicant requests a change in the amount of assistance payments, appeal the rejection of the requested change or the agency's failure to act upon the requested change within 30 calendar days of the requested change;~~
 - ~~(g)~~(f) reapply at any time, if found ineligible; ~~and~~
 - ~~(h)~~(g) withdraw from the assistance program at any ~~time.~~ time; and
 - (h) refuse to comply with drug testing requirements.
- (5) ~~The applicant's responsibilities. He~~ The applicant must:
- (a) provide the county department, state and federal officials, the necessary sources from which the county

department can locate and obtain information needed to determine eligibility;

- (b) report to the county department of social services any change in situation that may affect eligibility for a ~~check~~ payment within 10 calendar days after ~~he~~ the applicant learns of the change. The meaning of fraud shall be explained. The applicant shall be informed that ~~he~~ they may be suspected of fraud if ~~he~~ they ~~fails~~ fail to report a change in situation and that in such situations, ~~he~~ they may have to repay assistance received in error and that ~~he~~ they may also be tried by the courts for fraud; and
- (e) ~~inform the county department of social services of any person or organization against whom he has a right to recovery. When he accepts medical assistance (included with any AFDC), the applicant assigns his rights to third party insurance benefits to the state. He shall be informed that it is a misdemeanor to fail to disclose the identity of any person or organization against whom he has a right to recovery; and~~
- (d)(c) immediately report to the county department the receipt of a ~~check~~ payment which ~~he~~ the applicant knows to be erroneous, such as two ~~checks~~ payments for the same month, or a ~~check payment~~ in the ~~wrong~~ incorrect amount. If ~~he~~ the applicant does not report such ~~erroneous~~ payments, ~~he~~ the applicant may be required to repay any overpayment.

~~hereby adopted by reference under G.S. 150B-14(c). relative, children under the age of 21 must have one of the following relationships within the household:~~

- (1) A parent, including a biological mother or father, a legal father, or adoptive parent(s) after issuance of a final adoptive order;
 - (2) An alleged father or other relative of the alleged father;
 - (3) A blood or adoptive relative is limited to: brother, sister, grandparent, great-grandparent, great-great-grandparent, uncle, aunt, great uncle or aunt, great-great uncle or aunt, nephew, niece, first cousin. Spouses or former spouses of these individuals must have legal custody or legal guardianship of the child to meet the kinship requirement if the marriage has been terminated by death or divorce; or
 - (4) A step-relative limited to a stepparent or stepsibling. Spouses or former spouses of these individuals must have legal custody or legal guardianship to meet the kinship requirement if the marriage has been terminated by death or divorce.
- (b) Verification of kinship shall be made only at application unless previous documentation appears to be incorrect.
- (1) Kinship of a child to a specified relative except for an alleged father shall be verified by examining:
 - (A) birth certificates; or
 - (B) hospital records established at birth; or
 - (C) marriage record; or
 - (D) Social Security Administration records; or
 - (E) two of the following:
 - (i) school records;
 - (ii) Bible records;
 - (iii) hospital or physician's records;
 - (iv) court records including adoption records;
 - (v) immigration records;
 - (vi) naturalization records;
 - (vii) church documents;
 - (viii) passport;
 - (ix) military records;
 - (x) U.S. census records;
 - (xi) signed statement from an individual having specific knowledge about the kinship of the child to the specified relative. The statement shall include:
 - (I) name of child;
 - (II) date of birth;
 - (III) place of birth;
 - (IV) individual's relationship; and
 - (V) basis of individual's knowledge.

Authority G.S. 108A-29.1; 108A-43; 143B-153; 45 C.F.R. 206.10.

10A NCAC 71W .0303 ELIGIBILITY DETERMINATION PROCESS (READoption WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 71W .0304 EFFECTIVE DATE (READoption WITHOUT SUBSTANTIVE CHANGES)

SECTION .0400 - ELIGIBILITY FACTORS

10A NCAC 71W .0403 UNITED STATES CITIZENSHIP (READoption WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 71W .0404 KINSHIP AND LIVING WITH A SPECIFIED RELATIVE

- (a) ~~Eligibility requirements pertaining to For eligibility determinations based on~~ kinship and living with a specified relative ~~shall be found in 45 CFR 233.90 and this provision is~~

- (2) Kinship of a child to ~~his~~ the alleged father or other alleged paternal relative shall be verified by verifying the child's relationship to the alleged father and if necessary the alleged father's relationship to the alleged paternal relative. Relation to the alleged father shall be verified by examining:

- (A) court support records; or
- (B) county department of social services support records; or
- (C) statement signed and dated by the father that acknowledges his paternity; or
- (D) two of the following:
 - (i) school records;
 - (ii) Bible records;
 - (iii) hospital or physician records;
 - (iv) court records;
 - (v) immigration records;
 - (vi) naturalization records;
 - (vii) church documents;
 - (viii) passport;
 - (ix) military records;
 - (x) U.S. census records;
 - (xi) signed statement from an individual having specific knowledge about the kinship of the child to the ~~specified relative.~~ the alleged father.

(c) Verification that a child is living within the home of a specified relative shall be made during each determination of eligibility by:

- (1) a home visit when there is evidence of the child living in the home; or
- (2) use of school records; or
- (3) use of day care center records; or
- (4) statement of a social worker employed by the county department of social services when, following a home visit, ~~he~~ the social worker is able to substantiate that the child is living in the home; or
- (5) statement from a non-relative having personal knowledge of the child's living with the specified relative; or
- (6) two of the following:
 - (A) medical records, including health department records;
 - (B) Social Security or other benefit records;
 - (C) rental records;
 - (D) church records.

Authority G.S. 108A-25; 143B-153; 45 C.F.R. 233.10.

10A NCAC 71W .0405 RESIDENCE

(a) ~~Eligibility requirements pertaining to residence shall be found in 45 CFR 233.40 and this provision is hereby adopted by reference under G.S. 150B-14(e).~~ Families must be residents of North Carolina to be eligible to receive assistance.

(b) County residence eligibility requirement.

- (1) Adult. An adult has residence in the county in which ~~he resides.~~ they reside.
- (2) Child. A child has the residence of the person with whom ~~he resides.~~ they reside.

(c) Verification. Documentary evidence shall be required to verify the applicant's physical address at the time of initial application and at any change in the recipient or applicant's residence. The worker shall accept the client's statement unless there is some reason to doubt it. If there is doubt, documentary evidence shall be required. If any AFDC recipient's visit to another county within the state or to another state exceeds three months, the worker in the responsible county shall verify the following:

- (1) ~~the recipient's intent to return;~~
- (2) ~~reason for the continuing absence; and~~
- (3) ~~the continuing maintenance of a home in the first county.~~

Authority G.S. 108A-35; 143B-153; 45 C.F.R. 233.40.

10A NCAC 71W .0407 RESERVE

(a) ~~An AFDC assistance unit shall be allowed to reserve resources at a maximum of one thousand dollars (\$1,000). If the reserve level exceeds one thousand dollars (\$1,000), the unit is ineligible.~~ A Work First assistance unit shall be allowed to reserve resources at a maximum of three thousand dollars (\$3,000). The assistance unit is ineligible if the reserve level exceeds this maximum.

(b) ~~Only resources that are currently available to the assistance unit shall be counted. For applications, only those resources that are available during any month prior to disposition are counted to determine eligibility for those months.~~

(c) ~~(b)~~ Individuals whose reserve is counted. Resources owned by budget unit members shall be counted as follows:

- (1) ~~Parent. Count unless she receives SSI.~~ Parent, adoptive parent, or stepparent unless the individual receives SSI.
- (2) ~~Minor Mother. Count unless she receives SSI.~~
- (3) ~~Stepparent. If the stepparent is included in the payment, his resources shall be counted. If he is not included, but the parent has access to joint resources, half of the resources shall be counted.~~
- (4) ~~Specified Relative. If the specified relative is included in the payment, his resources shall be counted. Otherwise his resources shall not be counted.~~
- (5) ~~(2)~~ Child. If the child is included in the payment, ~~his~~ the child's resources shall be counted.
- (6) ~~Essential Person. If an essential person is included in the payment, his resources shall be~~

~~counted. Otherwise, his resources shall not be counted.~~

~~(7)~~(3) Jointly owned resources.

(A) If a budget unit member owns resources jointly with another public assistance recipient, ~~his~~ the budget unit member's share shall be counted as an available resource. The resource shall be divided equally among the owners unless the owners have a signed agreement specifying division.

(B) If a budget unit member owns resources jointly with a non-assistance recipient, and ~~he~~ the budget unit member can dispose of the resource without the consent of the other owner, ~~his~~ the budget unit member's share shall be counted as an available resource. The resource shall be divided equally among the owners unless they have a signed agreement specifying division.

(C) If a budget unit member owns resources jointly with a non-assistance recipient, and ~~he~~ the budget unit member cannot dispose of the resource without the consent of the other owners, it shall be determined whether the non-assistance recipient consents to the disposal of the resource.

(i) If ~~he~~ the non-assistance recipient consents, the budget unit member's share of the resource shall be counted. Resources shall be divided equally among the owners unless they have a signed agreement specifying division.

(ii) If ~~he~~ the non-assistance recipient refuses, the budget unit member's share shall not be counted.

(d) Reserve; items counted:

- (1) cash on ~~hand, including lump-sum payments received from the sale of an asset or an income tax refund;~~ hand;
- (2) the current balance of savings accounts;
- (3) that portion of a checking account other than the monthly income deposited to meet the family's needs;
- ~~(4) cash value of life insurance policies;~~
- ~~(5) equity on nonessential personal property limited to:~~
 - ~~(A) equity in excess of one thousand five hundred dollars (\$1,500) for one motor vehicle;~~
 - ~~(B) a mobile home not used as a home site;~~

- ~~(C) boats, boat trailers, and boat motors;~~
- ~~(D) campers;~~
- ~~(E) farm or business equipment;~~

- ~~(6)~~(4) stocks, bonds, mutual fund ~~shares;~~ shares.
- ~~(7) revocable trust funds;~~
- ~~(8) equity in real property including income producing property not used as a home;~~
- ~~(9) value of revocable prepaid burial contracts;~~
- ~~(10) net proceeds from a business, including a farm, which has been discontinued;~~
- ~~(11) life estate interest, if salable; and~~
- ~~(12) remainder interest, if salable.~~

(e) Reserve; items excluded:

- (1) personal effects and household goods;
- (2) a mobile ~~home used as a homesite;~~ home;
- (3) ~~straight term~~ life insurance;
- (4) burial insurance;
- (5) that portion of a checking account that is the monthly income deposited to meet the family's needs;
- (6) ~~non-salable~~ life estate or remainder interest;
- (7) heir ~~property, ie,~~ property from an estate which has not been settled;
- (8) ~~equity value of one thousand five hundred dollars (\$1,500) or less for one car, truck, or other motor vehicle. vehicles;~~
- (9) real property including income-producing property;
- (10) income received from a reverse mortgage;
- (11) retirement funds;
- (12) trust funds;
- (13) remaining balances of lump-sum payments; and
- (14) a Uniform Transfer to Minors Account if the owner of the account is included in the budget unit.

(f) Verification. ~~Value and ownership of real property and motor vehicles shall be verified. The client's statement of value of another reserve property available to members of the budget unit shall be accepted without further verification unless either this statement of value is incomplete, inconsistent, or unclear, or the values stated by the client would cause the budget unit's reserve to exceed the reserve maximum. The applicant or recipient's statement of the value of reserve property shall be accepted without further verification unless the statement of value is incomplete, inconsistent, unclear, or the values stated by the applicant or recipient would cause the budget unit's reserve to exceed the reserve maximum.~~

Authority G.S. 108A-41; 108A-46; 143B-153; 45 C.F.R. 233.20.

10A NCAC 71W .0408 INCOME

(a) Consideration of available earned and unearned income to determine eligibility for and amount of assistance.

- (1) ~~Parent's net income shall be counted unless the parent;~~ Parents' incomes, including the incomes of adoptive parents and stepparents, shall be counted unless the parent, adoptive parent, or stepparent receives SSI, provided that cash

contributions from the parent to the assistance unit shall be counted.

(A) ~~receives SSI. Provided that cash contributions from the parent to the assistance unit shall be counted.~~

(B) ~~is excluded from the assistance unit because he does not meet eligibility requirements. Gross income of the parent minus his needs shall be counted if he is excluded because he does not meet eligibility requirements. If the parent's needs have already been considered in calculating deemed income from a stepparent, the parent's gross income shall be counted.~~

(2) ~~Minor mother's net income shall be counted unless she:~~

(A) ~~is a student and qualifies for earned and unearned income exclusions. See unearned or earned income exclusion in (e) and (f) of this Rule.~~

(B) ~~receives SSI. Provided that cash contributions from the minor mother to the assistance unit shall be counted.~~

(C) ~~is excluded from the assistance unit because she does not meet eligibility requirements. Gross income of the minor mother minus her needs shall be counted if she is excluded because she does not meet eligibility requirements. If the minor mother's needs have already been considered in calculating deemed income from a stepparent, the minor mother's gross income shall be counted.~~

(3) ~~Stepparent. If the stepparent is included in the assistance unit, his net income shall be counted. If the stepparent is not in an assistance unit, net income shall be counted unless he is an SSI recipient. If he is an SSI recipient only cash contributions from him to the assistance unit shall be counted.~~

(4) ~~Specified relative other than parent. If the specified relative is included in the assistance unit, net income shall be counted. If he is not included in the assistance unit, only cash contributions from him to the assistance unit shall be counted.~~

(5)(2) ~~Child. Countable net unearned income of a child who is included in the assistance unit shall be counted.~~

(6) ~~Essential person. Net income of an essential person who is included in the assistance unit shall be counted.~~

(b) The following items of earned income shall be included in determining eligibility:

- (1) income from wages, salaries, and commissions;
- (2) farm income;

(3) ~~small business income including~~

~~self-employment;~~

(4) ~~rental income; and~~

(5) ~~income from roomers and boarders; boarders.~~

(6) ~~earned income tax credit; and~~

(7) ~~supplemental payments in excess of state's maximum rates for Foster Care and State Foster Home Funds paid by the county to AFDC recipients who serve as foster parents.~~

(c) ~~Earned income exclusions are found in 45 CFR 233.20 and this provision is hereby adopted by reference under G.S. 150B-14(e). In addition to the earned income exclusions contained in 45 CFR 233.20, earned income from temporary census employment shall be excluded in determining eligibility. In addition, the following items of earned income shall be excluded in determining eligibility:~~

(1) ~~Foster Care and State Foster Home Payments equal to or below the state maximum rates to AFDC recipients who serve as foster parents;~~

(2) ~~Earned income from the 185 percent limitation for up to six months in a calendar year of a child applicant/recipient who is a full time student;~~

(3) ~~Earned income from census employment under Section 1115 Demonstration Project Approved by the DHHS contingent on receipt of federal regulations in sufficient time for implementation.~~

(d) ~~Good Cause Provisions for Failure to Timely Report Income or Return Monthly Work First Family Assistance Reports. Report Timely.~~

(1) ~~Circumstances that constitute "good cause" for failing to report income in a timely manner or return a monthly Work First Family Assistance Report are limited to:~~

(A) ~~the death of a household member; a significant family crisis or change including, but not limited to, the death of a spouse, parent or child;~~

(B) ~~the hospitalization or illness of the applicant or recipient caretaker, or a dependent child for whom she the individual provides care; care, including participation in substance use treatment or attendance at a medical appointment;~~

(C) ~~failure of the applicant or recipient to report a change in monthly income of five dollars (\$5.00) or less civil leave, including jury duty or a required court appearance;~~

(D) ~~Lack of child care for parent and/or minor parent in school, training, or other work activity; or~~

(D)(E) ~~any other reason determined by the Director of the county department of social services, or his or her designee, hearing officer based on evidence provided by the recipient, recipient, applicant, or caretaker.~~

- (2) ~~Circumstances that constitute "good cause" for failing to return a monthly form in a timely manner are limited to:~~
- (A) ~~the death of a household member;~~
 - (B) ~~the hospitalization of the applicant or recipient or a dependent child for whom she provides care;~~
 - (C) ~~extenuating circumstances beyond the control of the recipient. Extenuating circumstances are defined as a natural disaster, a fire, computer breakdown, a postal strike, or postal delay provided the return envelope is postmarked the day prior to the deadline;~~
 - (D) ~~any other reason determined by the county director or his designee based on evidence provided by the recipient.~~

(e) The following items of unearned income shall be included in determining eligibility for or the amount of assistance:

- (1) OASDHI benefits;
- (2) Veterans Administration benefits;
- (3) Railroad Retirement benefits;
- (4) pensions or retirement benefits;
- (5) workmen's compensation;
- (6) unemployment compensation;
- (7) support payments and contributions;
- (8) work release payments;
- (9) dividends and income from trust ~~funds;~~ funds, stocks, bonds, and other investments;
- (10) private disability or unemployment benefits, including benefits from insurance plans;
- (11) ~~any portion of loans, grants, or scholarships designated or used for maintenance needs which is a duplication of items included in the assistance standard;~~
- (12)(11) trade readjustment benefits;
- (13)(12) military allotments;
- (14)(13) brown lung benefits;
- (15)(14) black lung benefits;
- (16)(15) lump sum payments;
- (17) ~~deemed income from a stepparent not receiving assistance;~~
- (18) ~~deemed income to an alien from a sponsor and his spouse if living together;~~
- (19)(16) cash ~~contributions.~~ contributions; and
- (20)(17) any other income unless excluded by federal law of Paragraph (f) of this ~~Rule;~~ Rule.

(f) ~~Unearned income exclusions are found in 45 CFR 233.20 and this provision is hereby adopted by reference under G.S. 150B-14(e). In addition, In addition to the unearned income exclusions contained in 45 CFR 233.20, the following items of unearned income shall be excluded in determining eligibility for assistance. assistance:~~

- (1) food given to or grown by a member of the household;
- (2) the value of the ~~coupon~~ allotment received under the ~~Food Stamp~~ Food and Nutrition Services Program;
- (3) child support being routed to IV-D Accounting;

- (4) assistance from other agencies and ~~organizations. This includes organizations, including~~ financial assistance and in-kind goods or services received from a governmental, civic, or charitable organization so long as such aid is for rehabilitation purposes, special training or educational opportunities and provided no duplication exists;
- (5) HUD Section 8 payments;
- (6) loans (if there is any agreed upon repayment plan);
- (7) assistance received through the Low Income Home Energy Assistance Program including the Crisis Intervention Program;
- (8) home energy assistance as defined in 45 C.F.R. 233.53 ~~and this provision is adopted by reference under G.S. 150B-14(e); 45 CFR 233.53;~~
- (9) income paid to a child recipient through ~~Job Training Partnership Act of 1982 the Workforce Innovation and Opportunity Act (WIOA), P.L. 113-128,~~ as need-based payments, payments for supportive services, compensation in lieu of wages and payments to Job Corps participants;
- (10) gifts, including but not limited to birthday, Christmas and ~~graduation, up to thirty dollars (\$30.00) per calendar quarter per assistance unit member.~~ graduation. If the payee states in writing the gift was intended for the entire assistance unit, the gift shall be divided among assistance unit members. The gift shall be divided in the manner that is most advantageous to the assistance unit.

(g) Verification. The ~~client~~ applicant or recipient shall be responsible for providing verification of ~~earned~~ income including operational expenses for farm or self-employment income. For gifts, the recipient shall be responsible for obtaining a written statement from the provider of the gift indicating the amount, date given and purpose. ~~The county department of social services shall be responsible for all other income verifications.~~

Authority G.S. 108A-25; 108A-33; 143B-153; 45 C.F.R. 233; 42 U.S.C. 1315;

10A NCAC 71W .0410 PROSPECTIVE BUDGETING AND QUARTERLY REPORTING

Income shall be budgeted and reported as described below:

- (1) Income shall be budgeted prospectively for determining eligibility for and the amount of ~~AFDC~~ Work First payments. To arrive at a monthly amount to consider, the following processes shall be followed:
 - (a) For income that is paid on less than a monthly basis, the pay received from each period during a month shall be averaged and converted to a monthly

amount as follows. Averaged pay shall be ~~multiplied~~ determined by:

- (i) multiplying pay received by 2 if pay is received twice per month ~~month~~;
 - (ii) multiplying pay received by 2.15 if pay is received every two weeks ~~weeks~~;
 - (iii) multiplying pay received by 4.3 if pay is received weekly ~~weekly~~; or
 - (iv) dividing pay received by 3 if pay is received quarterly.
- (b) For child support, regular self-employment, or income that is received once per month, the amount received from two previous successive months shall be averaged to arrive at one monthly amount.
- (c) Annualized self-employment income shall be averaged over the lesser of the following period: the number of months the business has been in operation or 12 months.
- (2) The monthly income calculated in Paragraph (a) of this Rule shall be used to determine the AFDC Work First payment for three consecutive calendar months ~~payment~~.
- (3) Quarterly reporting shall be required for error-prone classes of recipients as defined by the state based on quality control and other management data. The quarterly reporting process shall follow the processing requirements found in 45 CFR 233.37 which is hereby incorporated by reference including all subsequent amendments and editions. ~~Copies of this Code of Federal Regulations may be obtained from the Division of Social Services, 325 North Salisbury Street, Raleigh, NC 27603 [telephone number (919) 733-3055] at a cost of ten cents (\$.10) per page at the time of adoption of this Rule.~~
- (4) AFDC Work First families recipients shall be required to report all changes in income within 10 calendar days after they become aware a change has occurred.

Authority G.S. 143B-153; 45 C.F.R. 233.28; 45 C.F.R. 233.36.

10A NCAC 71W .0412 JOBS PROGRAM (JOBS)

Authority G.S. 143B-153; 45 C.F.R. 250.30.

10A NCAC ~~74W~~ 71W .0413 TWO-PARENT FAMILIES

Authority G.S. 108A-25; S.L. 1997-443; P.L. 104-193.

SECTION .0500 - REDETERMINATION OF ELIGIBILITY

10A NCAC 71W .0502 INTERVIEW (READoption WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 71W .0503 HOME VISITS (READoption WITHOUT SUBSTANTIVE CHANGES)

SECTION .0600 – PAYMENT PROCEDURES

10A NCAC 71W .0601 CHECK ISSUANCE

(a) The department of social services shall ~~write checks according to authorizations submitted by county directors of social services.~~ issue Work First payments through Electronic Funds Transfer (EFT):

- (1) By direct deposit to a recipient's checking or savings account at the recipient's financial institution; or
- (2) By Electronic Benefits Transfer (EBT) card.

(b) ~~Except for replacement checks, all checks shall be mailed to the address given by the recipient or substitute payee. The applicant, recipient or payee shall be informed of the two payment options in this Rule at application and reapplication and provided informational material.~~

- (1) A household that elects to receive Work First payments through an EBT card shall receive an initial EBT card at no cost.
- (2) A Work First household that requests a replacement EBT card shall be responsible for the cost of the replacement card unless the household can establish that their original EBT card:

- (A) was lost in the mail or damaged by the card vendor prior to receipt by the Work First household;
- (B) is being replaced due to a name change on card;
- (C) was lost due to a natural disaster such as a fire, flood, tornado or hurricane; or
- (D) was damaged by a retailer or vendor.

(c) ~~Replacement checks are mailed to county departments of social services. Recipients and payees of Work First cash assistance are prohibited from accessing and or using Work First cash assistance through EBT cards in the following establishments: liquor stores; casinos or gaming establishments; or any establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state.~~

- (1) These restrictions apply to all Work First households including households where the adult caretaker is not included in the case but serves as the case payee.
- (2) Applicants and recipients shall be advised of the restrictions at initial application, reapplication and redetermination of eligibility.
- (3) Recipients or payees who use or access Work First cash assistance in an EBT transaction in any liquor store; any casino or gaming

establishment; or any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state may be subject to penalties as defined by the Division of Social Services.

~~(d) Checks shall be delivered to the post office on the last work day of each month.~~

Authority G.S. 143B-153; 45 C.F.R. 233.

10A NCAC 71W .0602 RECEIPT AND USE OF CHECKS

Authority G.S. 143B-153; 45 C.F.R. 234.60.

10A NCAC 71W .0603 LOST, STOLEN AND FORGED CHECKS

Authority G.S. 143B-153; 45 C.F.R. 233.20.

10A NCAC 71W .0604 CORRECTION OF OVERPAYMENTS

(a) If the recipient is not entitled to all or part of a ~~check payment~~ which has been issued and fraud is not suspected, the county shall take all reasonable steps to recover promptly any ~~overpayment of thirty five dollars (\$35.00) or more.~~ overpayment.

(b) A county may recoup ~~an AFDC or a Work First~~ overpayment from a recipient's ~~AFDC check, Work First payment,~~ on account of an overpayment made to the recipient's spouse, parent, child, sibling, or other person, only if the recipient, at the time the overpayment occurred, was:

- (1) 18 years of age or older,
- (2) living with the person, and
- (3) part of the assistance unit.

(c) Overpayments shall be collected as follows:

- (1) voluntary repayment by grant reduction or recipient refund;
- (2) involuntary repayment by grant reduction;
- (3) if an overpayment occurs due to a county error in complying with program regulations, the overpayment shall be recouped by state office adjustment;
- (4) if an overpayment occurs due to a state or county processing error, the overpayment shall be recouped from the recipient providing the recipient was provided proper notification of the amount of ~~AFDC Work First~~ they ~~he was~~ were eligible to receive;
- (5) if an overpayment occurs due to a state office error in interpreting regulations, the overpayment shall be charged to the state.

Authority G.S. 143B-153; 45 C.F.R. 233.20.

10A NCAC 71W .0605 CORRECTION OF UNDERPAYMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC ~~71B~~ 71W .0606 CLIENT FRAUD AND INTENTIONAL PROGRAM VIOLATIONS

(a) County Responsibilities; Fraud Prevention.

(1) The county department of social services shall develop of an operational program for fraud prevention, detection and investigation. Fraud program organizational requirements must be established based on the number of ~~(AFDC or Work First)~~ recipients, the effectiveness of the fraud prevention program, the frequency of suspected fraud cases, and the resources available to the agency.

(2) The county department must designate staff to be responsible for fraud activities.

~~(3) The county shall strive to obtain all Social Security numbers and correctly complete them on computer input forms.~~

~~(4)~~(3) The recipient shall be notified no less frequently than at each eligibility review of his obligation to report within ten days, all changes in income, resources, or other changes which may effect the amount of payment. Failure to do so within that time may constitute a willful withholding of such information, and permit the county department to recover the overpayment.

(b) County Department Responsibilities; Detection and Investigation:

(1) The county department shall investigate any information which indicates that a recipient may be receiving ~~AFDC or Work First~~ to which the recipient is not entitled.

(2) In the investigation the staff designated for fraud shall:

- (A) verify that all responsibilities have been fulfilled as set forth in the rules governing the ~~AFDC or Work First~~ program;
- (B) determine whether further investigation should be undertaken to support the belief that fraud is suspected;
- (C) evaluate the evidence to substantiate fraud and the intent to defraud;
- (D) determine the amount of the erroneous payment.

(3) When there is reason to suspect fraud, the county director must ensure that the agency has explained to the ~~client his~~ the recipient responsibilities for reporting any change ~~changes~~ in his ~~their~~ circumstances to the agency. The director shall determine whether the agency should investigate further and shall present the case and fraud summary to the county board of social services for action unless the board has delegated this responsibility to ~~him, the Director.~~

(4) The fraud summary shall include:

- (A) identifying information;
- (B) a description of the fraudulent act;

- (C) evidence to substantiate fraud and the intent to defraud;
- (D) evidence to substantiate the amount of ineligible assistance received;
- (E) information concerning the ~~client's~~ recipient's competency, educational background, ability to know right from wrong, any statement volunteered by the ~~client~~ recipient in response to the accusation and any other information which may help explain the ~~client's~~ recipient's current situation.
- (c) County Board's Responsibilities.
- (1) The county board of social services, or its designee, shall determine whether there is a basis for the belief that misrepresentation may have been committed by a person.
- (2) The county board, or its designee, shall determine if the person:
- (A) willfully and knowingly misstated, provided incorrect or misleading information in response to either oral or written questions; or
- (B) willfully and knowingly failed to report changes which might have affected the amount of payment; or
- (C) willfully and knowingly failed to report the receipt of benefits which ~~he~~ the person knew ~~he~~ they were ~~was~~ not entitled to receive.
- (3) There must be physical evidence to substantiate a determination that fraud was the reason for the overpayment.
- (4) If the board, or its designee, determines fraud is suspected, it shall instruct the agency to pursue one or more, of the following actions:
- (A) administrative recoupment which is defined as:
- (i) involuntary reduction of the AFDC or Work First grant may be collected from all income and assets of the assistance unit. The assistance unit shall retain an amount not less than 90 percent of the assistance payment received by a family of similar composition with no other income; or
- (ii) a voluntary grant reduction. There is no limitation on the amount of the reduction;
- (iii) voluntary recipient refund. There is no limitation on the amount of the refund;
- (iv) NC Debt Setoff Collection. NC Debt Set-off (Tax Intercept) is the process by which the North Carolina
- (B) administrative disqualification:
- (i) Hearing
- (I) An administrative disqualification hearing shall be initiated by the county department of social services when there is sufficient evidence to indicate that an individual has intentionally violated a program rule in order to receive cash assistance for which the individual is not eligible. The hearing shall be held and any administrative action initiated within 90 days of the date the individual is notified in writing that the hearing has been scheduled. No hearing shall be held when the amount of the overpayment is less than one hundred dollars (\$100.00).
- (II) The county board of social services shall designate the county director or their impartial county employee to act as the hearings officer. Duties are to: provide written notification of the hearing date, time, and location to the ~~client~~ individual at
- Department of Health and Human Services (DHHS) intercepts income tax refunds through the North Carolina Department of Revenue (DOR) to repay Intentional Program Violation (IPV) and Inadvertent Household Error (IHE) Claims of current/former Work First recipients.

least 30 days in advance of the date of the hearing. Written notification of the hearing shall include the ~~client's~~ individual's right to have legal representation, a witness or witnesses, or waive the hearing; conduct the hearing to collect all evidence and testimony; render a written decision to the ~~client~~ individual and DSS within 15 days as to whether an intentional program violation has occurred. Written notification that the hearing decision will be mailed by Certified Mail Return Receipt Requested. The notice will inform the ~~client~~ individual of the right to further appeal to the state (or higher local authority) and the procedures for such appeal. When an intentional program violation is found, the notification will inform the ~~client~~ individual of the length of the sanction and that ~~client~~ individual remains a part of the Work First case and subject to all program requirements. When no intentional program violation is found, the notification will inform the ~~client~~ individual that the overpayment will be collected pursuant to ~~10A NCAC 71W~~

~~.0604.~~ this Subchapter.

- (ii) Sanctions:
 - (I) The county department of social services shall apply disqualification sanctions as follows: 12 months of ineligibility for the first offense; 24 months for the second offense; and permanently disqualified for the third offense.
 - (II) The sanction shall be applied by reducing the work first cash assistance payment by the disqualified person's share of the payment for the appropriate period of sanction. The disqualified person remains a part of the work first case and subject to all program requirements.
 - (iii) Repayment: The county department of social services will follow procedures pursuant to Part (c)(4)(A) of this Rule in the collection of overpayments.
 - (C) civil court action; or
 - (D) criminal court action.

(d) Board Decision; Agency Follow-up:

- (1) If the board, or its designee, suspects fraud, the department's findings and actions shall be reported immediately to the ~~assistance payments section~~ Division of Social Services. The county director shall keep the county board and ~~assistance payments section~~ Division of Social Services informed on all cases referred for court and repayment action.
- (2) The county department of social services shall support the local prosecutor by accomplishing necessary interviews in accordance with the prosecutor's requirements, recommending possible witnesses, providing necessary investigative reports, and taking other action deemed necessary by legal authorities.
- (3) Regardless of what action is taken by the board or the court, the county shall continue to work with the ~~client~~ individual and shall promptly

notify the ~~client~~ individual of the action taken in ~~his~~ their case.

- (4) The county shall maintain records on the number of cases referred for investigation, the number of suspected fraud referrals, action taken to recover the overpayment and amounts recovered.

(e) In fraud cases, if a county fails to act promptly on indications of ineligibility, federal and state financial participation shall not be available.

Authority G.S. 108A-25; 108A-39; 143B-153; S.L. 1997-443, s. 12.17; 45 C.F.R. 233.20; 45 C.F.R. 235.110.

10A NCAC 71W .0607 DETERMINATION OF PAYMENT AMOUNT

Authority G.S. 143B-153; c. 738, 1987 Session Laws.

SECTION .0700 - EMERGENCY ASSISTANCE COVERAGE

10A NCAC 71W .0704 BENEFIT LEVELS

(a) Cash assistance:

- (1) The maximum cash assistance benefit per household is three hundred dollars (\$300) during 30 consecutive days. Assistance cannot be received again within a 12 consecutive month period.
- (2) When the agency purchases in-kind goods or contracts for the purchase of services to alleviate or to prevent destitution of the family, the value of the in-kind goods or contracted services purchased with the cash assistance must be established and considered when authorizing the benefit level.
 - (A) For in-kind goods, the value shall be the actual purchase price of the goods.
 - (B) For contracted services, the provider shall submit to the agency a written statement of the value of the service purchased with the cash assistance.

(b) Services:

- (1) There is no maximum benefit level for services but the family must need the services to alleviate the identified emergency.
- (2) Services must be authorized within a single 30 day period no less than 12 months after the beginning of the family's last EA authorization period and are limited to a maximum duration of 364 days.
- (3) Counties shall use their Work First block grant funds to provide emergency assistance to families. Counties shall define the eligibility criteria, including who is eligible and the types of emergencies that will be covered. This assistance is designed to assist with families' sporadic emergency needs, such as a utility cut-off or an eviction notice. Emergency assistance

is not designed specifically to help families move to self-sufficiency, although, use of this assistance may help a family's progress.

Authority G.S. 108A-39.1; 143B-153; 45 C.F.R. 233.120.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend the rule cited as 10A NCAC 72 .0102.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncdhhs.gov/divisions/social-services/about-dss/social-services-commission/rules>

Proposed Effective Date: August 1, 2021

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A public hearing can be requested by contacting Joel Johnson at the Office of General Counsel: Email: joel.johnson@dhhs.nc.gov; Fax: (919)733-3854; Mailing Address: 2001 Mail Service Center, Raleigh, NC 27699-2001.*

Reason for Proposed Action: *10A NCAC 72 .0102 is being amended to clarify a single definition to ensure programmatic clarity.*

Comments may be submitted to: *Paris Penny, 2401 Mail Service Center, Raleigh, NC 27699; phone (919) 527-7257; email paris.penny@dhhs.nc.gov*

Comment period ends: June 14, 2021

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 984-236-1850.

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

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

CHAPTER 72 - EDUCATIONAL ASSISTANCE

SECTION .0100 - GENERAL

10A NCAC 72 .0102 DEFINITIONS

The following definitions shall apply in this Chapter:

- (1) "Academic Year" means a period of time in which a student completes the equivalent of two semesters or three quarters of academic work.
- (2) "Approved Institution" means one of the branches of the University of North Carolina or one of the North Carolina community colleges.
- (3) "Case Management Services" are a set of services provided to participating students and their families which are designed to support the student's postsecondary education experience. Such services include:
 - (a) processing and accepting applications for the program;
 - (b) certifying each eligible student and the amount of the Eligible Student's Scholarship and communicating this information to the North Carolina State Education Assistance Authority to authorize release of funds;
 - (c) compiling accurate databases of resources in the students' academic communities that can help students succeed in school;
 - (d) providing or arranging for counseling regarding academic issues as well as other concerns that may affect the performance of the student;
 - (e) communicating with and advising students on academic issues;
 - (f) providing contact with students throughout their postsecondary experience;
 - (g) responding to students experiencing crisis;
 - (h) providing or arranging for emergency housing up to two weeks for students who have no place to live when school is out of session;
 - (i) if allowed by the student, being available to consult with student's families and staff of local Departments of Social Services regarding student's postsecondary experiences;
 - (j) monitoring grades and the individual's course of study, and evaluating progress toward goal achievement;
 - (k) maintaining records for each individual student regarding their academic progress and assistance provided; and
 - (l) providing quarterly program reports of case management services to the

contract administrator at the State Division of Social Services.

- (4) "Cost of Attendance" Costs of attendance are defined by the Higher Education Act of 1965, which includes tuition, fees, room, board, supplies, transportation, and personal expenses. This amount is established by each institution. This grant is limited to cost of attendance less other grants or scholarships from federal, state, or other sources.
- (5) "Education Training Voucher" (ETV) means the Federal scholarship program funded by the John Chafee Foster Care Independence Act 42 U.S.C. 677, which benefits individuals who were in the custody of the Department of Social Services at or after age 17 or who were adopted or exited to guardianship on or after their 16th birthday.
- (6) "Eligible Student" means a student who:
 - (a) has received a high school diploma or GED and has not yet reached his or her 26th birthday;
 - (b) is pursuing an undergraduate degree, diploma, or certificate at an approved institution as a half-time student or a full-time student, as defined in 34 CFR 668.2;
 - (c) was in the custody of a North Carolina local Department of Social Services on his or her 18th birthday, or was adopted from the North Carolina foster care system on or after his or her 12th birthday; and or exited foster care to a permanent home through the Guardianship Assistance Program; and
 - (d) is making satisfactory academic progress toward completion of the course of undergraduate study as defined in 34 CFR 668.34.
- (7) "Fiscal Year" means each annual period which begins on July 1 in any calendar year and ends on June 30 the following calendar year.
- (8) "Higher Education Act" means Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070, et seq.
- (9) "Matriculated Status" means the student is recognized by the approved institution as a student in a defined program of study leading to an associate's degree, baccalaureate degree, diploma or certificate.
- (10) "Pell Grant" means the needs based scholarship program administered by the federal government to benefit low income baccalaureate and postgraduate students.
- (11) "Program" means the Postsecondary Educational Support Scholarship program, also known as NC Reach, established by Section 10.34(a) of Session Law 2007-323.

- (12) "Residence Manual" means the most current edition of A Manual to Assist the Public Higher Education Institutions of North Carolina in the Matter of Student Residence Classification for Tuition Purposes as adopted by the Board of Governors of the University of North Carolina and available free of charge at https://ncresidency.cfnc.org/residencyInfo/pdf/RDS_Guidebook.pdf.
- (13) "Scholarship" means an award for education awarded to an eligible student under the program.

Authority G.S. 143B-153; S.L. 2018-5; S.L. 2017-57; 34 CFR 668.34.

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 984-236-1850.

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

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

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Industrial Commission intends to adopt the rule cited as 11 NCAC 23E .0302.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ic.nc.gov/proposedpermE302.html>

Proposed Effective Date: August 1, 2021

Public Hearing:

Date: June 10, 2021

Time: 2:00 p.m.

Location: Via Teleconference Only. Call-in Number: 1-888-363-4735; Access Code: 4465746

Reason for Proposed Action: *The Industrial Commission (hereinafter "Commission") has deemed it necessary to permanently adopt the rule cited as 11 NCAC 23E .0302 to ensure that the Commission has the ability to waive or modify the provisions of any of its rules to bring its rules in conformity with an emergency Order or directive of the Chief Justice of the North Carolina Supreme Court in the interests of justice or to protect the public health or safety.*

Comments may be submitted to: Gina Cammarano, 1240 Mail Service Center, Raleigh, NC 27699-1240; phone (919) 807-2524; email gina.cammarano@ic.nc.gov

Comment period ends: June 14, 2021

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.

CHAPTER 23 - INDUSTRIAL COMMISSION

SUBCHAPTER 23E – ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION

SECTION .0300 – RULES OF THE COMMISSION

11 NCAC 23E .0302 EMERGENCY ORDERS AND DIRECTIVES OF THE CHIEF JUSTICE OF THE NORTH CAROLINA SUPREME COURT

(a) This Rule applies to all matters within the authority and jurisdiction of the Commission and to all Subchapters of the Commission's rules.

(b) In the interests of justice or to protect the public health or safety, the Commission may waive or modify any portion of its rules in order to bring them in conformity with an emergency Order or directive of the Chief Justice of the North Carolina Supreme Court that is in effect. The Commission shall consider the following factors in determining whether to grant the waiver or modification:

- (1) the necessity of waiving or modifying the rule; and
- (2) the impact of waiving or modifying the rule on the regulated parties and on the Commission.

If the Commission waives or modifies a rule to bring it into conformity with any emergency Order or directive of the Chief Justice of the North Carolina Supreme Court, the Commission shall post a notice of the waiver or modification of the rule on its website unless the waiver or modification is case-specific and not generally applicable to the regulated public. For a waiver or modification that is case-specific and not generally applicable to the regulated public, the Commission shall notify the parties in the case of the waiver or modification via an order of the Commission.

(c) During any period that an emergency Order or directive of the Chief Justice of the North Carolina Supreme Court authorizes the taking of oaths and verifications outside the presence of a notary public, the Commission shall accept any pleading, motion, petition, supporting affidavit, or other document with an affirmation or representation not attested to before a notary public so long as the subscriber affirms the truth of the matter to be verified by an affirmation or representation in substantially the same language as that allowed by the emergency Order or

directive of the Chief Justice of the North Carolina Supreme Court.

(d) Any waiver or modification made pursuant to this Rule shall only remain in effect during the duration of any emergency Order or directive of the Chief Justice of the North Carolina Supreme Court upon which that waiver or modification is based.

Authority G.S. 97-80; 130A-425(d); 143-166.4; 143-296; 143-300.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Sheriffs' Education and Training Standards Commission intends to amend the rule cited as 12 NCAC 10B .0510.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://ncdoj.gov/law-enforcement-training/sheriffs/all-commission-forms-publications/>

Proposed Effective Date: *August 1, 2021*

Public Hearing:

Date: *April 30, 2021*

Time: *10:00 a.m.*

Location: *1700 Tryon Park Drive, Raleigh, NC 27610*

Reason for Proposed Action: *Amendment is necessary to further clarify the requirements for School Resource Officer certification.*

Comments may be submitted to: *Diane Konopka, 1700 Tryon Park Drive, Raleigh, NC 27615; email dkonopka@ncdoj.gov*

Comment period ends: *June 14, 2021*

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 984-236-1850.

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

- ☐ **State funds affected**
☐ **Local funds affected**
☐ **Substantial economic impact (\geq \$1,000,000)**



Approved by OSBM



No fiscal note required

CHAPTER 10 - SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SUBCHAPTER 10B - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .0500 - MINIMUM STANDARDS OF TRAINING FOR DEPUTY SHERIFFS

12 NCAC 10B .0510 CERTIFICATION AND TRAINING FOR SCHOOL RESOURCE OFFICERS

(a) A "School Resource Officer (SRO)" is defined as any law enforcement officer assigned to one or more public schools within a local school administrative unit, as defined in G.S. 115C-5(6), who works in a school at least 20 hours per week for more than 12 weeks per calendar year to assist with all of the following:

- (1) School safety;
- (2) School security;
- (3) Emergency preparedness;
- (4) Emergency response; and
- (5) Any additional responsibilities related to school safety or security assigned by the officer's employer while the officer is acting as a School Resource Officer.

Any written memorandum of understanding between the local school administrative unit and the law enforcement agency governing the School Resource Officer shall be consistent with this Paragraph.

(b) Deputy Sheriffs assigned by their agency to perform duties as a School Resource Officer shall:

- (1) have been issued general certification by the North Carolina Sheriffs' Education and Training Standards Commission as a Deputy Sheriff; and
- (2) have until December 31, 2020 to complete the ~~Basic~~ basic School Resource Officer Training Course if they are acting in the capacity of a School Resource Officer between January 1, 2019 and December 31, 2019. Any officer assigned as a School Resource Officer effective January 1, 2020 or later shall complete the Basic School Resource Officer Training course pursuant to Paragraph (f) of this Rule, within one year after being assigned as a School Resource Officer. Deputy Sheriffs who previously completed the training pursuant to Paragraph (f) of this Rule at any time and who have been continually assigned as an SRO pursuant to Paragraph (a) of this Rule shall be credited with completion of the ~~Basic~~ basic School Resource Officer Training course. Deputy Sheriffs who completed the training pursuant to Paragraph (g) of this Rule between October 1, 2018, and December 31, 2020, shall be credited with completion of the Basic School Resource Officer Training course even if they

were not assigned as an SRO pursuant to Paragraph (a) of this Rule as long as they comply with the annual SRO refresher training pursuant to Paragraph (e) of this Rule.

(c) A Deputy Sheriff assigned to one or more public schools within a local school administrative unit, who works in a school at least 20 hours per week for more than 12 weeks per calendar year and who has not completed the initial training as established by Paragraph ~~(f)~~(g) of this Rule shall not work in a school as a School Resource Officer until the officer has completed the initial training as established by Paragraph (f) of this Rule.

(d) The agency head shall submit to the Sheriffs' Standards Division a Form F-20 Commission School Resource Officer Assignment Form for the person(s) selected to act as a School Resource Officer for the agency. The Form F-20 is located on the agency's website: <https://ncdoj.gov> and must be completed in its entirety. The Form F-20 Commission School Resource Officer Assignment Form consists of the following:

- (1) applicant's name;
- (2) date of birth;
- (3) social security number;
- (4) name of agency and address;
- (5) date awarded general certification;
- (6) completion date of School Resource Officer training; and
- (7) date assigned as a School Resource Officer.

(e) The term of certification as a School Resource Officer shall be indefinite, provided the School Resource Officer completes during each calendar year one credit of School Resource Officer refresher training authored by North Carolina Justice Academy. For School Resource Officers who complete the basic SRO training requirement in 2020 or earlier, this requirement becomes effective January 1, 2021. Otherwise, this requirement becomes effective the year following the officer's successful completion of the ~~Basic~~ basic School Resource Officer Training course. A certified School Resource Officer who has not completed the refresher training during a calendar year as established by this Rule shall not work in a school as a School Resource Officer until the officer has completed the required refresher training as established by this Rule. Any refresher training that is not completed during a single calendar year must be made up on or before January 31st of the following calendar year. Any officer who fails to resolve a deficiency in the refresher training shall no longer maintain School Resource Officer certification.

(f) Instructors who teach a basic SRO course in a traditional classroom format will receive credit toward the completion of the basic SRO course requirement as required by this Rule, provided they pass all required tests and have their instruction documented by the Agency Head or In-Service Training Coordinator once completed.

~~(f)(g)~~ The School Resource Officer training course for Deputy Sheriffs shall provide the trainee with the skills and knowledge to perform in the capacity of a School Resource Officer. The ~~Basic~~ basic School Resource Officer Training course authored by the North Carolina Justice Academy shall be used as the curriculum for this training course. Copies of this publication may be inspected at the agency:

Sheriffs' Standards Division
North Carolina Department of Justice

1700 Tryon Park Drive

Post Office Drawer 629

Raleigh, North Carolina 27602

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

North Carolina Justice Academy

Post Office Drawer 99

Salemberg, North Carolina 28385

Authority G.S. 17E-4; 17E-7.

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 .0208, .0306, .0308; 07J .1301; 07K .0207; 07M .0302, .0307, .0602, .0603 and repeal the rules cited as 15A NCAC 07M .0301, .0306 and .0308.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://deq.nc.gov/about/divisions/coastal-management/coastal-management-rules/proposed-rules>

Proposed Effective Date: *September 1, 2021*

Public Hearing:

Date: *May 4, 2021*

Time: *1:00 p.m.*

Location:

<http://ncdenrits.webex.com/ncdenrits/j.php?MTID=mb7852d1658f311a552321dc4c855a511>

Reason for Proposed Action:

15A NCAC 07H .0208 and 07M .0602-.0603: The Coastal Resources Commission's floating structure policies do not specifically address Floating Upweller Systems used in shellfish aquaculture operations. These amendments clarify how they may be sited in public trust waters.

15A NCAC 07M .0300: The Coastal Resources Commission (CRC) is proposing amendments to the CAMA Public Beach and Coastal Waterfront Access Program. These amendments are intended to address implementation aspects of the Program, as well as reorganize some of the individual rules based on grant administration, local government requirements, and project selection. These changes are consistent with G.S. 150B-19.1(b) which requires agencies to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in 150B-19.1(a) and modify them to reduce regulatory burden.

15A NCAC 07H .0306 and 07J .1301: Currently, there are specific types of development allowed oceanward of the setback line except only when a community has a CRC approved Development Line. This was not the original intent of the Coastal Resources Commission; therefore, the CRC is amending its rules to allow those exceptions oceanward of the setback line.

15A NCAC 07H .0308 and 07K .0207: The Coastal Resources Commission proposes to amend its administrative rules in order

to provide greater flexibility to local governments and government agencies in constructing public accessways and enhanced handicap access to the beach by allowing the limited use of beach matting.

Comments may be submitted to: *Braxton Davis, 400 Commerce Ave, Morehead City, NC 28557; phone (252) 808-2808*

Comment period ends: *June 14, 2021*

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 984-236-1850.

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

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

**CHAPTER 07 - COASTAL MANAGEMENT
SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS
OF ENVIRONMENTAL CONCERN**

**SECTION .0200 – THE ESTUARINE AND OCEAN
SYSTEMS**

15A NCAC 07H .0208 USE STANDARDS

(a) General Use Standards

- (1) Uses that are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches;

- (2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant has complied with the following standards:
 - (A) The location, design, and need for development, as well as the construction activities involved shall be consistent with the management objective of the Estuarine and Ocean System AEC (Rule .0203 of this subchapter) and shall be sited and designed to avoid significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation as defined by the Marine Fisheries Commission, and spawning and nursery areas;
 - (B) Development shall comply with State and federal water and air quality rules, statutes and regulations;
 - (C) Development shall not cause irreversible damage to documented archaeological or historic resources as identified by the N.C. Department of Cultural resources;
 - (D) Development shall not increase siltation;
 - (E) Development shall not create stagnant water bodies;
 - (F) Development shall be timed to avoid significant adverse impacts on life cycles of estuarine and ocean resources; and
 - (G) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.
- (3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule, the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits as identified in the findings and goals of the Coastal Area Management Act, that the public benefits outweigh the long range adverse effects of the project, that there is no reasonable alternate site available for the project, and that all reasonable means and measures to mitigate adverse impacts of the project have been incorporated into the project design and shall be implemented at the applicant's expense. Measures taken to mitigate or minimize adverse impacts shall include actions that:
 - (A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
 - (B) restore the affected environment; or

- (C) compensate for the adverse impacts by replacing or providing substitute resources.
 - (4) "Primary nursery areas" are defined as those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages. Primary nursery areas are designated and described by the N.C. Marine Fisheries Commission (MFC) and by the N.C. Wildlife Resources Commission (WRC);
 - (5) "Outstanding Resource Waters" (ORW) are defined as those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission (EMC). In those estuarine waters and public trust areas classified as ORW by the EMC no permit required by the Coastal Area Management Act shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site specific information, degrade the water quality or outstanding resource values; and
 - (6) Beds of "submerged aquatic vegetation" (SAV) are defined as those habitats in public trust and estuarine waters vegetated with one or more species of submergent vegetation. These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the Marine Fisheries Commission. Any rules relating to SAVs shall not apply to non-development control activities authorized by the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et seq.).
- (b) Specific Use Standards
- (1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined by the MFC, or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:
 - (A) Navigation channels and canals may be allowed through fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and if there is no reasonable alternative that would avoid the wetland losses;
 - (B) All dredged material shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or coastal wetlands;
 - (C) Dredged material from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no significant, long-term wetland impacts. Under no circumstances shall dredged material be placed on regularly flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10);
 - (D) Widths of excavated canals and channels shall be the minimum required to meet the applicant's needs but not impair water circulation;
 - (E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end inland;
 - (F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters;
 - (G) Construction of finger canal systems are not allowed. Canals shall be either straight or meandering with no right angle corners;
 - (H) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include shoreline stabilization, vegetative stabilization, or setbacks based on soil characteristics; and
 - (I) Maintenance excavation in canals, channels and boat basins within primary nursery areas and areas of submerged aquatic vegetation as defined by the MFC shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria:
 - (i) The applicant demonstrates and documents that a water-dependent need exists for the excavation;
 - (ii) There exists a previously permitted channel that was constructed or maintained

- under permits issued by the State or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there shall be evidence that the channel was continuously used for a specific purpose;
 - (iii) Excavated material can be removed and placed in a disposal area in accordance with Part (b)(1)(B) of this Rule without impacting adjacent nursery areas and submerged aquatic vegetation as defined by the MFC; and
 - (iv) The original depth and width of a human-made or natural channel shall not be increased to allow a new or expanded use of the channel.
- (2) Hydraulic Dredging
 - (A) The terminal end of the dredge pipeline shall be positioned at a distance sufficient to preclude erosion of the containment dike and a maximum distance from spillways to allow settlement of suspended solids;
 - (B) Dredged material shall be either confined on high ground by retaining structures or deposited on beaches for purposes of renourishment if the material is suitable in accordance with the rules in this Subchapter, except as provided in Part (G) of this Subparagraph;
 - (C) Confinement of excavated materials shall be landward of all coastal wetlands and shall employ soil stabilization measures to prevent entry of sediments into the adjacent water bodies or coastal wetlands;
 - (D) Effluent from diked areas receiving disposal from hydraulic dredging operations shall be contained by pipe, trough, or similar device to a point waterward of emergent vegetation or, where local conditions require, below normal low water or normal water level.
 - (E) When possible, effluent from diked disposal areas shall be returned to the area being dredged;
 - (F) A water control structure shall be installed at the intake end of the effluent pipe.
- (G) Publicly funded projects shall be considered by review agencies on a case-by-case basis with respect to dredging methods and dredged material disposal in accordance with Subparagraph (a)(3) of this Rule; and
 - (H) Dredged material from closed shellfish waters and effluent from diked disposal areas used when dredging in closed shellfish waters shall be returned to the closed shellfish waters.
- (3) Drainage Ditches
 - (A) Drainage ditches located through any coastal wetland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant shows that larger ditches are necessary;
 - (B) Dredged material derived from the construction or maintenance of drainage ditches through regularly flooded marsh shall be placed landward of these marsh areas in a manner that will insure that entry of sediment into the water or marsh will not occur. Dredged material derived from the construction or maintenance of drainage ditches through irregularly flooded marshes shall be placed on non-wetlands wherever feasible. Non-wetland areas include relic disposal sites;
 - (C) Excavation of new ditches through high ground shall take place landward of an earthen plug or other methods to minimize siltation to adjacent water bodies; and
 - (D) Drainage ditches shall not have a significant adverse impact on primary nursery areas, productive shellfish beds, submerged aquatic vegetation as defined by the MFC, or other estuarine habitat. Drainage ditches shall be designed so as to minimize the effects of freshwater inflows, sediment, and the introduction of nutrients to receiving waters. Settling basins, water gates and retention structures are examples of design alternatives that may be used to minimize sediment introduction.
- (4) Nonagricultural Drainage
 - (A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow are minimized to both surface and ground water;
 - (B) Drainage ditches shall provide for the passage of migratory organisms by

- allowing free passage of water of sufficient depth; and
 - (C) Drainage ditches shall not create stagnant water pools or changes in the velocity of flow.
- (5) Marinas. "Marinas" are defined as any publicly or privately owned dock, basin or wet boat storage facility constructed to accommodate more than 10 boats and providing any of the following services: permanent or transient docking spaces, dry storage, fueling facilities, haulout facilities and repair service. Excluded from this definition are boat ramp facilities allowing access only, temporary docking and none of the preceding services. Expansion of existing facilities shall comply with the standards of this Subparagraph for all development other than maintenance and repair necessary to maintain previous service levels. Marinas shall comply with the following standards:
 - (A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging) and shall not disturb shellfish resources, submerged aquatic vegetation as defined by the MFC, or wetland habitats, except for dredging necessary for access to high-ground sites. The following four alternatives for siting marinas are listed in order of preference for the least damaging alternative; marina projects shall be designed to have the highest of these four priorities that is deemed feasible by the permit letting agency:
 - (i) an upland basin site requiring no alteration of wetland or estuarine habitat and providing flushing by tidal or wind generated water circulation or basin design characteristics;
 - (ii) an upland basin site requiring dredging for access when the necessary dredging and operation of the marina will not result in significant adverse impacts to existing fishery, shellfish, or wetland resources and the basin design shall provide flushing by tidal or wind generated water circulation;
 - (iii) an open water site located outside a primary nursery area which utilizes piers or docks rather than channels or
 - (B) Marinas that require dredging shall not be located in primary nursery areas nor in areas which require dredging through primary nursery areas for access. Maintenance dredging in primary nursery areas for existing marinas shall comply with the standards set out in Part (b)(1)(I) of this Rule;
 - (C) To minimize coverage of public trust areas by docks and moored vessels, dry storage marinas shall be used where feasible;
 - (D) Marinas to be developed in waters subject to public trust rights (other than those created by dredging upland basins or canals) for the purpose of providing docking for residential developments shall be allowed no more than 27 square feet of public trust areas for every one linear foot of shoreline adjacent to these public trust areas for construction of docks and mooring facilities. The 27 square feet allocation does not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces;
 - (E) To protect water quality in shellfishing areas, marinas shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the marina. In compliance with 33 U.S. Code Section 101(a)(2) of the Clean Water Act and North Carolina Water Quality Standards (15A NCAC 02B .0200) adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Coastal
- canals to reach deeper water; and
 - (iv) an open water marina requiring excavation of no intertidal habitat, and no dredging greater than the depth of the connecting channel.

- Management shall consult with the Division of Marine Fisheries regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;
- (F) Marinas shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the state or deeded by the State;
- (G) Marina basins shall be designed to promote flushing through the following design criteria:
- (i) the basin and channel depths shall gradually increase toward open water and shall never be deeper than the waters to which they connect; and
 - (ii) when possible, an opening shall be provided at opposite ends of the basin to establish flow-through circulation;
- (H) Marinas shall be designed so that the capability of the waters to be used for navigation or for other public trust rights in estuarine or public trust waters are not jeopardized while allowing the applicant access to deep waters;
- (I) Marinas shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels and their boundaries as designated by the US Army Corps of Engineers. This includes mooring sites (permanent or temporary); speed or traffic reductions; or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted;
- (J) Open water marinas shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality;
- (K) Marinas that require dredging shall provide areas in accordance with Part (b)(1)(B) of this Rule to accommodate disposal needs for future maintenance dredging, including the ability to remove the dredged material from the marina site;
- (L) Marina design shall comply with all applicable EMC requirements (15A NCAC 02B .0200) for management of stormwater runoff. Stormwater management systems shall not be located within the 30-foot buffer area outlined in 15A NCAC 07H .0209(d);
- (M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and listing the availability of local pump-out services;
- (N) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting will be done over dry land with collection and containment devices that prevent entry of waste materials into adjacent waters;
- (O) All marinas shall comply with all applicable standards for docks and piers, shoreline stabilization, dredging and dredged material disposal of this Rule;
- (P) All applications for marinas shall be reviewed by the Division of Coastal Management to determine their potential impact to coastal resources and compliance with applicable standards of this Rule. Such review shall also consider the cumulative impacts of marina development in accordance with G.S. 113A-120(a)(10); and
- (Q) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the development complies with the standards for marina development within this Section.
- (6) Piers and Docking Facilities.
- (A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted only if the greater width is necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur;
 - (B) The total square footage of shaded impact for ~~docks~~ docks, docks, platforms and mooring facilities (excluding the pier) allowed shall be eight square feet per linear foot of shoreline with a maximum of 2,000 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, to improve public access, or to support

- a water dependent use that cannot otherwise occur. Size restrictions shall not apply to marinas;
- (C) Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking;
- (D) A boathouse shall not exceed 400 square feet except to accommodate a documented need for a larger boathouse and shall have sides extending no farther than one-half the height of the walls and covering only the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline. Size restrictions do not apply to marinas;
- (E) The total area enclosed by an individual boat lift shall not exceed 400 square feet except to accommodate a documented need for a larger boat lift;
- (F) Piers and docking facilities shall be single story. They may be roofed but shall not be designed to allow second story use;
- (G) Pier and docking facility length shall be limited by:
- (i) not extending beyond the established pier or docking facility length along the same shoreline for similar use. This restriction does not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public;
 - (ii) not extending into the channel portion of the water body; and
 - (iii) not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation that borders the water body. The one-fourth length limitation does not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation shall not apply when the proposed pier is located between longer piers or docking facilities within 200 feet of the applicant's property. However, the proposed pier or docking facility shall not be longer than the pier head line established by the adjacent piers or docking facilities, nor longer than one-third the width of the water body.
- (H) Piers or docking facilities longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least 1 foot each 100 foot increment of length longer than 400 feet, or, if the additional length is necessary to span some obstruction to navigation. Measurements to determine lengths shall be made from the waterward edge of any coastal wetland vegetation that borders the water body;
- (I) Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. If the adjacent property is sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any

- development of the pier. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205(t) illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable as determined by the Director of the Division of Coastal Management; and
- (J) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.
- (7) Bulkheads
- (A) Bulkhead alignment, for the purpose of shoreline stabilization, shall approximate the location of normal high water or normal water level;
- (B) Bulkheads shall be constructed landward of coastal wetlands in order to avoid significant adverse impacts to the resources;
- (C) Bulkhead backfill material shall be obtained from an upland source approved by the Division of Coastal Management pursuant to this Section, or if the bulkhead is a part of a permitted project involving excavation from a non-upland source, the material so obtained may be contained behind the bulkhead;
- (D) Bulkheads shall be permitted below normal high water or normal water level only when the following standards are met:
- (i) the property to be bulkheaded has an identifiable erosion problem, whether it results from natural causes or adjacent bulkheads, or it has unusual geographic or geologic features, e.g. steep grade bank, which will cause the applicant unreasonable hardship under the other provisions of this Rule;
- (ii) the bulkhead alignment extends no further below normal high water or normal water level than necessary to allow recovery of the area eroded in the year prior to the date of application, to align with adjacent bulkheads, or to mitigate the unreasonable hardship resulting from the unusual geographic or geologic features;
- (iii) the bulkhead alignment will not adversely impact public trust rights or the property of adjacent riparian owners;
- (iv) the need for a bulkhead below normal high water or normal water level is documented by the Division of Coastal Management; and
- (v) the property to be bulkheaded is in a non-oceanfront area.
- (E) Where possible, sloping rip-rap, gabions, or vegetation shall be used rather than bulkheads.
- (8) Beach Nourishment
- (A) Beach creation or maintenance may be allowed to enhance water related recreational facilities for public, commercial, and private use consistent with the following:
- (i) Beaches may be created or maintained in areas where they have historically been found due to natural processes;
- (ii) Material placed in the water and along the shoreline shall be clean sand and free from pollutants. Grain size shall be equal to that found naturally at the site;
- (iii) Beach creation shall not be allowed in primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds;
- (iv) Material shall not be placed on any coastal wetlands or submerged aquatic vegetation as defined by MFC;
- (v) Material shall not be placed on any submerged bottom with significant shellfish resources as identified by the

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| | | Division of Marine Fisheries during the permit review; and Beach construction shall not create the potential for filling adjacent navigation channels, canals or boat basins. | | | co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin; |
| | (B) | Placing unconfined sand material in the water and along the shoreline shall not be allowed as a method of shoreline erosion control; | | (C) | Groins shall pose no threat to navigation; |
| | (C) | Material from dredging projects may be used for beach nourishment if: | | (D) | The height of groins shall not exceed one foot above normal high water or normal water level; |
| | | (i) it is first handled in a manner consistent with dredged material disposal as set forth in this Rule; | | (E) | No more than two structures shall be allowed per 100 feet of shoreline unless the applicant provides evidence that more structures are needed for shoreline stabilization. |
| | | (ii) it is allowed to dry prior to being placed on the beach; and | | (F) | "L" and "T" sections shall not be allowed at the end of groins; and |
| | | (iii) only that material of acceptable grain size as set forth in Subpart (b)(8)(A)(ii) of this Rule is removed from the disposal site for placement on the beach. Material shall not be placed directly on the beach by dredge or dragline during maintenance excavation. | | (G) | Riprap material used for groin construction shall be free from loose dirt or any other pollutant and of a size sufficient to prevent its movement from the site by wave and current action. |
| | (D) | Beach construction shall comply with State and federal water quality standards; | | (10) | "Freestanding Moorings". |
| | (E) | The renewal of permits for beach nourishment projects shall require an evaluation by the Division of Coastal Management of any adverse impacts of the original work; and | | (A) | A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling as long as the piling is not associated with an existing or proposed pier, dock, or boathouse; |
| | (F) | Permits issued for beach nourishment shall be limited to authorizing beach nourishment only one time. | | (B) | Freestanding moorings shall be permitted only: |
| | | | | (i) | to riparian property owners within their riparian corridors; or |
| (9) | Groins | | | (ii) | to any applicant proposing to locate a mooring buoy consistent with a water use plan that is included in either the local zoning or land use plan. |
| | (A) | Groins shall not extend more than 25 feet waterward of the normal high water or normal water level unless a longer structure is justified by site specific conditions and by an individual who meets any North Carolina occupational licensing requirements for the type of structure being proposed and approved during the application process; | | (C) | All mooring fields shall provide an area for access to any mooring(s) and other land based operations that shall include wastewater pumpout, trash disposal and vehicle parking; |
| | (B) | Groins shall be set back a minimum of 15 feet from the adjoining riparian lines. The setback for rock groins shall be measured from the toe of the structure. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are | | (D) | To protect water quality of shellfishing areas, mooring fields shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the |

- mooring field. In compliance with Section 101(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;
- (E) Moorings shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the state or deeded by the State;
 - (F) Moorings shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels. This includes mooring sites (permanent or temporary), speed or traffic reductions, or any other device, either physical or regulatory, which may cause a federally maintained channel to be restricted;
 - (G) Open water moorings shall not be enclosed within breakwaters that preclude circulation and degrade water quality in violation of EMC standards;
 - (H) Moorings and the associated land based operation design shall comply with all applicable EMC requirements for management of stormwater runoff;
 - (I) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of any waste from boat toilets or any other discharge and listing the availability of local pump-out services and waste disposal;
 - (J) Freestanding moorings associated with commercial shipping, public service or temporary construction or salvage operations may be permitted without a public sponsor;
 - (K) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the length of the vessel to be moored. Moorings and the attached vessel shall not interfere with the access of any riparian owner nor shall it block riparian access to channels or deep water, which allows riparian access. Freestanding moorings shall not interfere with the ability of any riparian owner to place a pier for access;
 - (L) Freestanding moorings shall not be established in submerged cable or pipe crossing areas or in a manner that interferes with the operations of an access through any bridge;
 - (M) Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard and the WRC requirements and the required marking maintained for the life of the mooring(s); and
 - (N) The type of material used to create a mooring must be free of pollutants and of a design and type of material so as to not present a hazard to navigation or public safety.
- (11) Filling of Canals, Basins and Ditches - Notwithstanding the general use standards for estuarine systems as set out in Paragraph (a) of this Rule, filling canals, basins and ditches shall be allowed if all of the following conditions are met:
- (A) the area to be filled was not created by excavating lands which were below the normal high water or normal water level;
 - (B) if the area was created from wetlands, the elevation of the proposed filling does not exceed the elevation of said wetlands so that wetland function will be restored;
 - (C) the filling will not adversely impact any designated primary nursery area, shellfish bed, submerged aquatic vegetation as defined by the MFC, coastal wetlands, public trust right or public trust usage; and
 - (D) the filling will not adversely affect the value and enjoyment of property of any riparian owner.
- (12) "Submerged Lands Mining"
- (A) Development Standards. Mining of submerged lands shall meet all the following standards:
 - (i) The biological productivity and biological significance of mine sites, or borrow sites used for sediment extraction, shall be evaluated for

- significant adverse impacts and a protection strategy for these natural functions and values provided with the State approval request or permit application;
 - (ii) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;
 - (iii) Mining shall avoid significant archaeological resources as defined in Rule .0509 of this Subchapter; shipwrecks identified by the Department of Cultural Resources; and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);
 - (iv) Mining activities shall not be conducted on or within 500 meters of significant biological communities identified by the Division of Marine Fisheries or the WRC, such as high relief hard bottom areas. "High relief" is defined for this Part as relief greater than or equal to one-half meter per five meters of horizontal distance;
 - (v) Mining activities shall be timed to minimize impacts on the life cycles of estuarine or ocean resources; and
 - (vi) Mining activities shall not affect potable groundwater supplies, wildlife, freshwater, estuarine, or marine fisheries.
- (B) Permit Conditions. Permits for submerged lands mining may be conditioned on the applicant amending the mining proposal to include measures necessary to ensure compliance with the provisions of the Mining Act and the rules for development set out in this Subchapter. Permit conditions shall also include:
 - (i) Monitoring by the applicant to ensure compliance with all applicable development standards; and
 - (ii) A determination of the necessity and feasibility of restoration shall be made by the Division of Coastal Management as part of the permit or consistency review process. Restoration shall be necessary where it will facilitate recovery of the pre-development ecosystem. Restoration shall be considered feasible unless, after consideration of all practicable restoration alternatives, the Division of Coastal Management determines that the adverse effects of restoration outweigh the benefits of the restoration on estuarine or ocean resources. If restoration is determined to be necessary and feasible, then the applicant shall submit a restoration plan to the Division of Coastal Management prior to the issuance of the permit.
- (C) Dredging activities for the purposes of mining natural resources shall be consistent with the development standards set out in this Rule;
- (D) Mitigation. Where mining cannot be conducted consistent with the development standards set out in this Rule, the applicant may request mitigation approval under 15A NCAC 07M .0700; and
- (E) Public Benefits Exception. Projects that conflict with the standards in this Subparagraph, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.
- (13) "Wind Energy Facilities"
 - (A) An applicant for the development and operation of a wind energy facility shall provide:
 - (i) an evaluation of the proposed noise impacts of the turbines to be associated with the proposed facility;
 - (ii) an evaluation of shadow flicker impacts for the

- (iii) turbines to be associated with the proposed facility;
 - (iv) an evaluation of avian and bat impacts of the proposed facility;
 - (v) an evaluation of viewshed impacts of the proposed facility;
 - (vi) an evaluation of potential user conflicts associated with development in the proposed project area; and
 - (vi) a plan regarding the action to be taken upon decommissioning and removal of the wind energy facility. The plan shall include estimates of monetary costs, time frame of removal and the proposed site condition after decommissioning.
- (B) **Development Standards.** Development of wind energy facilities shall meet the following standards in addition to adhering to the requirements outlined in Part (a)(13)(A) of this Rule:
 - (i) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;
 - (ii) Development shall not be sited on or within 500 meters of significant biological communities identified by the Division of Marine Fisheries or the WRC, such as high relief hard bottom areas. High relief is defined for this standard as relief greater than or equal to one-half meter per five meters of horizontal distance;
 - (iii) Development shall not cause irreversible damage to documented archeological resources including shipwrecks identified by the Department of Cultural Resources and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);
- (iv) Development activities shall be timed to avoid significant adverse impacts on the life cycles of estuarine or ocean resources, or wildlife;
- (v) Development or operation of a wind energy facility shall not jeopardize the use of the surrounding waters for navigation or for other public trust rights in public trust areas or estuarine waters; and
- (vi) Development or operation of a wind energy facility shall not interfere with air navigation routes, air traffic control areas, military training routes or special use airspace and shall comply with standards adopted by the Federal Aviation Administration and codified under 14 CFR Part 77.13.
- (C) **Permit Conditions.** Permits for wind energy facilities may be conditioned on the applicant amending the proposal to include measures necessary to ensure compliance with the standards for development set out in this Rule. Permit conditions may include monitoring to ensure compliance with all applicable development standards; and
- (D) **Public Benefits Exception.** Projects that conflict with these standards, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.

Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124.

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 shall be 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 shall be set in accordance with

- Subparagraphs (a)(3) through (9) of this Rule. ~~It~~ With the exception of those types of development defined in 15A NCAC 07J .1301(d), in no case shall new development be sited seaward of the development line. In areas with a Static Line Exception, approved in accordance with 15A NCAC 07J .1200 and a Development Line approved in accordance with 15A NCAC 07J .1300, the petitioner shall notify the Division of Coastal Management which one of the two approaches will be utilized and applied to the entire large-scale project area as defined in 15A NCAC 07H .0305(a)(7).
- (3) In no case shall a development line be created or established on State-owned lands or oceanward of the mean high water line or perpetual property easement line, whichever is more restrictive.
- (4) The ocean hazard setback 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. 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 shall be 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 that, 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 or tract 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) 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" as 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 shall apply 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, and the boundaries of the large-scale beach fill project. 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) 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 setback 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. The acknowledgement shall state that 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 shall require permit approval. Structures relocated with public funds shall comply with the applicable setback line and 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 shall 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 pursuant to 15A NCAC 07H .0308(a)(2).

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

**15A NCAC 07H .0308 SPECIFIC USE STANDARDS
FOR OCEAN HAZARD AREAS**

(a) Ocean Shoreline Erosion Control Activities:

- (1) Use Standards Applicable to all Erosion Control Activities:
 - (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.
 - (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, unless specifically authorized under the Coastal Area Management Act, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.
 - (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
 - (D) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(h) of this Section.
 - (E) Project construction shall be timed to minimize adverse effects on biological activity.
 - (F) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
 - (G) Permanent erosion control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:
 - (i) the erosion control structure is necessary to protect a bridge that provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in Part (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary

- stabilization are not adequate to protect public health and safety; and
- (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.
- (H) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
 - (i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in Part (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;
 - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
 - (iv) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of significant adverse impacts on adjoining properties and on public access to and use of the beach.
- (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
 - (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;
 - (ii) dredging alone is not practicable to maintain safe access to the affected channel;

- (iii) the structure is limited in extent and scope to that necessary to maintain the channel;
 - (iv) the structure shall not have significant adverse impacts on fisheries or other public trust resources; and
 - (v) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any significant adverse impacts on adjoining properties and on public access to and use of the beach.
 - (J) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:
 - (i) the structure will not be enlarged beyond the dimensions set out in the permit;
 - (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
 - (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.
 - (K) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.
- (2) Temporary Erosion Control Structures:
 - (A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
 - (B) Temporary erosion control structures as defined in Part (A) of this Subparagraph may be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
 - (C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed under Rule .0309 of this Section as an exception to the erosion setback requirement.
 - (D) Temporary erosion control structures may be placed waterward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
 - (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected except to align with temporary erosion control structures on adjacent properties, where the Division has determined that gaps between adjacent erosion control structures may result in an increased risk of damage to the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet waterward of the structure to be protected, or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control

structures may be located more than 20 feet waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee in accordance with Part (A) of this Subparagraph.

(F) Temporary erosion control structures may remain in place for up to eight years for a building and its associated septic system, a bridge or a road. The property owner shall be responsible for removal of any portion of the temporary erosion control structure exposed above grade within 30 days of the end of the allowable time period.

(G) An imminently threatened structure or property may be protected only once, regardless of ownership, unless the threatened structure or property is located in a community that is actively pursuing a beach nourishment project, or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. Existing temporary erosion control structures may be permitted for additional eight-year periods provided that the structure or property being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter, and the community in which it is located is actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control structure was installed. For the purpose of this Rule:

- (i) a building and its septic system shall be considered separate structures,
- (ii) a road or highway may be incrementally protected as sections become imminently

threatened. The time period for removal of each contiguous section of temporary erosion control structure shall begin at the time that the initial section was installed, in accordance with Part (F) of this Subparagraph.

(H) For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with G.S. 113A-115.1 if it:

- (i) has been issued an active CAMA permit, where necessary, approving such project; or
- (ii) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
- (iii) has received a favorable economic evaluation report on a federal project; or
- (iv) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project or the identification of the financial resources or funding bases necessary to fund the beach nourishment, inlet relocation or stabilization project.

If beach nourishment, inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable

- time limits set forth in Part (F) of this Subparagraph.
- (I) Once a temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, it shall be removed to the maximum extent practicable by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project, or an inlet relocation or stabilization project, any portion of the temporary erosion control structure exposed above grade shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.
- (J) Removal of temporary erosion control structures is not required if they are covered by sand. Any portion of the temporary erosion control structure that becomes exposed above grade after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.
- (K) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- (L) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the temporary erosion control structure shall not exceed 20 feet, and the total height shall not exceed six feet, as measured from the bottom of the lowest bag.
- (M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- (N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.
- (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and in accordance with Rule .0312 of this Section.
- (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:
- (A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;
- (B) The activity shall not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);
- (C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;
- (D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;
- (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.
- (b) Dune Establishment and Stabilization.
- (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same configuration as adjacent natural dunes.
- (2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.
- (3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be replanted or temporarily stabilized until planting can be completed.

- (4) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.
 - (5) No new dunes shall be created in inlet hazard areas.
 - (6) Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or tract of land to the maximum extent practicable and may be redistributed within the Ocean Hazard AEC provided that it is not placed any farther oceanward than the crest of a primary dune, if present, or the crest of a frontal dune.
 - (7) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid dune impacts.
- (c) Structural Accessways:
- (1) Structural accessways shall be permitted across primary or frontal dunes so long as they are designed and constructed in a manner that entails negligible alteration of the primary or frontal dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.
 - (2) An accessway shall be considered to entail negligible alteration of primary or frontal dunes provided that:
 - (A) The accessway is exclusively for pedestrian use;
 - (B) The accessway is a maximum of six feet in width;
 - (C) ~~The Except in the case of beach matting for a local, state or federal government's public access, the~~ accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the dune. Where this is deemed by the Division of Coastal Management to be impossible due to any more restrictive local, state, and/or federal building requirements, the structure shall touch the dune only to the extent ~~necessary; and necessary.~~ Beach matting for a local, state or federal government's public access shall be installed at grade and not involve any excavation or fill of the dune; and
 - (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.
 - (3) An accessway that does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers are not prohibited provided all other applicable standards of this Rule are met.
- (d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) of this Section and 15A NCAC 07J .0210 shall comply with the following standards:
- (1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.
 - (2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.
 - (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.
 - (4) All foundations shall be designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet the requirements of this Part or shall be designed to break-away without structural damage to the main structure.
- (4) In order to preserve the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") may be provided for off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 15 feet in width and may be constructed of wooden sections fastened together, or other materials approved by the Division, over the length of the affected dune area. Installation of a Hatteras ramp shall be done in a manner that will preserve the dune's function as a protective barrier against flooding and erosion by not reducing the volume of the dune.
 - (5) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways are not restricted by the requirement to be landward of the FLSNV as described in Rule .0309(a) of this Section.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 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 purpose of siting oceanfront development in accordance with the provisions of this Section. A "qualified owner's association" is an owner's association, as 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 shall apply 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) In determining where to position a requested development line, the petitioner shall use 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) The following types of development shall be permitted seaward of the development line if all other provisions of this Subchapter and other state and local regulations are met:

- (1) campsites;
- (2) beach accessways consistent with Rule 15A NCAC 07H .0308(c);
- (3) unenclosed, uninhabitable, gazebos with a footprint of 200 square feet or less;
- (4) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
- (5) temporary amusement stands; and
- (6) sand fences consistent with Rule 15A NCAC 07H .0311.

In all cases, this development shall be permitted only if it is landward of the vegetation line, measurement line or static vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune

vegetation; has overwalks to protect any existing dunes; is not essential to the continued existence or use of an associated principal development; and is not required to satisfy minimum requirements of local zoning, subdivision and health regulations.

~~(d)~~(e) 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)~~(f) 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, including:
 - (A) The development line, static vegetation line, mean high water line, and any other information necessary for a review of the petitioner's proposed development line, such as a pre-nourishment project mean high water line, local ordinances, or easements; and
 - (B) 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;
- (2) All local regulations associated with the development line;
- (3) A record of local adoption of the development line by the petitioner; and
- (4) Documentation of incorporation of a development line into local ordinances or rules and regulations of an owner's association.

~~(f)~~(g) 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)~~(h) 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)~~(i) 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, unless the petitioner and the Division of Coastal Management agree upon a later date.

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

SUBCHAPTER 07K - ACTIVITIES IN AREAS OF ENVIRONMENTAL CONCERN WHICH DO NOT REQUIRE A COASTAL AREA MANAGEMENT ACT PERMIT

SECTION .0200 - CLASSES OF MINOR MAINTENANCE AND IMPROVEMENTS WHICH SHALL BE EXEMPTED FROM THE CAMA MAJOR DEVELOPMENT PERMIT REQUIREMENT

15A NCAC 07K .0207 STRUCTURAL ACCESSWAYS OVER FRONTAL DUNES EXEMPTED

(a) The N.C. Coastal Resources Commission hereby exempts from the CAMA permit requirement all structural pedestrian ~~accessways over frontal dunes which can be shown to meet the following criteria: accessways, including beach matting installed by a local, state, or federal government to provide public access over primary and frontal dunes when such accessways which can be shown to meet the following criteria:~~

- (1) The accessway ~~must~~ shall not exceed six feet in width and must be for private residential or for public access to an ocean beach. This exemption does not apply to accessways for commercial use or for motor-powered vehicular use.
- (2) The accessway ~~must~~ shall be constructed so as to make no alterations to the frontal dunes that are not necessary to construct the accessway. This means that wherever possible the accessway ~~must~~ shall be constructed over the frontal dune without any alteration of the dunes. In no case shall the dune be altered so as to significantly diminish its capacity as a protective barrier against flooding and erosion. Driving of pilings into the dune or a local, state or federal government's use of beach matting for a public access that is installed at grade and involves no excavation or fill shall not be considered alteration of a frontal dune for the purposes of this Rule.
- (3) The accessway shall conform with any applicable local or state building code standards.
- (4) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways are not restricted by the requirement to be landward of the FLSNV as described in 15A NCAC 07H .0309(a).
- (5) Damaged, non-functioning, or portions of accessways that become non-compliant with Subparagraph (4) of this Paragraph shall be removed by the property owner.

(b) Before beginning any work under this exemption the CAMA local permit officer or Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality representative must be notified of the proposed activity to allow on-site review of the

proposed accessway. Notification can be by telephone, in person, or in writing and must include:

- (1) name, address, and telephone number of landowner and location of work including county and nearest community;
- (2) the dimensions of the proposed structural accessway.

Authority G.S. 113A-103(5) c.

SUBCHAPTER 07M - GENERAL POLICY GUIDELINES FOR THE COASTAL AREA

SECTION .0300 - SHOREFRONT ACCESS POLICIES

15A NCAC 07M .0301 DECLARATION OF GENERAL POLICY

~~(a) The public has traditionally and customarily had access to enjoy and freely use the ocean beaches and estuarine and public trust waters of the coastal region for recreational purposes and the State has a responsibility to provide continuous access to these resources. It is the policy of the State to foster, improve, enhance and ensure optimum access to the public beaches and waters of the 20 county coastal region. Access shall be consistent with rights of private property owners and the concurrent need to protect important coastal natural resources such as sand dunes and coastal marsh vegetation.~~

~~(b) The State has created an access program for the purpose of acquiring, improving and maintaining waterfront recreational property at frequent intervals throughout the coastal region for public access to these important public trust resources.~~

~~(c) In addition, some properties, due to their location, are subject to severe erosion so that development is not possible or feasible. In these cases, a valid public purpose may be served by the donation or acquisition of these properties for public access.~~

~~(d) The primary purpose of the public access program is to provide funds to acquire or develop land for public access, including parking as authorized by G.S. 113A-134.3(e). Boating and fishing facilities are eligible for funding under the Public Beach and Coastal Waterfront Access Program provided that pedestrian access is also incorporated in the design of the facility.~~

Authority G.S. 113A-124; 113A-134.1; 113A-134.3.

15A NCAC 07M .0302 DEFINITIONS

As used in this Section: the Public Beach and Coastal Waterfront Access program is to provide public access to the public trust beaches and waters in the 20 coastal ~~counties~~ counties as defined in G.S. 113A-103(2).

- (1) "Ocean Beach Access" includes the acquisition and improvement of properties adjacent or proximate to the Atlantic Ocean for parking and public passage to the oceanfront.
- (2) "Coastal Waterfront Access" includes the acquisition and improvement of properties located in the 20 county area under the Coastal Area Management Act (CAMA) jurisdiction that are adjacent or proximate to coastal

- waterways to which the public has rights of access or public trust rights.
- (3) ~~"Inlet Beach Access" includes the acquisition and improvement of properties located within Inlet Hazard Areas as defined in 15A NCAC 07H .0304(3).~~
- (4)(3) "Public Trust Waters" is defined in 15A NCAC 07H .0207(a).
- (5)(4) "Beach" is defined as an area adjacent to the ocean extending landward from the mean low water line to a point where either the growth of vegetation occurs or a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward, or riparian owners have specifically and legally restricted access above the mean high water line. This definition is intended to describe those shorefront areas customarily freely used by the ~~public.~~ public consistent with G.S. 77-20.
- (5) A "Local Waterfront Access Plan" identifies access needs and opportunities, determines access and facility requirements, establishes standards, develops specific project design plans or guidelines, establishes priorities, considers financial resource availability (such as grants, impact fees or occupancy taxes) and construction timing, and provides a system for evaluation of the plan.
- (6) "Certified CAMA Land Use Plan" is defined in 15A NCAC 07B. A local government may identify access needs, develop a local waterfront access plan, and develop local policies to pursue access funding through its land use plan.
- (6) ~~"Local Access Sites" include those public access points which offer minimal or no facilities. Generally, these accessways provide only a dune crossover or pier, if needed, litter receptacles and public access signs. Vehicle parking is generally not available at these access sites. However, bicycle racks may be provided.~~
- (7) ~~"Neighborhood Access Sites" includes those public access areas offering parking, usually for 5 to 25 vehicles, a dune crossover or pier, litter receptacles and public access signs. Restroom facilities may be installed.~~
- (8) ~~"Regional Access Sites" are of such size and offer such facilities that they serve the public from throughout an island or community including day visitors. These sites normally provide parking for 25 to 80 vehicles, restrooms, a dune crossover, pier, foot showers, litter receptacles and public access signs.~~
- (9) ~~"Multi regional Access Sites" are generally larger than regional accessways but smaller than state parks. Such facilities may be undertaken and constructed with the involvement and support of state and local government agencies. Multi regional accessways provide parking for a minimum of 80 vehicles, restrooms with indoor showers and changing rooms, and concession stands.~~
- (10) ~~"Urban Waterfront Access Projects" improve public access to deteriorating or under utilized urban waterfronts. Such projects include the establishment or rehabilitation of boardwalk areas, shoreline stabilization measures such as the installation or rehabilitation of bulkheads, and the placement or removal of pilings for the purpose of public safety and increased access and use of the urban waterfront.~~
- (11) ~~"Improvements" are facilities that are added to promote public access at a designated access site. The most common improvements include dune crossovers, piers, boardwalks, litter receptacles, parking areas, restrooms, gazebos, boat ramps, canoe/kayak launches, bicycle racks and foot showers.~~
- (12)(7) "Maintenance" is the upkeep and repair of public access sites and their facilities in such a manner that public health and safety is ensured. Where the local government uses or has used access funds administered by the North Carolina Coastal Management Program (NCCMP), the local government shall provide operation and maintenance of the facility for the useful life of that facility. The useful life of a facility shall be defined in the individual grant contract.
- (13) ~~"Handicapped Accessible" is defined as meeting the standards of the State Building Code for handicapped accessibility.~~
- (8) "Tier 1 Communities" include Tier 1 counties as determined annually by the North Carolina Department of Commerce as outlined in G.S. 143B-437.08, and the counties respective municipalities. The Division shall use the Tier 1 designation to encourage economic activity in economically distressed communities.

Authority G.S. 113A-124; 113A-134.3.

15A NCAC 07M .0306 LOCAL GOVERNMENT AND STATE INVOLVEMENT IN ACCESS

(a) Coastal Waterfront access in the 20 county coastal area is a concern of local, state, regional and national importance. Local governments have lead responsibility for the selection of public access sites within their jurisdiction. Access shall be based on identified needs as stated in land use plans pursuant to 15A NCAC 07B .0702(d)(3)(A) and local waterfront access plans. The Division of Coastal Management may take the lead in acquiring and improving access sites as such opportunities arise.

(b) A local policy in a land use plan sets the community objectives for access. A local government may, through its land use plan:

- (1) identify access needs and develop local policy to pursue access funding;

- (2) develop a local access plan; and
- (3) solicit access sites through corporate assistance.
- (e) ~~An access plan shall identify needs and opportunities, determine access and facility requirements, establish standards, and develop specific project design plans or guidelines by appropriate site. An access plan shall consider both financial resource availability (such as grants, impact fees or hotel/motel tax revenues) and construction timing. It shall establish priorities and devise a system for annual evaluation of the plan.~~
- (d) ~~Local governments may also include provisions in local ordinances that require access for waterfront developments or require payment in lieu of access for non water dependent subdivisions.~~
- (e) ~~Dedicated street ends may be acceptable for accessways.~~
- (f) ~~The Division of Coastal Management has primary responsibility for administering the Public Beach and Coastal Waterfront Access Program. Subject to the availability of funds, the Division of Coastal Management shall annually solicit pre-application proposals from local governments and shall select competitive projects for full application submittal. Projects from these final applications shall be selected for funding based on criteria in Rule .0307 of this Section.~~
- (g) ~~The Division of Coastal Management may use available funds on a non-competitive basis to plan for and provide public access through acquisition of improvements. Prior to expending funds, the Division of Coastal Management shall hold a public meeting or hearing to discuss its proposal. Members of the public shall be invited to comment to the Coastal Resources Commission for a minimum of 60 days prior to the expenditure of non-competitive money by the Division of Coastal Management.~~
- (h) ~~The Division of Coastal Management shall ensure all projects funded through the Public Beach and Coastal Waterfront Access Program are making progress throughout project implementation and ensure that completed projects are operated and maintained for access purposes.~~

Authority G.S. 113A-124; 113A-134.3.

**15A NCAC 07M .0307 ELIGIBILITY, SELECTION
CRITERIA AND MATCHING REQUIREMENTS
PUBLIC BEACH AND COASTAL WATERFRONT
ACCESS PROGRAM**

- (a) Any local government in the 20 coastal county region having ocean beaches or estuarine or public trust waters within its jurisdiction may apply for access funds for the development of beach or coastal waterfront access facilities with associated improvements. Boat ramps, canoe/kayak launch areas may also be developed provided that the access facilities incorporate pedestrian access to coastal waters.
- (a) The Division of Coastal Management (DCM) has primary responsibility for administering the Public Beach and Coastal Waterfront Access Program. Subject to the availability of funds, the DCM shall annually solicit pre-application proposals from local governments and shall select competitive projects for final application submittal. Projects from these final applications shall be selected for funding based on criteria in Paragraph (h) of this Rule.
- (b) The DCM may use available funds on a non-competitive basis to plan for and provide public access through acquisition or

improvements. Prior to expending funds, the DCM shall hold a public meeting or hearing to discuss its proposal. Members of the public shall be invited to comment to the Coastal Resources Commission (CRC) for a minimum of 30 days prior to the expenditure of non-competitive money by the DCM.

(c) Local governments have lead responsibility for the selection of public access sites within their jurisdiction. Any local government in the 20 coastal county region having ocean beaches or public trust waters within their jurisdiction may apply for access funds for the acquisition and development of beach or coastal waterfront access facilities.

(d) Prior to submitting their final application for a Public Beach and Coastal Waterfront Access grant from the DCM, the local government shall hold a public meeting or hearing to discuss its proposal. The local government shall consider public comments prior to its decision to apply for funds from the State.

(b)(c) Eligible projects include:

- (1) Land acquisition, including acquisition of unbuildable lots; as outlined in G.S. 113A-134.3(a);
- (2) ~~Local Access Sites;~~ Development of improvements at new or existing sites that provide public access, such as dune crossovers, piers, boardwalks, parking areas, restrooms, showers, benches, litter receptacles, and bicycle racks;
- (3) ~~Neighborhood Access Sites or improvements;~~
- (4)(3) ~~Regional Access Sites or improvements;~~ Development of improvements to public access at deteriorating or underutilized urban waterfronts. Such projects include the establishment or rehabilitation of boardwalk areas, shoreline stabilization measures such as the installation or rehabilitation of bulkheads, and the placement or removal of pilings for the purpose of public safety and increased access and use of the urban waterfront;
- (5) ~~Multi-regional Access Sites or improvements;~~
- (6) ~~Urban waterfront development access projects;~~
- (7)(4) ~~Reconstruction Reconstruction, replacement or relocation of existing, damaged facilities; deteriorating facilities;~~
- (8) ~~Reconstruction or replacement of aging facilities; and~~
- (9)(5) Offsite parking areas servicing access sites within the local government's jurisdiction.
- (6) Boat ramps and canoe/kayak launch areas provided that the public access facility incorporates pedestrian access to coastal waters; or
- (7) Maintenance of previously funded access sites. This project category is available only to Tier 1 communities. Such projects include repair and maintenance of access site facilities and amenities to ensure public health and safety. Repair and maintenance does not include activities such as trash removal, grounds

keeping, or custodial services, nor can it be used to pay local government staff salaries.

(f) All projects must meet the standards of handicapped accessibility for individuals with disabilities according to the North Carolina Building Code. Exceptions may be granted where site characteristics impede accessibility improvements.

(g) The following criteria shall be used to select projects that may receive financial assistance:

- (1) Priority shall be given to the acquisition of lands that meet G.S. 113A-134.3(a);
- (2) The project acquires land for future access improvements;
- (3) The project creates handicapped-accessible facilities at new access sites, adds handicapped-accessible facilities to existing sites, or replaces deteriorating facilities;
- (4) The applicant demonstrates a need for the project due to a high demand for public access and limited availability;
- (5) The project is identified in the local land use plan, certified CAMA Land Use Plan or local access plan;
- (6) The applicant has not received previous assistance from this grant program or the applicant has received assistance and demonstrated its ability to complete previous projects successfully with funds from this grant program;
- (7) The applicant's commitment of matching funds exceeds the required local share of the total project cost provided in Paragraphs (d) and (e) Paragraph (h) of this Rule;
- (8) The project proposal includes multiple funding sources;
- (9) The project location includes donated land deemed unbuildable due to regulations or physical limitations; The project's location is within a Tier 1 community.

(d) The North Carolina Department of Commerce's Tier designations, as outlined by the Lee Act (G.S. 105-129.3) shall be used to determine the economic status of counties. Land acquisition, including acquisition of unbuildable lots, shall include a local government contribution of at least 15 percent of the acquisition cost, except for Tier 1 and Tier 2 counties as designated by the N.C. Department of Commerce, and their respective municipalities which shall have a contribution of at least 10 percent. At least one-half of the local contribution shall be cash match, the remainder may be in-kind match.

(e) Local government contributions for access site improvements shall be at least 25 percent of the project costs, except for Tier 1 and Tier 2 designated counties and their respective municipalities which shall have a local government contribution of at least 10 percent of the project costs. At least one-half of the local contribution shall be cash match; the remainder may be in-kind match.

(h) The applicant's matching requirements are based on project type and their designation as a Tier 1 community. Match requirements are as follows:

(1) Local government contributions for land acquisition shall be at least 15 percent of the acquisition cost, except for Tier 1 communities which shall have a local government contribution of at least 10 percent of the project cost. At least one-half of the local contribution shall be cash match, the remainder may be in-kind match.

(2) Local government contributions for access site improvements shall be at least 25 percent of the project costs, except for Tier 1 communities which shall have a local government contribution of at least 10 percent of the project costs. At least one-half of the local contribution shall be cash match; the remainder may be in-kind match.

(3) Local government contributions for maintenance of previously funded access sites shall be at least 10 percent of the maintenance project costs. At least one-half of the local contributions shall be cash match; the remainder may be in-kind match. This project type is only available to Tier 1 communities.

(i) Federal and other State funds may be used as the local government cash contribution, provided such funds are not already being used as matching funds for other state programs.

(j) Multi-phase projects and previous contingency projects shall be considered on their own merits within the pool of applications being reviewed in any year.

(k) Projects selected for funding may not begin until the Department of Environmental Quality and grant recipient sign a contract. An exception may be granted for eligible land acquisition projects when a waiver has been requested by the applicant in writing and approved by the DCM. A waiver shall be in effect for 18 months from the date of approval. A project receiving a waiver shall not receive preferential treatment in funding decisions.

Authority G.S. 113A-124; 113A-134.3.

15A NCAC 07M .0308 PUBLIC INVOLVEMENT/NOTICE

Prior to submitting its final application for a public access grant from the Division of Coastal Management, the local government shall hold a public meeting or hearing to discuss its proposal. The local government shall consider public comments prior to its decision to apply for funds from the State.

Authority G.S. 113A-124; 113A-134.3.

SECTION .0600 - FLOATING STRUCTURE POLICIES

15A NCAC 07M .0602 DEFINITIONS

(a) A boat is a vessel or watercraft of any type or size specifically designed to be self-propelled, whether by engine, sail, oar, or paddle or other means, which is used to travel from place to place by water.

(b) A "floating structure" is any structure, not a boat, supported by a means of flotation, designed to be used without a permanent

foundation, which is used or intended for human habitation or commerce. A structure will be considered a floating structure when it is inhabited or used for commercial purposes for more than thirty days in any one location. A boat may be deemed a floating structure when its means of propulsion has been removed or rendered inoperative and it contains at least 200 square feet of living space area.

(c) A floating upweller system is a structure used in mariculture for the purpose of growing shellfish. For the purposes of this Rule, floating upweller systems are considered floating structures.

Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8); 113A-124(c)(5).

15A NCAC 07M .0603 POLICY STATEMENTS

(a) It is the policy of the State of North Carolina that floating structures shall not be allowed or permitted within the public trust waters of the coastal area except in permitted marinas.

(b) All floating structures shall be in conformance with local regulations for on-shore sewage treatment.

(c) Floating upweller systems may be permitted as a platform at the private docking facility in accordance with 15A NCAC 07H .0208(b)(6) or at a permitted marina in accordance with 15A NCAC 07H .0208(b)(5).

Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8); 113A-124(c)(5).

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 36 – BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Nursing intends to amend the rules cited as 21 NCAC 36 .0317 and .0318.

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

Proposed Effective Date: *August 1, 2021*

Public Hearing:

Date: *May 28, 2021*

Time: *1:00 p.m.*

Location: *Virtual via Teams: 919.670.0362; Conference ID: 137896174#*

Reason for Proposed Action:

21 NCAC 36 .0317 Administration: *Literature and peer review do not warrant a more prescriptive approach to program director qualifications. Additionally, there is no currently employed program director who has been employed consecutively since 1984. This amendment strikes sections that are unnecessary or duplicative.*

21 NCAC 36 .0318 Faculty: *Literature and peer review do not warrant more prescriptive approaches to faculty qualifications. The deletion of strict percentage requirements for graduate-*

prepared faculty in pre-licensure programs is consistent with this review. Additionally, there is no currently employed faculty member who has been employed consecutively since 1984. Other changes are to provide consistent formatting within the rules. This amendment strikes sections that are unnecessary or duplicative.

Comments may be submitted to: *Angela Ellis, PO Box 2129, Raleigh, NC 27602-2129; email public.comment@ncbon.com*

Comment period ends: *June 14, 2021*

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 984-236-1850.

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

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

SECTION .0300 - APPROVAL OF NURSING PROGRAMS

21 NCAC 36 .0317 ADMINISTRATION

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

(b) The controlling institution shall ensure that a full-time registered nurse, qualified pursuant to Paragraph (e) of this Rule, has the authority to direct the nursing program.

(c) The controlling institution shall ensure that the program director has the authority and responsibility for maintaining compliance with the Rules in this Chapter and other legal requirements in all areas of the program.

(d) The controlling institution shall ensure that the program director has non-teaching time sufficient to allow for program organization, administration, continuous review, planning, and development.

(e) The program director in a program preparing students for initial nurse licensure shall satisfy the following requirements:

- (1) hold an active unencumbered license or multistate licensure privilege to practice as a registered nurse in North Carolina;
- (2) have two years of full-time experience as a faculty member in a Board-approved nursing program;
- (3) be experientially qualified, having clinical nursing experience, experience as a faculty member in a nursing program, and academic or nursing leadership experience to lead the program to accomplish the mission, goals, and expected program outcomes;
- (4) hold either a baccalaureate in nursing or a graduate degree in nursing from an accredited institution. If newly employed on or after January 1, 2016, hold a graduate degree from an accredited institution. If newly employed on or after January 1, 2021, hold a graduate degree in nursing from an accredited institution;
- (5) prior to or within the first three years of employment, have education in teaching and learning principles for adult education, including curriculum development, implementation, and evaluation, appropriate to the program director role. Once completed, this preparation need not be repeated if employing organization is changed. This preparation may be demonstrated by one of the following:
 - (A) completion of 45 contact hours of Board-approved continuing education courses;
 - (B) completion of a certificate program in nursing education;
 - (C) nine semester hours of graduate course work in adult learning and learning principles;
 - (D) national certification in nursing education; or
 - (E) documentation of successful completion of structured, individualized development activities of at least 45 contact hours approved by the Board. Criteria for approval shall include content in the faculty role in curriculum implementation, curricular objectives to be met and evaluated, review of strategies for identified student population, and expectations of student and faculty performance.

~~Any registered nurse who was employed as a nurse program director for the first time prior to January 1, 1984 shall be exempt from the requirements in Subparagraph (c)(5) of this Rule.~~

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

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

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

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

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

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

21 NCAC 36 .0318 FACULTY

~~(a) All nursing program faculty, including both full-time and part-time faculty members, shall participate in curriculum implementation and evaluation.~~

~~(b)(a)~~ Policies for nursing program faculty members shall be consistent with those for other faculty of the controlling institution, with variations as needed due to the nature of the nursing curriculum.

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

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

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

~~(f) All faculty shall hold an active unencumbered license or multistate licensure privilege to practice as a registered nurse in North Carolina.~~

~~(g)(c)~~ Nurses licensed pursuant to this Chapter who are full-time and part-time faculty and who teach in a program leading to initial licensure as a nurse shall:

(1) ~~hold an active unencumbered license or multistate licensure privilege to practice as a registered nurse in North Carolina.~~

~~(1)(2)~~ hold either a baccalaureate in nursing or a graduate degree in nursing from an accredited institution;

~~(2)(3)~~ have two calendar years or the equivalent of full-time clinical experience as a registered nurse;

~~(3)(4)~~ if newly employed in a full-time faculty position on or after January 1, 2016, hold a graduate degree from an accredited institution or obtain a graduate degree in nursing from an accredited institution within five years of initial full-time employment;

~~(4)(5)~~ prior to or within the first three years of employment, have education in teaching and learning principles for adult education, including curriculum development, implementation, and evaluation, appropriate to faculty assignment. Once completed, this preparation need not be repeated if employing organization is changed. This preparation may be demonstrated by one of the following:

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

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

(C) nine semester hours of graduate course work in adult learning and learning principles;

(D) national certification in nursing education; or

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

~~Any registered nurse who was employed as a nurse faculty member or program director prior to January 1,~~

~~1984 shall be exempt from the requirements in Subparagraph (g)(4) of this Rule.~~

~~(5)(6)~~ maintain competence in the areas of assigned responsibility; and

~~(6)(7)~~ have knowledge of current nursing practice for the registered nurse and the licensed practical nurse.

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

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

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

(1) student admission, progression, and graduation requirements; and

(2) the development, implementation, and evaluation of the curriculum.

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

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

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

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CHAPTER 46 – BOARD OF PHARMACY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Pharmacy intends to amend the rule cited as 21 NCAC 46 .2801.

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

Proposed Effective Date: August 1, 2021

Public Hearing:

Date: June 15, 2021

Time: 10:00 a.m.

Location: The public hearing will be held remotely. The public can participate on Teams at <https://tinyurl.com/yfjbubpp> or may call 336-604-5350, conference ID 946 782 795#.

Reason for Proposed Action: Section 503A of the Federal Food, Drug and Cosmetic Act strictly limits the compounding of human drug products in states that have not entered into a memorandum of understanding with the Secretary of Health and Human

Services with respect to gathering and providing certain information to the FDA. 21 U.S.C. § 353a(b)(3)(B). The consequence of not entering the memorandum of understanding would be to prevent North Carolina compounding pharmacies from shipping compounded human drug products outside of the State if those exceed 5 percent of the total prescriptions dispensed by the pharmacy. This alternative would cause a number of North Carolina pharmacies to sharply curtail shipping compounded prescriptions to their patients in other states, causing financial harm, disadvantaging those pharmacies with respect to businesses located in other states that do enter the memorandum of understanding, and disrupting patient service. Moreover, the requirement to constantly remain under the alternative 5 percent cap, upon threat of prosecution, would cause undue risks and perpetual tracking costs to many pharmacies. The threats and costs imposed by the alternative has the effect (if not the intention) of compelling states to enter into the memorandum of understanding. Pharmacies are already required by law to provide all the subject information upon request by the North Carolina Board of Pharmacy. The memorandum provides that, rather than being collected by each state, the data will be collected by the National Association of Boards of Pharmacy through its e-profile system in which all North Carolina-permitted pharmacies already participate, in order to promote efficiencies for both the pharmacies and the Board. This rule implements the memorandum of understanding and Section 503A of the Federal Food, Drug and Cosmetic Act. In addition, it updates certain information about costs and sources for the public to acquire compounding standards.

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

Comment period ends: June 15, 2021 at 10:00 a.m.

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

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

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

☒ **No fiscal note required**

SECTION .2800 – COMPOUNDING

21 NCAC 46 .2801 COMPOUNDING

(a) A pharmacy may dispense a compounded drug preparation to a patient only pursuant to a prescription that is valid and complies with all requirements of the law, including 21 NCAC 46 .1801. In advance of dispensing the compounded drug preparation, a pharmacy shall prepare the compounded drug preparation only:

- (1) upon the pharmacy's receipt of a valid prescription order for an individual patient; or
- (2) in anticipation of a prescription order based on an established history of receiving prescription orders for the compounded drug preparation. Any compounded drug preparation prepared in anticipation of a prescription order shall not be dispensed until the pharmacy receives a valid prescription order for an individual patient.

(b) Compounded drug preparations shall not be offered to other entities for resale.

(c) A pharmacy may supply compounded drug products to practitioners authorized by law to prescribe drugs for those practitioners to administer to those practitioners' patients. Such compounding for office use shall comply with applicable federal law.

(d) The preparation, labeling, and dispensing of non-sterile compounded drug preparations shall comply with the standards established by United States Pharmacopeia chapter <795>, including all United States Pharmacopeia chapters and standards incorporated into chapter <795> by reference and including all subsequent amendments and editions of the same, governing both the non-sterile compounded drug preparations and the physical and environmental conditions under which non-sterile compounded drug preparations are prepared, labeled, and dispensed.

(e) The preparation, labeling, and dispensing of sterile compounded preparations shall comply with standards established by United States Pharmacopeia chapter <797>, including all United States Pharmacopeia chapters and standards incorporated into chapter <797> by reference and including all subsequent amendments and editions of the same, governing both the sterile compounded products and the physical and environmental conditions under which sterile compounded products are prepared, labeled, and dispensed.

(f) A pharmacy that prepares, labels, or dispenses sterile compounded preparations shall maintain a reference library in the pharmacy including the current United States Pharmacopeia standards and references on the compatibility, stability, storage, handling, and preparation of compounded drugs. These references may be either hard copy or electronically accessible.

(g) In a pharmacy where compounded drug preparations are prepared, labeled, or dispensed, the pharmacist-manager or the pharmacist-manager's designated pharmacist shall be knowledgeable in the specialized functions of preparing, labeling, and dispensing compounded drug preparations. If the pharmacist-manager chooses to designate another pharmacist for this purpose, the pharmacist-manager shall notify the Board on the pharmacy's permit application and, in writing, within 15 days of any change

in the designation. Notwithstanding the pharmacist-manager's designation of another pharmacist as knowledgeable in the specialized functions of preparing, labeling, and dispensing compounded drug preparations, the pharmacist-manager shall be responsible for ensuring the pharmacy's compliance with all statutes, rules, and standards that govern such activities.

(h) In addition to complying with all recordkeeping and labeling requirements specified or referred to by United States Pharmacopeia chapters <795> or <797>, a pharmacy that prepares, labels, or dispenses compounded drug preparations shall create and maintain a record-keeping system that enables the pharmacy immediately upon request to identify every compounded drug preparation prepared, labeled, or dispensed in the past three years. This recordkeeping system may be created and maintained electronically in compliance with 21 NCAC 46 .2508.

(i) The pharmacist-manager of a pharmacy that prepares, labels, or dispenses compounded drug preparations shall comply with all quality assurance requirements and standards of United States Pharmacopeia chapters <795> and <797>.

(j) Between January 1 and March 31 of each year, any pharmacy permitted by the Board that has prepared, labeled, or dispensed any compounded drug (for any patient or other person, either within or outside North Carolina) during the immediately preceding calendar year must update all information regarding its services in the National Association of Boards of Pharmacy's e-Profile Connect system at <https://dashboard.nabp/pharmacy>.

~~(j)(k)~~ In addition to the requirements of this Section, the compounding of radiopharmaceutical drug products shall comply with Section .2700 of this Chapter.

~~(k)(l)~~ United States Pharmacopeia chapters <795> or <797> may be inspected at the offices of the Board during its normal hours of operation. Copies also may be obtained from the U.S. Pharmacopeial Convention (www.usp.org), as a free download part of the "USP on Compounding: A Guide for the Compounding Practitioner," as an electronic publication, that cost one hundred dollars (\$100.00) as of the effective date of the last amendment to this Rule.

Authority G.S. 90-85.6; 90-85.21A; 90-85.26; 90-85.32.

CHAPTER 63 - SOCIAL WORK CERTIFICATION AND LICENSURE BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Work Certification and Licensure Board intends to adopt the rules cited as 21 NCAC 63 .0207, .0705, amend the rules cited as 21 NCAC 63 .0202-.0204, .0208-.0211, .0213, .0214, .0301, .0306, .0401, .0403-.0406, .0503-.0505, .0508, .0509, .0601-.0603, .0607-.0610, .0701, .0704, .0901, .0902, and repeal the rules cited as 21 NCAC 63 .0304 and .0703.

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

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

Proposed Effective Date: *October 1, 2021*

Public Hearing:

Date: *June 3, 2021*

Time: *2:00 p.m.*

Location: *Via Webex: Join from the meeting link:*

[https://northcarolinasocialworkcertificationandlicensureboard.my/j.php?MTID=m6147ccd50741650d11cf5529b88d9e01](https://northcarolinasocialworkcertificationandlicensureboard.my.webex.com/northcarolinasocialworkcertificationandlicensureboard.my/j.php?MTID=m6147ccd50741650d11cf5529b88d9e01); Join by Meeting Number (Access Code): 182 867 3284; Meeting Password: B9gQ6JvAfd7 (29476582 from phones and video systems); Tap to Join from a Mobile Device: +1-415-655-0001, 1828673284#29476582# US Toll; Some mobile devices may ask attendees to enter a numeric password; Join by Phone: +1-415-655-0001, US Toll; Join by Video System, Application or Skype for Business, Dial 1828673284@webex.com; You can also dial 173.243.2.68 and enter your meeting number.

Reason for Proposed Action:

21 NCAC 63 .0202 *To set forth guidelines for the application for licensure process and required documentation.*

21 NCAC 63 .0203 *To clarify transcript requirements for social work degrees.*

21 NCAC 63 .0204 *To set forth standards for applicant references and establish forms for references.*

21 NCAC 63 .0207 *To set forth guidelines for applicants from other jurisdictions and the requirements for substantial equivalency determinations.*

21 NCAC 63 .0208 *To address fees for applicants for licensure and multiple applications.*

21 NCAC 63 .0209 *To establish eligibility standards for examinations.*

21 NCAC 63 .0210 *To establish guidelines for associate licensee's application for licensure, supervision, and documentation.*

21 NCAC 63 .0211 *To clarify work experience requirements for licensure.*

21 NCAC 63 .0213 *To set forth application process for temporary licenses to practice.*

21 NCAC 63 .0214 *To clarify certification or licensure application requirements for military personnel and spouses.*

21 NCAC 63 .0301 *To set forth types of qualifying examinations for certification and licensure.*

21 NCAC 63 .0304 *To repeal cancelation refund policies for examination.*

21 NCAC 63 .0306 *To clarify that examination fees are nonrefundable.*

21 NCAC 63 .0401 *To clarify continuing education requirements.*

21 NCAC 63 .0403 *To set forth guidelines for renewal affidavits as part of the renewal of license application process.*

21 NCAC 63 .0404 *To set forth standards and additional requirements for reinstatement of a license after suspension for failure to renew and after temporary retirement from practice.*

21 NCAC 63 .0405 *To clarify required reporting applies to certificate holders, as well as licensees.*

- 21 NCAC 63 .0406** To simplify military waiver or extension of time requests for renewal processes.
- 21 NCAC 63 .0503** To clarify guidelines for the ethical standards, representations to public and scope of practice standards.
- 21 NCAC 63 .0504** To clarify standards regarding sexual activities or relationships with current or former clients.
- 21 NCAC 63 .0505** To make non-substantive grammatical changes for ethical guidelines on relationships with colleagues.
- 21 NCAC 63 .0508** To clarify standards for social worker research and scholarly activity.
- 21 NCAC 63 .0509** To clarify requirements for statements to the public regarding experience and abilities.
- 21 NCAC 63 .0601** To provide guidance on types of conduct interpreted as violations of GS 90B-11.
- 21 NCAC 63 .0602** To set forth guidelines for filing a complaint with the Board and the subsequent investigation.
- 21 NCAC 63 .0603** To clarify procedure for notifying licensees of charges and other disciplinary procedures.
- 21 NCAC 63 .0607** To clarify procedure for the administrative hearing.
- 21 NCAC 63 .0608** To set forth guidelines for the deliberation process and reaching a decision in contested disciplinary proceeding.
- 21 NCAC 63 .0609** To clarify procedure for reporting disciplinary actions to the National Practitioner Data Base.
- 21 NCAC 63 .0610** To set forth guidelines for requesting continuances of disciplinary hearings.
- 21 NCAC 63 .0701** To clarify procedures for submitting a petition for rule-making.
- 21 NCAC 63 .0703** To repeal guidelines for passing temporary rules.
- 21 NCAC 63 .0704** To make non-substantive grammatical changes to requests for declaratory ruling.
- 21 NCAC 63 .0705** To set forth guidelines for processing checks with insufficient funds.
- 21 NCAC 63 .0901** To set forth guidelines for applications of Certificates of Registration for professional corporations and limited liability companies.
- 21 NCAC 63 .0902** To set forth guidelines for renewing a Certification of Registration.

Comments may be submitted to: Elizabeth Pope, NC Social Work Certification and Licensure Board, 1207 S. Cox St.; Suite F, Asheboro, NC 27203; phone (336) 625-1679; fax (336) 625-4246; email epope@ncswboard.org

Comment period ends: June 14, 2021

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 984-236-1850.

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

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

SECTION .0200 - CERTIFICATION

21 NCAC 63 .0202 APPLICATION PROCESS

~~Applications, inquiries and forms shall be obtained from and returned to the Board. Applicants must submit only forms obtained directly from the Board office.~~

(a) Pursuant to G.S. 90B-7, any person desiring to obtain a certificate or license from the Board shall make application to the Board. Applications not completed within two years of submission to the Board shall be denied. Application forms and instructions may be found on the Board's website at <https://www.ncswboard.org>.

(b) All applications for certification or licensure shall contain the following:

- (1) the applicant's contact information;
- (2) the social security number of the applicant;
- (3) the requested designation of licensure or certification type;
- (4) educational history and degree attainment;
- (5) the names and contact information of three persons supplying professional reference forms in support of the applicant's application, as well as the length of time that said persons have known the applicant;
- (6) employment history;
- (7) whether the applicant has ever been certified, licensed, or registered to practice social work by the Board, by another occupational Board, or in another state/jurisdiction and, if so:
 - (A) what credential was held;
 - (B) in what state/jurisdiction;
 - (C) the issuance date and expiration date; and
 - (D) what examinations were taken to obtain said certification, licensure, or registration;
- (8) whether the applicant has ever had a credential denied, limited, reprimanded, suspended, or revoked;
- (9) whether the applicant has ever been convicted of a felony or misdemeanor under any laws;
- (10) whether any criminal charges are pending against the applicant;

- (11) whether any court, board, agency, or professional organization has found the applicant guilty of misconduct, unprofessional conduct, dishonest or fraudulent practice, or incompetent practice;
- (12) whether any charges are pending against the applicant before any court, board, agency, or professional organization for unprofessional conduct, dishonest or fraudulent practice, or incompetent practice;
- (13) three professional references, as prescribed in 21 NCAC 63 .0204, provided in a sealed envelope with the signature of the reference over the sealed closure;
- (14) official score reports showing passage of the required examination, as prescribed herein and in 21 NCAC 63 .0301, provided from the examination testing provider;
- (15) official transcripts, as prescribed in 21 NCAC 63 .0203, provided either from said institution directly to the Board or from the applicant to the Board in an envelope that is sealed by said institution;
- (16) the applicant's affirmation that:
 - (A) the applicant has read the North Carolina General Statute 90B Social Work Certification and Licensure Act, including the Board's rules, ethical guidelines, and disciplinary procedures, which are available on the Board's website at <https://www.ncswboard.org>;
 - (B) the information provided by the applicant in the application is true;
 - (C) the applicant consents to a criminal history record check; and
 - (D) the applicant has read and understands the public notice statement on employee misclassification that is set forth in the application and has disclosed any investigations for employee misclassification, and its results, over the preceding 12-month period, as prescribed by G.S. 143-789; and
- (17) the application fee, as prescribed in 21 NCAC 63 .0208.

(c) In addition to the items set forth in Paragraph (b) of this Rule, applicants for certification as a certified social work manager shall provide a completed CSWM Administrative Supervision Form, as prescribed in Paragraph (e) of this Rule, and an Employment Verification Form, as prescribed in Paragraph (f) of this Rule, to demonstrate supervised administrative experience attained in the preceding six years.

(d) Applicants for licensure as a licensed clinical social worker who are licensed by the Board as licensed clinical social worker associates at the time of application shall provide to the Board the LCSW Short-Form Application, which contains the following:

- (1) the applicant's name, the number of his or her licensed social worker associate license, and contact information;
- (2) the signature of the applicant and the applicant's LCSW supervisor;
- (3) whether the LCSW supervisor recommends that the applicant continue supervised clinical practice at the LCSWA level or recommends the applicant for LCSW licensure;
- (4) the applicant's certification that:
 - (A) the applicant has completed the requirements to obtain licensure in North Carolina as a LCSW as set forth in G.S. 90B-7(d);
 - (B) the applicant has read the North Carolina General Statute 90B Social Work Certification and Licensure Act, and the Board's rules, ethical guidelines, and disciplinary procedures, which are available on the Board's website at <https://www.ncswboard.org>, and agrees to comply with them;
 - (C) the information provided by the applicant in the application is true;
 - (D) the applicant has not violated any of the Board's governing statutes or rules;
 - (E) the applicant has not been convicted of a misdemeanor or felony crime since submitting his or her initial application for associate licensure; and
 - (F) the applicant has read and understands the public notice statement on employee misclassification that is set forth in the application and has disclosed any investigations for employee misclassification, and its results, over the preceding 12-month period, as prescribed by G.S. 143-789;
- (5) the application fee, as prescribed in 21 NCAC 63 .0208; and
- (6) a list of all continuing education hours taken since the applicant was licensed as a LCSWA or since renewal of LCSWA licensure that provides the name of the course taken, the date on which the course was taken, the length of the course taken, and whether the course taken was distance learning or for ethics.

(e) A CSWM Administrative Supervision Form shall contain the following:

- (1) the name of the applicant and his or her supervisor;
- (2) the applicant's position;
- (3) a description of the applicant's administrative duties and responsibilities for the employer;
- (4) where the applicant worked during the time that supervision was provided to the applicant;
- (5) dates during which the applicant was employed;

- (6) total number of hours during which the applicant was employed;
- (7) dates during which the supervisor provided administrative supervision;
- (8) total number of hours during which the supervisor provided individual administrative supervision to the applicant;
- (9) total number of hours during which the supervisor provided group administrative supervision to the applicant;
- (10) total combined hours of individual and group hours provided to the applicant; and
- (11) the supervisor's certification that the information set forth in the CSWM Administrative Supervision Form is correct and that the supervisor is certified with the Board on at least one level and has a minimum of two years of administrative experience in a social work or mental health setting.

(f) An Employment Verification Form shall be completed for each place of employment in which the applicant has worked over the preceding six years and shall contain the following:

- (1) the applicant's name and contact information;
- (2) the applicant's license number, if a license is held;
- (3) the name and contact information of the applicant's place of employment;
- (4) the title of the applicant's position;
- (5) whether the applicant is authorized to provide clinical services on behalf of the employer;
- (6) the applicant's duties for the employer, as documented in a job description on the employer's letterhead;
- (7) the name and license number of the applicant's clinical supervisor;
- (8) whether the applicant's supervisor provided supervision to the applicant in person or remotely;
- (9) the date of the applicant's employment;
- (10) whether the applicant was employed full-time, part-time, or pro re nata;
- (11) whether the applicant is paid a fee or salary for services performed; and
- (12) the employer's signature, contact information, and the date completed.

On the Employment Verification Form, the applicant shall provide the information requested in Subparagraphs (f)(1)-(2) of this Rule and the applicant's employer shall provide the information requested in Subparagraphs (f)(3)-(12) of this Rule.

Authority G.S. 90B-6; 90B-7; 93B-8.1(c); 143-789.

21 NCAC 63 .0203 TRANSCRIPTS

Applicants must have official transcripts sent from institutions where their highest social work degrees have been conferred. If transcript course titles ~~are ambiguous, or~~ do not adequately convey the ~~pertinent~~ content of the courses, the applicant shall ~~provide clarifying documents may be requested.~~ documentation from the institution.

Authority G.S. 90B-7; S.L. 1999-313.

21 NCAC 63 .0204 REFERENCES

(a) Applicants for ~~all the LCSW and CSWM~~ classifications shall have a minimum of three references related to the applicant's social work experience, experience, as required by G.S. 90B-7(d) and (e). Applicants for other classifications shall have a minimum of three references. The Board shall not accept references by relatives, clients, or subordinates of applicants. A current Board member shall not submit a reference for an applicant unless ~~he or she~~ the Board member is the applicant's current or only social work supervisor. In such a case the Board member may submit a reference, but ~~he or she~~ the Board member shall ~~excuse himself or herself~~ recuse oneself from review of that applicant.

(b) All references shall come from individuals who have or had a professional association with the applicant and have knowledge of the applicant's professional experience in the practice of social work.

(c) For applicants for LCSWA licensure, at least one reference shall be from ~~one~~ a person who has been or is currently supervising the applicant in a social work setting.

(d) For applicants from other jurisdictions seeking certification or licensure in accordance with G.S. 90B-8, at least one reference shall be from a registered, certified, or licensed social worker who has been or is currently practicing in a social work setting.

(e) All references shall be on a form prescribed by the Board, which is available on the Board's website at ncswwboard.org, and shall contain the following:

- (1) the name of the applicant and the classification for which the applicant is applying;
- (2) the name of the person completing the reference;
- (3) the applicant's signature and applicant's indication as to whether or not the applicant waives the right to access the information provided by the person completing the reference;
- (4) the profession of the person completing the reference;
- (5) the position of the person completing the reference;
- (6) the relationship between the applicant and the person completing the reference;
- (7) how long the person completing the reference has known the applicant;
- (8) whether the person completing the reference believes that he or she has limited, moderate, or thorough knowledge of the applicant's professional qualifications;
- (9) whether the applicant has ever been guilty of unprofessional conduct, dishonest practice, incompetence, or fraud, if known by the person completing the reference;
- (10) if the person completing the reference is aware of any issues such as substance abuse or emotional disorders that would impair the applicant's ability to practice;
- (11) if the person completing the reference has any concerns about the applicant that he or she

- would like to bring to the Board's attention and if so, a description:
- (12) a rating of poor, good, superior, or unknown for the applicant's professional judgement, ethical conduct, competence and skill, concern and empathy, record keeping, client relationships, written communication, verbal communication, and social work knowledge base;
 - (13) whether the person completing the reference, in his or her discretion, would recommend the applicant highly without reservation; recommend the applicant as qualified and competent; recommend the applicant with some reservation and if so, to explain accordingly; or would not recommend the applicant and if not, to explain accordingly;
 - (14) a narrative of the applicant's strengths, weaknesses, special skills, reservations, or other information related to the applicant's suitability for certification or licensure, including any reservations held by the person completing the reference regarding the applicant; and
 - (15) the signature and contact information of the person completing the reference.

Authority G.S. 90B-6; 90B-7; 90B-8.

21 NCAC 63 .0207 SUBSTANTIAL EQUIVALENCY

- (a) In addition to the items set forth in 21 NCAC 63 .0202(b), applicants for certification as a certified social worker pursuant to G.S. 90B-8 shall provide verification of current certification, license, or registration in good standing to practice social work in another jurisdiction and certified proof of having passed the ASWB Bachelors Level Examination.
- (b) In addition to the items set in 21 NCAC 63 .0202(b), applicants for certification as a certified master social worker pursuant to G.S. 90B-8 shall provide verification of current certification, license, or registration and certified proof of having passed the ASWB Masters Level Examination or ACSW exam.
- (c) In addition to the items set forth in 21 NCAC 63 .0202(b), applicants for certification as a certified social work manager pursuant to G.S. 90B-8 shall provide:
 - (1) verification of current licensure in good standing to practice social work in another jurisdiction;
 - (2) a copy of the state or jurisdiction law determining the qualifications under which the applicant was certified in the other state or jurisdiction; and
 - (3) certified proof that the applicant has passed the ASWB Advanced Generalist Exam.
- (d) In addition to the items set forth in 21 NCAC 63 .0202(b), applicants for licensure as a licensed clinical social worker pursuant to G.S. 90B-8 shall provide verification of a current and active license in good standing to practice social work in another jurisdiction and certified proof of having passed the ASWB Clinical Level Examination. If the applicant has not passed the ASWB Clinical Level Examination at the time of application, the

applicant must provide a copy of the state/jurisdiction law determining the qualifications under which the applicant was licensed to practice social work in the other state or jurisdiction so that the Board can determine the applicant's eligibility to take the ASWB Clinical Examination.

(e) In addition to the items set forth in 21 NCAC 63 .0202(b), applicants for licensure as a licensed clinical social worker associate pursuant to G.S. 90B-8 shall provide:

- (1) verification of current and active licensure in good standing to practice social work in another jurisdiction;
- (2) an Employment Verification Form, as prescribed in 21 NCAC 63 .0202(f), that sets forth the total number of hours and dates of paid supervised post-MSW practice in a clinical setting from each employer for which the applicant has practiced clinical social work in the preceding six years, provided in a sealed envelope with the employer's signature on the envelope's sealed closure; and
- (3) a Clinical Social Work Supervision Form, as described in Paragraph (f) of this Rule, from each person who previously has provided clinical supervision to the applicant during the four years preceding the application, provided in a sealed envelope with the signature of the applicant's clinical supervisor on the envelope's sealed closure.

(f) A Clinical Social Work Supervision Form shall be on a form prescribed by the Board, which is available on the Board's website at ncswboard.org, and shall contain the following:

- (1) the name of the applicant and his or her clinical supervisor;
- (2) the applicant's position;
- (3) a description of the applicant's clinical social work duties and responsibilities with information about the population served by applicant, problems addressed, assessment, and treatment modalities used for treatment and diagnosis of mental and emotional disorders;
- (4) where the applicant worked;
- (5) dates during which the applicant was employed;
- (6) total number of hours during which the applicant was employed;
- (7) dates during which the clinical supervisor provided supervision to the applicant;
- (8) total number of hours during which the clinical supervisor provided individual supervision to the applicant;
- (9) total number of hours during which the clinical supervisor provided group supervision to the applicant;
- (10) total combined hours of individual and group supervision that clinical supervisor provided to the applicant; and
- (11) the clinical supervisor's certification that the information set forth in the Clinical Social Work Supervision Form is correct; that the clinical supervisor is certified, licensed, or

registered as a clinical social worker with a graduate degree in social work from a program accredited by the Council on Social Work Education and has at least two years of clinical social work experience post-licensure.

Authority G.S. 90B-6; 90B-7; 90B-8. ~~90B-10.~~

21 NCAC 63 .0208 APPLICATION FEE

Each applicant for certification or licensure by the Board shall submit an initial application fee of one hundred and ~~fifteen~~ forty-five dollars (~~\$115.00~~)(\$145.00) with the ~~application.~~ application, unless otherwise exempt under G.S. 93B-15.1. An applicant applying for multiple levels of certification or licensure within one application must submit an application fee of one hundred and forty-five dollars (\$145.00) per each level for which the applicant applies. Application fees shall be paid only by money order, certified bank check, or credit card.

Authority G.S. 90B-6; 90B-6.2.

21 NCAC 63 .0209 EXAM ELIGIBILITY

(a) The Board shall review each application submitted pursuant to 21 NCAC 63 .0202 and .0207 to determine whether an applicant's applicant possesses the educational, supervision, and examination qualifications for eligibility for a particular level of certification. ~~certification or licensure, pursuant to G.S. 90B-7. An applicant will be notified in writing if he/she is ineligible for the requested level of certification.~~ To be considered eligible to take the Clinical examination, an applicant must have two years of experience in a clinical social work setting documented with the Board and a MSW. To be considered eligible to take the Advanced Generalist examination, an applicant must have two years of experience in an administrative social work setting. He/she may then apply for another level of certification. If an applicant is found to be ineligible for any level of certification, he/she may not sit for any examination.

(b) An applicant shall be notified in writing if found to be ineligible for the requested level of certification. If an applicant is found ineligible for the particular level of certification or licensure for which he or she has applied, the applicant may request in writing to the Board that the applicant be considered for eligibility for another level of certification or licensure for which the applicant possesses the minimum education, supervision, and examination qualifications. Such request must be made no later than 30 days following the date on which the applicant received written notification of ineligibility, as set forth in Paragraph (a) of this Rule. If an applicant is found to be ineligible for any level of certification or licensure, the applicant shall not be allowed to sit for any examination.

(c) If an applicant is found eligible for the particular level of certification or licensure for which he or she has applied, the Board shall issue the applicant notification of exam candidacy approval. Upon receipt, the applicant shall submit to the Board an Exam Request Form or Clinical Exam Request Form, as described in Paragraphs (e) and (f) of this Rule, and the fee set forth in 21 NCAC 63 .0303 to initiate the exam process.

(d) Upon receipt of the applicant's Exam Request Form and the fee set forth in 21 NCAC 63 .0303, the Board shall forward to the

applicant instructions for registering to sit for the examination and the deadline by which the exam eligibility shall expire, which is determined in accordance with the ASWB Examination Candidate Handbook that is available at <http://aswb.org>. If the applicant fails to take the examination before the deadline by which the exam eligibility shall expire, the applicant must submit another Exam Request Form and the fee set forth in 21 NCAC 63 .0303 in order to take the examination. If the applicant takes but fails the examination, the applicant must submit another Exam Request Form and the fee set forth in 21 NCAC 63 .0303 in order to re-take the examination, even if the expiration date has not yet occurred. An applicant must wait at least 90 days from the date on which he or she took the examination before re-taking the examination.

(e) An applicant desiring to take an examination other than the ASWB Clinical level examination shall submit to the Board an Exam Request Form, which is available on the Board's website at <https://www.ncswboard.org>, that shall contain the following:

- (1) the applicant's name and address;
- (2) the applicant's social security number; and
- (3) the type of examination for which the applicant is approved to sit.

(f) An applicant desiring to take the ASWB Clinical level examination shall submit to the Board a Clinical Exam Request Form, which is available on the Board's website at <https://www.ncswboard.org>, only after completing two years of clinical practice. The Clinical Exam Request Form shall contain the following:

- (1) the name and license number of the applicant;
- (2) the contact information, date of birth, and signature of the applicant;
- (3) the name, license number, and signature of the applicant's clinical supervisor; and
- (4) the attestation of the applicant's clinical supervisor that the applicant has completed two years of clinical practice and is qualified to take the ASWB Clinical level examination.

Authority G.S. 90B-6; 90B-6.2.

21 NCAC 63 .0210 ASSOCIATE LICENSES

(a) ~~The Board shall issue an associate license to any person who meets the requirements in G.S. 90B-7(f).~~ Applicants for licensure as a LCSWA shall provide an application to the Board, as set forth in 21 NCAC 63 .0202(b), and shall comply with the requirements of this Rule.

~~(b) Applications and forms shall be obtained from and returned to the Board Office. The application fee set in Rule .0208 of this Chapter shall be submitted with the application.~~

~~(e)(b)~~ Prior to practicing clinical social work, applicants associates must demonstrate in writing through an emergency crisis plan that, in the event of a clinical emergency, they have immediate access to a at least one licensed mental health professional who has agreed to provide to them emergency clinical consultation to assure that standards of compliance with the North Carolina statutes and rules governing clinical social work practice are maintained. For purposes of this Rule, "immediate" shall mean within one hour. Each licensed clinical social worker associate shall notify the Board in writing of any

~~change in such access.~~ The emergency crisis plan shall be submitted on a form prescribed by the Board that is available on the Board's website. The emergency crisis plan outline must be submitted for each location at which the associate practices and shall provide the following:

- (1) the name, address, and contact information for the LCSWA practice;
- (2) a description of the practice setting that provides whether the practice is in a home, an office setting, and whether the LCSWA practices with other practitioners;
- (3) a hierarchy of initial contact persons, if more than one contact person is identified; where each person is located; and his or her estimated response time;
- (4) a plan for follow-up consultations with the LCSWA's clinical supervisor if an alternate emergency contact was consulted at the time of need; and
- (5) signatures and license numbers of the LCSWA, the LCSW supervisor, and the emergency consultant back-up provider.

Each licensed clinical social worker associate shall notify the Board in writing within seven days of any change in such access by resubmission of an emergency crisis plan outline form.

(c) Prior to practicing clinical social work, associates shall provide to the Board an Employment Verification for LCSWA form that contains the following:

- (1) the associate's name, address, contact information, license number, and license issuance and expiration dates;
- (2) the name and address of the agency for which the associate intends to work;
- (3) the associate's current position title and a copy of the job description;
- (4) whether the associate is authorized by the employer to provide clinical services;
- (5) the name of the associate's LCSW clinical supervisor and whether the supervisor is located on-site or off-site;
- (6) whether the associate is being paid a fee or salary;
- (7) dates during which the associate is working full-time, part-time, or as needed; and
- (8) the name and signature of the person completing the form on behalf of the employer.

(d) Each associate licensee must be supervised as set forth in G.S. 90B-7(f) and receive on-going appropriate supervision as defined in Rule .0211(a)(2) of this Chapter until the ~~associate licensee is licensed as a~~ qualifying examination has been passed and the Licensed Clinical Social Worker license is issued.

(e) All associate licensees shall submit reports of their clinical social work experience and supervision on a form prescribed by the Board and made available on the Board's website ~~the appropriate Board form(s)~~ every six months for review and evaluation by the Board. This six-month review form shall contain the following:

- (1) the associate's name, LCSWA license number, and contact information for the associate;

(2) the associate's place of employment and an employment verification form, as prescribed in 21 NCAC 63 .0202(f), if not previously provided to the Board;

(3) the associate's signature and date submitted;

(4) an acknowledgment from the associate's LCSW supervisor as to whether:

- (A) a position statement on clinical supervision, available on the Board's website at <https://www.ncswboard.org>, has been signed and submitted to the Board;
- (B) an emergency crisis plan, as set forth in Paragraph (b) of this Rule, has been submitted to the Board;
- (C) a supervisory log has been maintained and is available upon request to verify documented supervision; and
- (D) a case narrative summarizing one case treated during this review period has been prepared, reviewed, and is on file and available for Board review, if needed;

(5) a rating of the associate by the associate's LCSW supervisor in all the following categories:

- (A) ethical standards of social work practice;
- (B) effective use of supervision;
- (C) competence in social work practice;
- (D) professional growth and development;
- (E) consistency of performance effort;
- (F) knowledge of social work principles and practices;
- (G) ability to formulate a treatment plan appropriate to the clients' needs;
- (H) ability to implement interventions consistent with the treatment plan;
- (I) supervisee's ability to assess his or her own capacities and skills;
- (J) ability to correctly diagnose mental and emotional disorders; and
- (K) ability to plan treatment and carry out clinical interventions related to mental and emotional disorders.

(6) a narrative summary regarding the associate's growth as a clinical practitioner and participation in clinical supervision;

(7) the period during which the associate received supervision from the LCSW supervisor;

(8) the number of in-person hours of individual supervision that the associate received;

(9) the number of in-person hours of group supervision that the associate received;

(10) the number of hours provided through technology that the associate received in a group setting;

- (11) the number of hours provided through technology that the associate received in an individual setting;
- (12) the number of clinical practice hours that the associate attained during the review period; and
- (13) the name, phone number, signature, and license number with expiration date of the associate's LCSW supervisor.

(f) To prevent a lapse in licensure, associate licensees who desire to become Licensed Clinical Social Workers shall renew the LCSWA or complete the application process for the Licensed Clinical Social Worker classification and submit the application fee as set in Rule .0208 of this Chapter ~~early enough to allow at least 30 days for administrative processing and Board action~~ prior to the expiration of the ~~associate~~ associate's license.

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

21 NCAC 63 .0211 WORK EXPERIENCE

(a) Qualifications as required by G.S. ~~90B-7(d)(s)~~ 90B-7(d) for the Licensed Clinical Social Worker (LCSW) ~~credential:~~ credential are as follows:

- (1) Two years of post-MSW clinical social work experience shall mean 3,000 documented clock hours of work or employment for a fee or salary while engaged in the practice of clinical social work as defined in this Chapter. The 3,000 hours shall be accumulated after the issuance of the associate license and over a period of time not less than two years ~~not~~ and no more than six consecutive years. Practicum or internship experience gained as part of any educational program shall not be included. Pursuant to G.S. 93B-15.1(a), military applicants may receive credit for military occupational specialty experience obtained post MSW degree and deemed substantially equivalent to clinical social work practice as defined in this Chapter.
- (2) Appropriate supervision shall mean supervision by a MSW who is also a Licensed Clinical Social Worker and who is in good standing with the Board. A supervisor disciplined by any professional credentialing body or professional organization, or who has violated the provisions of an occupational licensing Board may not provide supervision to an associate licensee without the written permission of the Board. The Licensed Clinical Social Worker Associate's (LCSWA) clinical social work supervisor shall have an additional two years of clinical social work experience post LCSW licensure.
- (3) Appropriate supervision shall be that which is provided on a regular basis, conducted no less than once every two weeks, with at least one hour of supervision during every 30 hours of experience. A minimum of 100 hours of supervision is required. The clinical supervisor shall make the initial determination whether the

applicant's work experience meets the definition of clinical social work in accordance with the rules of this Chapter. The Board shall make the final determination whether or not the applicant's work experience meets the definition of clinical social work practice. Appropriate supervision may be individual or group supervision. Individual supervision shall mean one on one, face-to-face supervision by a MSW who is also a LCSW where the supervisor reviews and discusses clinical social work cases, reviews documentation, and provides evaluative comments and direction to the LCSWA. Group supervision shall mean face-to-face supervision provided by a MSW who is also a LCSW in a group setting, during which the supervisor reviews and discusses clinical social work cases, reviews documentation, and provides feedback and direction to each LCSWA in the group. A maximum of 25 hours of group supervision may be applied toward meeting the supervision requirements for the LCSW.

- (4) Unless otherwise preapproved by the Board, no more than 20 hours of supervision may be provided through the use of technology. The clinical supervisor may seek approval by providing a written request to the Board. The request shall include the parties' information, including name, license number, and business address; and the circumstances for which the additional hours are needed. Approval of the request shall be determined on a case by case basis, based upon the circumstances provided in the request. All supervision provided through the use of technology shall be synchronous, involve visual and audio interactions throughout the entire session, and shall take place in such a manner as to maintain the confidentiality of the communication.

(b) Qualifications as required by G.S. 90B-7(e)(2) for the Certified Social Work Manager (CSWM) ~~credential:~~ credential are as follows:

- (1) Two years of post social work degree experience shall mean 3,000 documented clock hours of employment for a fee or salary while engaged in administrative social work duties including, policy and budgetary development and implementation, supervision and management, program evaluation, planning, and staff development. Such duties shall be carried out in an administrative setting where social work or other mental health services are delivered. The 3,000 hours shall be accumulated over a period of time not less than two years ~~not~~ and no more than six consecutive years. Practicum or internship experience gained as part of any educational program shall not be included.

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

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

21 NCAC 63 .0213 TEMPORARY LICENSES

~~The Board may issue a non-renewable temporary reciprocal license pursuant to G.S. 90B-8(b), that is valid for no more than six months, upon receipt of a twenty five dollar (\$25.00) fee.~~

(a) Pursuant to G.S. 90B-8(b), any nonresident clinical social worker certified, registered, or licensed in another jurisdiction desiring to obtain a temporary license from the Board shall make application to the Board. Applications not completed within two years of submission to the Board shall be denied. Application forms and instructions may be found on the Board's website at <https://www.ncswboard.org>. A temporary license shall expire six months following the date of issuance and is not eligible for renewal. No individual shall hold more than one temporary license within a five-year period.

(b) An applicant pursuant to this Rule shall provide the following information on the application set forth in Paragraph (a) of this Rule:

- (1) the applicant's name, contact information, signature, and date of signature;
- (2) the social security number of the applicant;
- (3) the requested designation of licensure type;
- (4) the applicant's place of employment, the name of the applicant's supervisor, and the license number of the applicant's supervisor, if the supervisor holds a license to practice clinical social work;
- (5) educational history and degree attainment;
- (6) whether the applicant has ever been certified, licensed, or registered to practice social work by the Board, by another occupational board or agency, or in another state/jurisdiction and, if so:
 - (A) what credential was held;
 - (B) in what state/jurisdiction;

- (C) the issuance date and expiration date; and
- (D) what examinations were taken to obtain said certification, licensure, or registration;
- (7) whether the applicant ever has had a credential denied, limited, reprimanded, suspended, or revoked;
- (8) whether the applicant ever has been convicted of a felony or misdemeanor under any laws;
- (9) whether any criminal charges are pending against the applicant;
- (10) whether any court, board, agency, or professional organization has found the applicant guilty of misconduct, unprofessional conduct, dishonest or fraudulent practice, or incompetent practice;
- (11) whether any charges are pending against the applicant before any court, board, agency, or professional organization for unprofessional conduct, dishonest or fraudulent practice, or incompetent practice;
- (12) the applicant's certification that:
 - (A) the applicant has read the North Carolina General Statute 90B Social Worker Certification and Licensure Act, and the Board's rules, ethical guidelines, and disciplinary procedures, which are available on the Board's website at <https://www.ncswboard.org>, and agrees to comply with them;
 - (B) the information provided by the applicant in the application is true;
 - (C) the applicant consents to a criminal history record check;
 - (D) the applicant's consent for the jurisdiction in which the applicant is licensed to release information to the Board related to the applicant's licensure status and practice of social work;
 - (E) the applicant has read and understands the public notice statement on employee misclassification that is set forth in the application and has disclosed any investigations for employee misclassification, and its results, over the preceding 12-month period, as prescribed by G.S. 143-789; and
- (13) an application fee of twenty-five dollars (\$25.00).

(c) An applicant pursuant to this Rule shall provide a copy of the completed application set forth in Paragraph (b) of this Rule to the occupational board or agency in which the applicant is certified, licensed, or registered to practice social work. The applicant shall request that the occupational board or agency in which the

applicant is certified, licensed, or registered to practice social work submit a form to the Board that contains the following:

- (1) confirmation that the applicant's completed application as set forth in Paragraph (b) of this Rule is accurate, if known;
- (2) whether the applicant obtained original licensure from the responding board or agency and, if not, the jurisdiction from which the applicant obtained original licensure;
- (3) whether the responding board or agency has official transcripts, as prescribed in 21 NCAC 63 .0203, in its records for the applicant;
- (4) whether the applicant graduated from an education program that is accredited by the Council on Social Work Education (CSWE), for which accreditation standards are available at www.cswe.org;
- (5) whether the applicant was exempt or "grandfathered" from the jurisdiction's licensure requirements at the time the applicant received his or her certification, licensure, or registration to practice social work;
- (6) whether the applicant took an ASWB examination to obtain licensure in the responding board or agency's jurisdiction and, if so, which examination;
- (7) whether the applicant's licensure in the responding board or agency's jurisdiction is in good standing and, if not, the reason for which the licensure is not;
- (8) whether the responding board or agency, any state agency, or any professional organization ever has found the applicant guilty of misconduct, unprofessional conduct, dishonest or fraudulent practice, or incompetent practice and, if so, a copy of the documents adjudicating the applicant;
- (9) whether any charges are pending against the applicant before the responding board or agency, any state agency, or any professional organization for unprofessional conduct, dishonest or fraudulent practice, or incompetent practice;
- (10) whether the applicant completed any supervision of clinical practice that was approved by the responding board or agency and, if so:
 - (A) the dates of supervision;
 - (B) the total number of supervision hours recorded;
 - (C) the total number of practice hours recorded; and
 - (D) the name and license number of the applicant's supervisor;
- (11) whether the responding agency or board has any additional comments regarding the applicant's fitness to practice clinical social work or licensure status; and

(12) the name, signature, date of signature, and contact information of the representative completing the information set forth in Paragraph (c) of this Rule, with the responding board or agency's seal affixed.

Authority G.S. 90B-6; 90B-6.2; 90B-8.

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

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

- (1) ~~Has completed and submits to the Board, an application containing the information as described in Rules .0202, .0203, and .0204 of this Section; 21 NCAC 63 .0202(b)(1)-(3), (6)-(12), and (16);~~
- (2) ~~Has provided to the Board written documentation to satisfy conditions set out in G.S. 93B-15.1(a) and (c); and 93B-15.1(a); or~~
- (3) ~~Has passed the qualifying examination for the level of certification or licensure for which the applicant is applying; written documentation to satisfy conditions set out in G.S. 93B-15.1(a2).~~

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

- (1) ~~Has completed and submits to the Board, application information as described in Rules .0202, .0203, and .0204 of this Section; 21 NCAC 63 .0202(b)(1)-(16); and~~
- (2) ~~Has provided written documentation to satisfy conditions set out in G.S. 93B-15.1(b) and (c); and 93B-15.1(b).~~
- (3) ~~Has passed the qualifying examination for the level of certification or licensure for which the applicant is applying.~~

(c) Military trained applicants and military spouse applicants may apply for a temporary license as described in Rule .0213 of this Section, license by submitting to the Board an application containing the information set forth in 21 NCAC 63 .0213(b)(1)-(12). Military spouse applicants seeking temporary licensure also must comply with 21 NCAC 63 .0213(c). A temporary license shall apply only to clinical licensure and requires the following: licensure.

- (1) ~~Submission of an application and official written verification of equivalent licensure, certification, or registration in good standing from the jurisdiction under which the applicant is currently licensed, certified, or registered;~~
- (2) ~~Payment of the applicable fee;~~
- (3) ~~Prior to the expiration of the temporary license, the applicant shall fulfill all requirements for documentation of education, experience,~~

~~training, and examination, and pay any additional application fee as described in Rule .0202 of this Section. Upon receipt of all required documentation and applicable fees, the Board shall issue the appropriate clinical license for a period not to exceed two years.~~

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

SECTION .0300 - EXAMINATIONS

21 NCAC 63 .0301 QUALIFYING EXAMINATIONS

~~(a) Any national examination selected by the Board, or any examination developed by the Board, Board shall serve to evaluate the qualifications of each applicant for certification or licensure. Any such examination shall be administered at least once a year. Applicants for certification or licensure must pass the appropriate qualifying examination within two years of the initial application; failure to do so will necessitate that the applicant reapply to the Board for certification or licensure.~~

(b) The Board examination required by G.S. 90B-7(b)(2) for the Certified Social Worker credential is the Association of Social Work Board ("ASWB") Bachelor level examination. The Board examination required by G.S. 90B-7(c)(2) for the Certified Master Social Worker credential is the ASWB Master level examination or the Academy of Certified Social Workers ("ACSW") examination. The Board examination required by G.S. 90B-7(d)(3) for the Licensed Clinical Social Worker credential is the ASWB Clinical level examination. The Board examination required by G.S. 90B-7(e)(3) for the Certified Social Worker Manager credential is the ASWB Advanced Generalist level examination if the applicant holds a Master's degree, or the ASWB Bachelor level examination if the applicant holds a Bachelor's degree.

Authority G.S. 90B-6; 90B-7; 90B-8.

21 NCAC 63 .0304 CANCELLATION

Authority G.S. 90B-6.

21 NCAC 63 .0306 EXAMINATION FEES

An examination fee of forty dollars (\$40.00) plus the cost of the examination to the Board shall be assessed for administration and processing of any written examination. Examination fees are nonrefundable.

Authority G.S. 90B-6; 90B-6.2.

SECTION .0400 - RENEWAL OF CERTIFICATIONSECTION

21 NCAC 63 .0401 CONTINUING EDUCATION REQUIREMENTS

(a) Continuing education for certification or licensure renewal shall be required to maintain professional knowledge and technical competency. ~~Renewal of certification or licensure shall require 40 contact hours of continuing education credits approved by the Board within each two year renewal cycle. Social workers~~

shall obtain 40 contact hours of Board-approved continuing education credits in accordance with this Rule within each two-year renewal cycle. For purposes of this Rule, a "contact hour" is defined as time spent actually receiving education, excluding breaks. If a certification or licensure is for less than a full two-year period, then social workers shall obtain 30 contact hours of Board-approved continuing education credits in accordance with this Rule. then 30 contact hours of continuing education credits shall be required. Continuing education credits shall be awarded as follows:

- (1) ~~Continuing continuing~~ education units awarded that do not reflect contact hours or clock hours of instruction shall be awarded at the rate of one contact hour of credit for each continuing education unit;
- (2) ~~One one~~ academic course hour of credit shall be equal to 15 contact hours; and
- (3) ~~Credit credit~~ for auditing an academic course shall be for clock hours of instruction attended with one clock hour equal to one contact hour of credit.

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

(c) The following activities shall be approved for continuing education:

- (1) ~~Academic academic~~ social work courses taken for credit or audit;
- (2) ~~Agency-based~~ agency-based staff development, seminars, institutes, workshops, mini courses or conferences oriented to social work practice, values, skills and knowledge;
- (3) ~~Cross-disciplinary cross-disciplinary~~ offerings from medicine, law and the behavioral/social sciences or other disciplines, if such offerings are related to social work practice, values, skills and knowledge;
- (4) ~~Distance distance~~ learning activities including online courses and home study courses that have been pre-approved by the Association of Social Work Boards (ASWB) or ~~the North Carolina Chapter of the National Association of Social Workers (NASW-NC).~~ (NASW) and its associated state chapters. A list of approved distance learning courses and providers are available online at www.aswb.org and www.naswnc.org. The maximum continuing education credit granted for distance learning activities is ~~one half one-half~~ of the required hours, up to a maximum of 20 contact hours per renewal period. ~~Live-synchronous Synchronous~~ audio-video broadcasts allowing for real time interaction between the instructor and participants ~~attending through electronic means~~ shall not be considered distance learning activities; activities but as a face-to-face offering; and

- (5) ~~A~~ a group of professionals within the health and human services or related fields organized to come together to study a particular topic focusing on social work practice provided the following can be documented:
- (A) study ~~topic~~; topics;
 - (B) study ~~material~~; materials;
 - (C) ~~facilitator~~; facilitator(s); and
 - (D) ~~date~~ date(s) and hours of attendance.
- (d) Continuing education focusing on practitioner self-care and well-being shall not exceed six contact hours of credit during a single renewal cycle.
- (e) Up to five contact hours of credit shall be granted per renewal cycle for presenting a training focused on social work practice provided that:
- (1) ~~The~~ the Board receives confirmation from the organization for which the licensee presented that identifies the licensee as the presenter, confirms the title and date of the presentation, the length of the presentation, and number of attendees; and
 - (2) the dates of the presentation occur within the renewal ~~cycle~~; cycle.
- (f) Credit shall not be granted for:
- (1) identical programs completed within the same renewal period;
 - (2) job orientation or training directed at procedural mandates such as health and safety practices, new hire training, and compliance training; or
 - (3) supervision and case consultation.

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

21 NCAC 63 .0403 RENEWAL APPLICATION AND FEES

(a) To renew a certificate or license, a person must submit the following to the Board on or before the expiration of his or her certification or licensure:

- (1) all fees as required in Paragraphs (b) and (c) of this Rule; and
 - (2) a Renewal Affidavit, as described in Paragraph (d) of this Rule.
- ~~(a)~~(b) Fees for renewal of certificates or licenses are as follows:
- (1) ~~For~~ for Certified Social Workers (CSW's), the renewal fee is seventy dollars (\$70.00).
 - (2) ~~For~~ for Certified Master Social Workers (CMSW's), the renewal fee is ninety dollars ~~(\$90.00)~~ (\$90.00).
 - (3) ~~For~~ for Licensed Clinical Social Workers (LCSW's), the renewal fee is one hundred and fifty dollars (\$150.00).
 - (4) ~~For~~ for Licensed Clinical Social Worker Associates (LCSWA's), the renewal fee is one hundred and forty dollars (\$140.00).
 - (5) ~~For~~ for Certified Social Work Managers (CSWM's), the renewal fee shall be one hundred and fifty dollars (\$150.00).

~~(b)~~(c) Persons whose applications for renewal are received by the Board after the renewal date of their certificate or license, but no

later than 60 days after the renewal date, shall pay a late renewal fee of fifty dollars (\$50.00) in addition to any other applicable fees. Renewal fees are nonrefundable.

(d) A Renewal Affidavit shall contain the following:

- (1) the person's printed name, signature, and date;
- (2) the person's contact information;
- (3) the last four digits of the person's social security number and license number;
- (4) whether the person's contact information has changed since the previous renewal;
- (5) whether the person is requesting a duplicate license;
- (6) a list of all continuing education hours taken since the last renewal application that provides the name of the course taken, the date on which the course was taken, the length of the course taken, and whether the course taken was distance learning or for ethics;
- (7) the person's affirmation or certification that:
 - (A) he or she has engaged in at least 40 hours of continuing education activities, as described in 21 NCAC 63 .0401, in the preceding 24 months or in at least 30 hours of continuing education activities if the renewal term is less than 2 years;
 - (B) he or she has engaged in at least four hours of continuing education focused on ethics related to social work practice and ethical decision making in the preceding certificate or license cycle;
 - (C) his or her ability to perform his or her professional responsibilities is not impaired in any way or by the use of alcohol, prescription or non-prescription drugs, or other controlled substances;
 - (D) he or she has not been convicted of a misdemeanor or felony crime since his or her last renewal or, if he or she has, an explanation of the conviction is provided;
 - (E) he or she has reviewed and agree to comply with the Social Work Certification and Licensure Act and 21 NCAC 63;
 - (F) he or she has not violated Section .0500 of this Chapter;
 - (G) he or she understands that renewal of his or her certification or license is subject to a Continuing Education audit and he or she agree to comply with an audit request from the Board;
 - (H) the information in the Renewal Affidavit is accurate, that the Board may verify and investigate such information, and that any material omission or misrepresentation is

- (I) grounds for the Board's refusal to renew a license or certification; and he or she has read and understands the public notice statement on employee misclassification that is set forth in the Renewal Affidavit and has disclosed any investigations for employee misclassification, and its results, over the preceding 12-month period, as prescribed by G.S. 143-789.

Authority G.S. 90B-6; 90B-6.2; 90B-9(b).

21 NCAC 63 .0404 REINSTATEMENT

(a) ~~Persons who apply for reinstatement after temporary retirement from the practice of social work pursuant to G.S. 90B-9(d), or after their certificate or license was suspended for failure to renew, renew shall pay a reinstatement fee of one hundred and twenty five dollars (\$125.00) in addition to any other applicable fees, submit the following to the Board:~~

- (1) a reinstatement fee of one hundred and fifty-five dollars (\$155.00) in addition to any renewal fee or late renewal fee owed pursuant to G.S. 90B-6.2;
- (2) a Renewal Affidavit, as described in 21 NCAC 63 .0403(d);
- (3) a current application for certification or licensure, as described in 21 NCAC 63 .0202; and
- (4) three professional reference forms, as described in 21 NCAC 63 .0204.

(b) ~~Persons who apply for reinstatement after temporary retirement from the practice of social work pursuant to G.S. 90B-9.1 shall submit the following to the Board:~~

- (1) a renewal fee pursuant to G.S. 90B-6.2; and
- (2) a Renewal Affidavit, as described in 21 NCAC 63 .0403(d).

(c) Applicants desiring to reinstate LCSWA shall comply with G.S. 90B-7(f) by completing all requirements for full licensure as LCSW within six years, inclusive of any time spent on nonpracticing status pursuant to G.S. 90-B-9.1 or suspension for failure to renew.

Authority G.S. 90B-6; 90B-6.2; 90B-9; 90B-9.1.

21 NCAC 63 .0405 REQUIRED REPORTING BY LICENSEE OR CERTIFICATE HOLDER OF CHANGES TO BOARD

(a) Each licensee or certificate holder shall notify the Board in writing of any of the following changes within 30 days of the effective date of the ~~changes; change:~~

- (1) Change change of the licensee's or certificate holder's name, which shall be accompanied by documentation such as a certified marriage certificate or driver's license;
- (2) Change change in the licensee's or certificate holder's residence or business address, including street and mailing address;

- (3) Change change in the licensee's or certificate holder's residence or business telephone number; and
- (4) Any any adverse action or disciplinary action against a licensee or certificate holder from a licensing board, professional certifying body, or professional organization for any conduct described in G.S. 90B-11(a).

(b) Within 30 days of the effective date of a disposition in a criminal matter in which the licensee or certificate holder is defendant, including driving under the influence, each licensee or certificate holder shall send to the Board a certified copy of any plea of guilty, finding of guilty, plea of nolo contendere, or deferred judgment.

(c) The licensee's or certificate holder's failure to report to the Board the dispositions addressed by Subparagraph (a)(4) and or Paragraph (b) of this Rule ~~to the Board~~ shall be considered a violation of the Ethical Guidelines, Section ~~.0500. .0500~~ of this Chapter.

Authority G.S. 90B-6; 90B-9; 90B-11.

21 NCAC 63 .0406 MILITARY WAIVER OR EXTENSION OF TIME FOR RENEWAL OF CERTIFICATION OR LICENSURE

(a) ~~If a social worker is currently certified or licensed in good standing by this Board and is serving in the armed forces of the United States and who has been granted an extension of time to file a tax return under G.S. 105-249.2, the Board shall grant a waiver or the same extension of time to fulfill the requirements for renewal of his or her certification or licensure.~~

~~(b)(a) Prior to the expiration of his or her license or certificate, To request an extension of time to pay a license renewal fee pursuant to G.S. 93B-15, the licensee or certificate holder shall submit a written request for extension to the Board to include a copy of the social worker's military orders and the extension approval granted by the Internal Revenue Service or the State Department of Revenue. Revenue to file a tax return prior to the expiration of the license or certificate.~~

~~(e) During the extended time period, the existing license or certification shall not expire until a decision on the renewal application is made by the Board. If the application is denied or the terms of the license or certification are limited, the existing license or certification shall not expire until the last day for applying for judicial review of the Board order.~~

~~(d)(b) Continuing education credits approved during the extended time period shall not be utilized for future renewal periods.~~

Authority G.S. 90B-6; 90B-6.2; 93B-15.

SECTION .0500 - ETHICAL GUIDELINES

21 NCAC 63 .0503 GENERAL PROFESSIONAL RESPONSIBILITIES

(a) Social workers shall engage in practice only ~~within their sphere of competence,~~ in accordance with their training and experience. They shall accurately represent to clients, colleagues, and the general public their abilities, education, training, credentials, and experience. They shall engage in continuing

professional education prior to maintain and enhance their competence, engaging in a new area of practice.

(b) ~~As employees of institutions or agencies, social workers are responsible for remaining alert to and attempting to moderate institutional pressures or policies that conflict with the standards of their profession. If such conflict arises, social workers' responsibility shall be to uphold the ethical standards of their profession. In the event that the employment policies or practices of social workers' employers are contrary to the Ethical Guidelines set forth in Section .0500 of this Chapter, social workers shall comply with the Ethical Guidelines.~~

(c) Social workers shall not ~~practice, practice or~~ facilitate ~~or collaborate with~~ any form of discrimination on the basis of race, sex, sexual orientation, gender, age, religion, socioeconomic status, medical diagnoses, or national ~~origin~~ origin while practicing social work or while holding themselves out as social workers to the public.

(d) Social workers shall practice their profession in compliance with legal standards, federal, state, or local laws impacting the practice of social work.

(e) Social workers shall not engage in settlement agreements that preclude reporting of ethical misconduct to the Board.

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

21 NCAC 63 .0504 RESPONSIBILITIES IN PROFESSIONAL RELATIONSHIPS

(a) Social workers shall not misuse their professional relationships sexually, ~~financially~~ financially, or for any other personal advantage. They shall maintain this standard of conduct toward all who are professionally associated with them such as clients, colleagues, supervisees, employees, ~~students~~ students, and research participants.

(b) Social workers shall inform clients of the extent and nature of services available to them as well as the limits, rights, ~~opportunities~~ opportunities, and obligations associated with service ~~which~~ that might affect the client's decision to enter into or continue the relationship.

(c) Social workers shall obtain consent (~~agreement~~ to participate in social work ~~intervention~~) intervention from all clients or their legally authorized representative except when ~~laws~~ judicial orders require intervention to ~~insure~~ ensure the client's and community's safety and protection.

(d) Social workers shall terminate a professional relationship with a client ~~when, after careful evaluation and assessment, when~~ it is determined that the client is not likely to benefit from continued services or the services are no longer needed. The social worker who anticipates the termination or interruption of services shall give reasonable prior notice to the client, client as soon as possible. The social worker shall provide referrals as needed or upon the request of the client. A social worker shall not terminate a professional relationship for the purpose of beginning a personal or business relationship with a client.

(e) Social workers shall respect the integrity, protect the welfare, and maximize self-determination of clients they serve. They shall avoid entering treatment relationships in which their professional judgment will be compromised by the prior association with or knowledge of a client. Examples include treatment of one's family ~~members; close friends; associates; employees; members, friends,~~

associates, employees, or others whose welfare could be jeopardized by such a dual relationship.

(f) Social workers shall not initiate, and shall avoid when possible, personal relationships or dual roles with current clients, or with any former clients whose feelings toward ~~them~~ the social worker may ~~still~~ be derived from or influenced by the former professional relationship. When a social worker may not avoid a personal relationship with a ~~client, client or former client~~, the social worker shall take appropriate precautions, such as documented discussion with the client ~~or former client~~ about the relationship, ~~consultation~~ consultation, or supervision to ensure that the social worker's objectivity and professional judgment are not impaired. In instances when dual or multiple relationships are unavoidable, social workers shall set clear ~~and culturally sensitive boundaries; boundaries that take into consideration the client's age, race, sex, gender, sexual orientation, religion, socioeconomic status, national origin, and medical diagnoses.~~

(g) Social workers shall not engage in sexual activities with clients or former clients. A social worker shall not engage in or request electronic, verbal, or physical sexual contact with a client or former client under any circumstances. For the purposes of this Rule "sexual contact" means behavior relating to sexual activities including intentional touching, either directly or through the clothing that may be exploitive, abusive, or detrimental to the clients' welfare.

(h) Social workers shall ~~be solely responsible for acting~~ act in accordance with G.S. 90B and these Rules in regard to relationships with clients or former clients. A client's or former client's initiation of a personal, ~~sexual~~ sexual, or business relationship shall not be a defense by the social worker for failing to act in accordance with G.S. 90B and these Rules.

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

21 NCAC 63 .0505 RELATIONSHIPS WITH COLLEAGUES

Social workers shall act with integrity in their relationships with colleagues and other professionals. They shall consider the practice areas and knowledge or expertise of other professionals to whom they make referrals and with whom they collaborate in serving clients.

- (1) When expressing judgment on the views, qualifications and findings of colleagues, social workers shall not misrepresent the colleague's license level, degree, or other professional qualification in any written or oral communication and shall avoid the use of demeaning or derogatory language.
- (2) Social workers shall maintain knowledge of the professional and community resources available to the client population they serve and when referring clients, social workers shall refer to professionals and community resources that are able to provide the services required.
- (3) If a social worker's services are sought by an individual who is already receiving similar services from another professional, the client's welfare shall be the primary consideration before agreeing to provide services. To

- minimize confusion and conflict, social workers shall discuss with the prospective client the nature of the existing professional relationship, the client's needs, the therapeutic issues involved, and the benefits and risks associated with entering into a relationship with a new service provider.
- (4) Social workers shall provide competent professional guidance to colleagues, employees, supervisees, and students. They shall foster working conditions that provide fairness, privacy and protection from physical or mental harm. Social workers supervising associate licensees shall evaluate without bias, the work performance of those under their supervision, and share evaluations with supervisees. Social ~~Workers~~ workers shall not engage in sexual relationships with supervisees, students, trainees, or other colleagues over whom they exercise professional authority. They shall not abuse the power inherent in their supervisory position for personal or financial gain.
 - (5) A social worker certified or licensed under this Chapter who has knowledge of conduct that would constitute grounds for disciplinary action under this ~~Chapter~~ Chapter, or the Chapter governing the practice of another licensed healthcare ~~provider~~ provider, shall report the conduct to the licensing authority that oversees the healthcare provider believed to be engaged in misconduct. Social workers shall provide information to assist colleagues defending themselves against allegations of unethical or incompetent practice.

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

21 NCAC 63 .0508 PURSUIT OF RESEARCH AND SCHOLARLY ACTIVITIES

In planning, ~~conducting~~ conducting, and reporting a study with human subjects, the social worker acting as an investigator shall ~~make a careful evaluation of its ethical acceptability, taking into account the following additional principles for research with human subjects.~~ evaluate the ethical acceptability in accordance with this Rule. To the extent that this ~~appraisal, evaluation,~~ weighing scientific and humane values, suggests a compromise of ethical principles, the investigator shall protect the rights of the research participants.

- (1) Social workers shall obtain authorization from administrative superiors and clients who agree to be subjects in the study. Social workers shall also acknowledge ~~accurately~~ any other persons who contribute in a scholarly manner to their research in any reports concerning their research, whether published or unpublished.
- (2) ~~An agreement shall be established between the~~ The social worker acting as an investigator shall establish with and the research participant an

- agreement clarifying ~~their~~ each person's roles and responsibilities.
- (3) The rights of an individual to decline to participate in or withdraw from the research shall be respected and the participant shall not be penalized for such action.
- (4) The social worker acting as an investigator shall ~~inform the participant of all the features of the research that would affect his/her~~ give the individual information about the manner in which the research may affect the individual, in order for the individual to give his or her informed consent for participation in the study.
- (5) ~~Information~~ Identifying information obtained about the participant during the course of the study shall be confidential unless informed consent for release of information is obtained in advance.
- (6) Research findings shall be presented accurately. Social workers shall not distort or misrepresent research.

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

21 NCAC 63 .0509 PUBLIC STATEMENTS

- (a) ~~Public statements, announcements of services and promotional activities of social workers serve the purpose of providing sufficient information to aid consumers in making informed judgments and choices, choices.~~ Social workers shall state ~~accurately, objectively and~~ without misrepresentation their professional qualifications, ~~affiliations~~ affiliations, and ~~functions~~ functions, as well as those of the institutions or organizations with which they or their statement may be associated. ~~They shall correct~~ When social workers are made aware of misrepresentations by others with respect to these matters, matters, social workers shall make efforts to correct the misrepresentations.
- (b) In announcing availability for professional services, a social worker shall use ~~his or her~~ the licensee or certificate holder's name, ~~type~~ type, and level(s) of certification and licensure; and may use highest relevant academic degree from an accredited institution; specialized post-graduate training; address and telephone number; office hours; type of services provided; appropriate fee information; foreign languages spoken; and policy with regard to third-party payments.
- (c) Social workers shall not offer to perform any service beyond the scope permitted by law or beyond the scope of their competence. They shall not engage in any form of advertising which is false, fraudulent, deceptive, or misleading. They shall neither solicit nor use recommendations or testimonials from clients.
- (d) Social workers shall respect the rights and reputations of professional organizations with which they are affiliated. They shall not falsely imply sponsorship or certification by such organizations. When making public statements, the social worker shall make clear which are personal opinions and which are authorized statements on behalf of an organization.

(e) ~~A social worker~~ Social workers shall display ~~his or her~~ their license or certificate at the social worker's primary place of practice as required by G.S. 90B-15.

Authority G.S. 90B-6; 90B-11; 90B-15.

SECTION .0600 - DISCIPLINARY PROCEDURES

21 NCAC 63 .0601 GROUND FOR DISCIPLINARY PROCEDURES

~~In addition to the conduct set forth in G.S. 90B-11, the Board may take disciplinary action upon the following grounds: The following conduct constitutes a violation of G.S. 90B-11:~~

- (1) offering a check to the Board in payment of required fees which is returned ~~unpaid~~; unpaid as a result of non-payment attributable to the payor;
- (2) obtaining or attempting to obtain compensation by fraud or deceit;
- (3) submitting false documents to the Board, such as those related to continuing education audits or submitted as a part of the application or renewal process; and
- ~~(3)(4) violation of violating~~ any order of the Board.

Authority G.S. 90B-2; 90B-6; 90B-11.

21 NCAC 63 .0602 INVESTIGATION

(a) Any person who has reason to believe that a social worker has violated the laws governing the practice of social work may file a complaint with the Board. Anyone wishing to file a complaint shall file a form with the Board office that contains the following information:

- (1) the complainant's name and contact information;
- (2) the name, contact information, and license number of the social worker about which the complainant wishes to file the complaint;
- (3) a narrative of the facts about which the complaint relies;
- (4) identification of the statutes or rules that were allegedly violated;
- (5) identification of the individuals and their contact information who may have information to support the complaint;
- (6) identification of any documents that may support the complaint; and
- (7) the complainant's affirmation that:
 - (A) the complainant has read and understands the ethics standards and disciplinary procedures of the Board, which are available on the Board's website at <https://www.ncswboard.org>;
 - (B) the information provided by the complainant is true, based on the complainant's personal knowledge, or based upon information that the complainant believes to be true; and

(C) the complainant is aware that the social worker about which the complaint is filed shall be made aware of the complaint and when the complaint may be disclosed as a public record; and

(8) the complainant's signature and the date on which the complaint is made.

~~(a)(b)~~ Upon receipt of a complaint, the Board shall notify the social worker against whom the complaint was filed, noting the report of a violation and the specific ~~ethical standard rule, statute, or ethical guideline~~ brought into question.

~~(b)(c)~~ Upon receipt of a complaint, ~~or upon its own motion~~, the Board, its staff, or designee(s) ~~may investigate~~ shall determine whether more information or evidence is needed to show whether a person certified or licensed by the Board has violated any provision of G.S. 90B or these Rules. If more information or evidence is deemed necessary, the Board, its staff, or designee(s) shall conduct an investigation.

~~(c)(d)~~ The complainant and social worker against whom a complaint was filed shall be notified in writing of the Board's decision as to whether an investigation is warranted.

(e) The Board may initiate its own complaint and conduct an investigation of a suspected violation if the Board obtains information tending to show that a violation of G.S. 90 or these Rules has occurred.

~~(d)(f)~~ Any Board member who conducts the investigation of a specific case shall not participate in the Board's adjudication of that case.

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

21 NCAC 63 .0603 NOTICE OF CHARGES AND HEARING

(a) If an investigation conducted in accordance with Rule .0602 of this Section produces any credible evidence indicating a violation of G.S. 90B or these Rules, the Board may shall initiate disciplinary proceedings. Disciplinary proceedings conducted by the Board are governed by G.S. 90B, Article 3A of Chapter 150B of the General Statutes. Prior to any Board action, written notice outlining the particular statutes and rules involved, the alleged facts, and the date, ~~location~~ location, and nature of any hearing shall be sent to the social worker involved and the ~~complainant~~ complainant, if the disciplinary proceeding was initiated by a complainant.

(b) Nothing herein shall abridge the right of in this Rule shall prevent the Board to from summarily suspend suspending a certificate or license pursuant to G.S. 150B-3(c). in accordance with G.S. 150B-3(c) if the Board determines that the public health, safety, or welfare requires emergency action.

Authority G.S. 90B-6; 90B-11; 150B-38.

21 NCAC 63 .0607 CONDUCT OF HEARING

(a) Disciplinary hearings shall be conducted by a majority of the Board. The Chairperson shall serve as presiding officer unless he or she the Chairperson is absent or disqualified, disqualified in accordance with Paragraph (b) of this Rule, in which case the

Vice-chairperson shall preside. ~~Hearings shall be conducted as prescribed by G.S. 150B-40.~~

(b) ~~Disqualification.~~ An affidavit seeking disqualification of any Board member, if filed in good faith and in a timely manner, will be ruled on by the remaining members of the Board. An affidavit is considered timely if it is filed:

- (1) ~~Prior~~ prior to the hearing; or
- (2) As as soon after the commencement of the hearing as the affiant becomes aware of the facts which give rise to his the belief that a Board member should be disqualified.

(c) ~~Evidence.~~ The admission of evidence in a hearing on a contested case shall be as prescribed in G.S. 150B-41.

Authority G.S. 90B-6(h); 150B-40.

21 NCAC 63 .0608 DECISION OF BOARD

(a) ~~The form and content of the Board's decision in a contested case shall be as prescribed by G.S. 150B-42(a), and its decision shall be served upon the parties in a manner consistent with said statute.~~

(b) ~~The official record of the hearing in a contested case shall contain those items specified in G.S. 150B-42(b).~~

(a) Immediately upon the conclusion of a disciplinary proceeding conducted pursuant to 21 NCAC 63 .0603 and if so moved by two Board members, the Board shall deliberate on whether an applicant, certificate holder, or licensee involved has violated a statute or rule for which the Board has the authority to enforce, and what appropriate disciplinary action, if any, should be taken against the applicant, certificate holder, or licensee involved.

(b) If the Board reaches a decision on the issues set forth in Paragraph (a) of this Rule immediately upon the conclusion of the disciplinary proceeding, the Board shall announce the decision but shall provide the parties with an opportunity to submit proposed findings of fact and exceptions to the decision to the Board's office within fifteen days, unless additional time is allowed by the Board for good cause shown or upon mutual agreement by the parties. For purposes of this Rule, "good cause" shall mean the length of the hearing, the complexity of the issues involved, and the availability of the parties.

(c) If the Board does not reach a decision on the issues set forth in Paragraph (a) of this Rule immediately upon the conclusion of the disciplinary proceeding, the Board shall provide the parties an opportunity to submit proposed findings of fact and conclusions of law to the Board's office within fifteen days, unless additional time is allowed by the Board for good cause shown or upon mutual agreement by the parties. The Board shall deliberate on the issues set forth in Paragraph (a) of this Rule at its next Board meeting following the parties' deadline to submit the proposed findings of fact and conclusions of law.

(d) Following the expiration of the time allowed for the parties to submit proposed findings and exceptions, the Board shall make a written final agency decision in accordance with G.S. 150B-42.

(e) Disciplinary costs shall be assessed against an applicant, certificate holder, or licensee in a written final agency decision as set forth in G.S. 90B-11 when:

- (1) the licensee previously has rejected a consent order offered by the Board to resolve the disciplinary matter;

(2) the licensee previously has been disciplined by the Board pursuant to G.S. 90B-11, previously received a non-disciplinary letter of caution, or previously received a non-disciplinary Consent Order from the Board for the same conduct at issue in disciplinary proceeding;

(3) the Board finds that the licensee's conduct or defense at hearing was dilatory or not asserted in good faith; or

(4) the Board denies, suspends, or revokes an application, certificate, or license.

Disciplinary costs shall equal three hundred dollars (\$300.00) per hour for time spent by the Board conducting a hearing that results in disciplinary action and for time spent by the Board deliberating on a disciplinary proceeding, with a minimum charge of three hundred dollars (\$300.00) for the first hour or portion thereof, and then prorated thereafter for each half-hour

Authority G.S. 90B-6(h); 90B-11; 150B-38; 150-42; S.L. 1999-313.

21 NCAC 63 .0609 REPORTING OF DISCIPLINARY ACTIONS

~~The Board shall report all disciplinary actions specified in G.S. 90B-11 through the Public Protection Database (PPD), the National Practitioner Data Bank Healthcare Integrity and Protection Data Bank (NPDB HIPDB), and may report them to any requesting public or private entity. Disciplinary actions do not include complaints.~~

(1) ~~In compliance with NPDB HIPDB requirements, the N.C. Social Work Certification and Licensure Board shall report negative action or finding that is publicly available. Consistent with 45 C.F.R. 60.3, the following negative actions shall be reported:~~

- (a) Injunctions for unlicensed practice;
- (b) Issuance of a cease and desist order;
- (c) Revocation;
- (d) Suspension;
- (e) Censure;
- (f) Reprimand;
- (g) Probation;
- (h) Withdrawal or denial of initial applications or reapplications proximate to an ethics matter;
- (i) Surrender of certification or license during an investigation;
- (j) Practice limitations connected to the delivery of health care services as defined by 45 C.F.R. 60.3; and
- (k) Limitations on the right of a licensee or certificate holder to supervise.

(2) For purposes of this Rule, the following matters shall not constitute negative actions:

- (a) monitoring independent of restrictions or discipline; and
- (b) letters of concern.

(a) In accordance with 45 CFR 60.9, the Board shall report disciplinary actions specified in G.S. 90B-11 to the National

Practitioner Data Bank. 45 CFR 60.9 is hereby incorporated by reference, including subsequent amendments and additions, and can be found at <https://www.govinfo.gov/content/pkg/CFR-2007-title45-voll/pdf/CFR-2007-title45-voll-sec60-9.pdf> at no cost.

(b) For purposes of this Rule and G.S. 90B-11, the following matters constitute disciplinary actions:

- (1) injunctions for unlicensed practice;
- (2) issuance of a cease and desist order;
- (3) revocation;
- (4) suspension;
- (5) censure;
- (6) reprimand;
- (7) probation;
- (8) withdrawal or denial of initial applications or reapplications proximate to an ethics matter;
- (9) surrender of certification or license during an investigation;
- (10) practice limitations connected to the delivery of health care services as defined by 45 C.F.R. 60.3; and
- (11) limitations on the right of a licensee or certificate holder to supervise.

(c) For purposes of this Rule, the following matters shall not constitute disciplinary actions:

- (1) monitoring independent of restrictions or discipline;
- (2) letters of concern; and
- (3) complaints.

Authority G.S. 90B-6(h); 90B-11.

21 NCAC 63 .0610 CONTINUANCES

(a) ~~All motions for continuance shall be addressed to the Chair.~~
~~(b)(a)~~ Motions for a continuance of a hearing ~~may shall~~ be ~~granted reviewed~~ in accordance with the North Carolina Rules of Civil Procedure as set forth in G.S. 1A-1, Rule 40(b). The Board is not required to grant a motion to continue. All motions for continuance shall be addressed to the Chair or presiding officer.

~~(c)(b)~~ In determining whether good cause ~~exists, exists as set forth in G.S. 1A-1, Rule 40,~~ the Chair or presiding officer shall consider the ability of the party requesting a continuance to proceed without a continuance.

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

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

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

SECTION .0700 – ADMINISTRATIVE PROCEDURES

21 NCAC 63 .0701 PETITIONS FOR ADOPTION OF RULES

(a) ~~The procedure for petitioning the Board to adopt, amend, or repeal a rule is governed by G.S. 150B-20.~~

~~(b) Submission.~~ Rule-making petitions shall be sent to the executive director of the Board. ~~Contact information for the Board can be found on the Board's website at www.ncswboard.org. No special form is required.~~ The rule-making petition shall ~~contain the following information:~~ state the petitioner's name and address and shall contain the information required by G.S. 150B-20(a). The petitioner also may submit the following additional information:

- (1) ~~the name and address of the person making the request; the reason for the proposal;~~
- (2) ~~the proposed text of any requested rule change; and data supporting the proposed rule;~~
- (3) ~~a statement of the effect of the requested change; practices likely to be affected by the proposed rule; and~~
- (4) ~~persons likely to be affected by the proposed rule.~~

~~(c) The Board does not require the following information to be submitted with the petition, but does consider the following information to be pertinent:~~

- (1) ~~the reason for its proposal;~~
- (2) ~~data supporting the proposed rule;~~
- (3) ~~practices likely to be affected by the proposed rule; and~~
- (4) ~~persons likely to be affected by the proposed rule.~~

~~(d) Disposition.~~ The executive director shall present the petition and his or her recommendation to the Board at its next regular meeting following receipt of the petition, and the Board shall render its decision to either deny the petition or initiate rule-making. ~~The Board shall notify the petitioner of its decision in writing within the 120 day period set by G.S. 150B-20.~~

Authority G.S. 90B-6(h); 150B-20.

21 NCAC 63 .0703 TEMPORARY RULES

Authority G.S. 90B-6(h); 150B-21.1.

21 NCAC 63 .0704 DECLARATORY RULINGS

(a) General. ~~The issuance of declaratory rulings by the Board is governed by G.S. 150B-4.~~ The Board shall respond to requests for declaratory rulings in accordance with G.S. 150B-4.

(b) Contents of a Request for Declaratory Ruling. A request for a declaratory ruling shall be in writing and addressed to the executive director of the Board. The request shall contain the following information:

- (1) ~~The the~~ the name and address of the person making the request;
- (2) ~~The the~~ the statute or rule to which the request relates;
- (3) ~~A concise~~ a statement of the need for a declaratory ruling as set forth in G.S. 150B-4(a); and
- (4) ~~A~~ a statement as to whether a hearing is desired, and if desired, the reason therefore.

(c) Refusal to Issue Ruling. The Board ~~may shall~~ refuse to issue a declaratory ruling under the following circumstances:

- (1) ~~When~~ when the Board has already made a controlling decision on ~~substantially~~ similar facts in a contested case;
- (2) ~~When~~ when the facts underlying the request for a ruling were ~~specifically~~ considered at the time of the adoption of the Rule in question; or
- (3) ~~When~~ when the subject matter of the request is involved in any pending litigation in North Carolina.

Authority G.S. 90B-6(h); 150B-4.

21 NCAC 63 .0705 INSUFFICIENT FEES

(a) The Board shall charge the maximum processing fee allowed by G.S. 25-3-506 if a check submitted to the Board is returned by a financial institution because of insufficient funds or because the drawer did not have an account at that bank.

(b) Until such time as the drawer of the bad check has paid the prescribed fee, the drawer shall not be eligible to take an examination, obtain a license, or have the license renewed. For the purpose of this Rule, "prescribed fee" shall mean the sum of:

- (1) the maximum processing fee allowed by G.S. 25-3-506;
- (2) the renewal or application fee, whichever is applicable; and
- (3) any late fee, as described in G.S. 90B-6.2.

(c) Any license that has been issued or renewed based on a check which is returned to the Board shall be invalid until such time as the drawer has paid the prescribed fee. The invalidity of the license or renewal shall commence on the date of the issuance of the license or renewal.

(d) Payment of the prescribed fee to the Board shall be made in the form of a cashier's check, money order, credit card, or debit card.

Authority G.S. 25-3-506; 90B-6(g).

SECTION .0900 - PROFESSIONAL CORPORATION OR LIMITED LIABILITY COMPANY

21 NCAC 63 .0901 APPLICATIONS FOR A CERTIFICATE OF REGISTRATION

(a) ~~Social Work Licensees~~ Licensed clinical social workers who wish to form a Professional Corporation or Professional Limited Liability Company must apply to the ~~North Carolina Social Work Certification and Licensure~~ Board for a Certificate of Registration. Registration in accordance with this Rule, pursuant to Chapter 55B of the North Carolina General Statutes. The following fees apply:

(b) All applications for a Certificate of Registration for Professional Corporation shall include the fee described in Paragraph (d) of this Rule and provide the following:

- (1) the name and address of the proposed business;
- (2) the purpose of the proposed business;
- (3) the name, address, profession, and license number of each proposed stock owner;
- (4) the percentage of shares to be owned by each proposed stock owner;

- (5) the name, address, profession, and license number of each proposed director;
- (6) the name, address, profession, and license number of each proposed corporate officer;
- (7) the name, address, profession, and license number of each proposed professional employee;
- (8) the contact information of the person completing the application; and
- (9) notarized signatures from the business's incorporators and an attestation that:
 - (A) they have read the Board's governing statutes and rules;
 - (B) there are no disciplinary actions pending against any of the business's incorporators, officers, directors, stockholders, or employees;
 - (C) the business is being incorporated under the provisions of Chapter 55B of the North Carolina General Statutes; and
 - (D) the business will be conducted in compliance with the Professional Corporation Act and the laws governing licensees of the Board.

(c) All applications for a Certificate of Registration for Professional Limited Liability Company shall include the fee described in Paragraph (d) of this Rule and provide the following:

- (1) the name and address of the proposed business;
- (2) the purpose of the proposed business;
- (3) the name, address, profession, and license number of each proposed shareholder;
- (4) the percentage of shares to be owned by each proposed shareholder;
- (5) the name, address, profession, and license number of each proposed director;
- (6) the name, address, profession, and license number of each proposed member;
- (7) the name, address, profession, and license number of each proposed professional employee;
- (8) the contact information of the person completing the application; and
- (9) notarized signatures from the business's organizers and an attestation that:
 - (A) they have read the Board's governing statutes and rules;
 - (B) there are no disciplinary actions pending against any of the business's organizers, members, managers, or employees;
 - (C) the business is being organized under the provisions of Chapter 57D of the North Carolina General Statutes; and
 - (D) the business will be conducted in compliance with Chapter 57D of the North Carolina General Statutes and the laws governing licensees of the Board.

(d) The following non-refundable fees apply:

- (1) ~~Fifty~~ fifty dollars (\$50.00) – application fee for a certificate of registration for a professional corporation or limited liability company; and
- (2) ~~Twenty-five~~ twenty-five dollars (\$25.00) – annual renewal fee for the certificate of registration for a professional corporation or limited liability ~~company; and company.~~
- (3) ~~Twenty-five (\$25.00) fee for amendments(s) to the certificate of registration for a professional corporation or limited liability company. An amendment to the Certificate of Registration shall be required for a change in name, address, or professional services provided; changes to the articles of organization or incorporation; change in ownership or members. Any social workers who has been granted a Certificate of Registration from this Board shall inform the Board of other changes in writing and at no additional cost within 30 days from the effective date of the change.~~

Authority G.S. 55B-10; 55B-11; 55B-12; 57C-2-01(e); 57D-2-02; 90B-6; 90B-6.2; 90B-11.

21 NCAC 63 .0902 RENEWAL OF CERTIFICATE OF REGISTRATION

(a) ~~A Social workers who have registered their business with the Board in accordance with 21 NCAC 63 .0901 shall renew annually their Certificate of Registration issued by the Board shall be renewed annually prior to the expirations date printed on the certificate. on or before January 1 of each year. Applications for Renewal of Certificates of Registration shall provide the following:~~

- (1) whether there has been any change to the business since the last renewal of the Certificate of Registration;
- (2) identification of changes to the business since its last submission to the Board office, if any were made;
- (3) whether the business has ceased operation and, if so, a copy of the articles of dissolution;
- (4) the name, contact information, and license number of the licensees who are owners, members, or shareholders of the business;
- (5) the name, address, and certificate of registration number of the business;
- (6) applicant's signature and the date signed; and
- (7) a non-refundable fee of twenty-five dollars (\$25.00).

(b) A Certificate of Registration ~~will~~ shall be suspended for failure to renew within 30 days after the expiration date and ~~will~~ shall be reported to the Office of the Secretary of State.

(c) ~~The Board may reinstate a Certificate of Registration suspended under this subsection within the calendar year upon payment of the required renewal fee plus an additional fee for late renewal as provided in G.S. 55B-11.~~

Authority G.S. 55B-11; 55B-12; 57C-2-01(e); 57D-2-02; 90B-6; 90B-6.2; 90B-11.

CHAPTER 66 - VETERINARY MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the Veterinary Medical Board intends to adopt the rule cited as 21 NCAC 66 .0211.

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

Proposed Effective Date: *August 1, 2021*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Contact the NC Veterinary Medical Board via email at keith@ncvmb.org*

Reason for Proposed Action: *Clarify the use of telemedicine with the practice of veterinary medicine.*

Comments may be submitted to: *Keith West, 1611 Jones Franklin Road, Suite 106, Raleigh, NC 27606; phone (919) 854-5601; email keith@ncvmb.org*

Comment period ends: *June 14, 2021*

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 984-236-1850.

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

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

SECTION .0200 - PRACTICE OF VETERINARY MEDICINE

21 NCAC 66 .0211 VETERINARY TELEMEDICINE

(a) "Veterinary telemedicine" or "telemedicine" means the use of electronic or telecommunication technologies to remotely provide medical information regarding a patient's clinical health status and to deliver veterinary medical services to a patient that resides in or is located in the State. The delivery of veterinary medical services through telemedicine is the practice of veterinary medicine. The practice of veterinary medicine occurs where the patient(s) is located at the time telemedicine technologies are used.

(b) A veterinarian may provide veterinary medical services via telemedicine to any patient only after establishing a Veterinarian-Client-Patient-Relationship (VCPR). No person shall practice veterinary telemedicine except a veterinarian within the context of a VCPR. A VCPR cannot be established by any electronic means or telecommunication technologies.

(c) "Veterinary telemonitoring" means the use of a medical device, smart phone, monitoring sensor, or other technology, in combination with an internet connection, to collect and store health information for a patient of the veterinarian and to transmit it to a veterinarian, as directed or requested by a veterinarian. Veterinary telemonitoring, by that act alone, is not the practice of veterinary medicine.

(d) "Veterinary Teleconsulting" occurs when any person, whose expertise the veterinarian believes would benefit the veterinarian's patient, provides advice or other information by any method of communication to a veterinarian at the veterinarian's direction or request. Veterinary teleconsulting, by that act alone, is not the practice of veterinary medicine.

(e) Veterinarians practicing telemedicine shall be held to the same standard of care as veterinarians providing in-person medical care. There is not a separate standard of care applicable to telemedicine. Veterinarians shall determine whether telemedicine is appropriate and in the best interest of the patient. Veterinarians shall maintain a medical record of the telemedicine patient(s) as required by 21 NCAC 66 .0207(b)(12)."

Authority G.S. 90-186(10).

reporters and transcriptionists that have been approved by the Administrative Office of the Courts. The proposed rule reflects this NC OAH operational change and updates the existing rule to reflect current NC OAH operations, including NC OAH's implementation of an electronic filing and case management system and installation of modern technology equipment in NC OAH courtrooms subsequent to the adoption of the current rule.

Comments may be submitted to: Bill Culpepper, General Counsel, Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, NC 27609; phone (984) 236-1931; fax (984) 236-1871; email bill.culpepper@oah.nc.gov

Comment period ends: June 14, 2021

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 984-236-1850.

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

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

CHAPTER 01 - GENERAL

SECTION .0100 - GENERAL

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings intends to amend the rule cited as 26 NCAC 01 .0103.

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

Proposed Effective Date: August 1, 2021

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Send public hearing request via email to Bill Culpepper, NC OAH General Counsel, at bill.culpepper@oah.nc.gov*

Reason for Proposed Action: *NC OAH has eliminated contracting for court reporting and transcriptionist services, thereby permitting attorneys to contract directly with court*

26 NCAC 01 .0103 COST TO PUBLIC

(a) Copies of any public ~~records documents~~ filed in the Office of Administrative Hearings are available at the "actual cost" as defined in G.S. ~~132-6.2(b). 132-6.2(b)~~ ~~for making the copy and mailing cost if applicable.~~ The Office of Administrative Hearings OAH shall provide its "actual cost" on the Office of Administrative Hearings OAH website.

~~(b) Certified copies of any public document filed in the Office of Administrative Hearings are available at a cost of one dollar (\$1.00) per certification in addition to any other applicable cost for the public document. Electronic copy certification is not available.~~

~~(c) Transcripts are available of contested case hearings. Procedures for requesting and costs of transcripts are in 26 NCAC 03 .0123.~~

- ~~(d) Copies of recordings are available in the original recording format and media only.~~
~~(e) Video conferencing fees including cancellation fees shall be paid by the requesting party. The video conferencing fees are set at the rates established by the Office of Information Technology Services (ITS).~~
~~(f) North Carolina sales tax shall be added if applicable.~~
~~(b)(g) There is no charge to the requesting party unless the actual cost total charge is equal to or exceeds ten dollars (\$10.00). three dollars (\$3.00).~~

Authority G.S. 7A-751; 132-6.2; 150B-19; 150B-21.25; 150B-37.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings intends to amend the rule cited as 26 NCAC 03 .0123.

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

Proposed Effective Date: August 1, 2021

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Send public hearing request via email to Bill Culpepper, NC OAH General Counsel, at bill.culpepper@oah.nc.gov*

Reason for Proposed Action: NC OAH has eliminated contracting for court reporting and transcriptionist services, thereby permitting attorneys to contract directly with court reporters and transcriptionists that have been approved by the Administrative Office of the Courts. The proposed rule reflects this NC OAH operational change and updates the existing rule to reflect current NC OAH operations, including NC OAH's implementation of an electronic filing and case management system and installation of modern technology equipment in NC OAH courtrooms subsequent to the adoption of the current rule.

Comments may be submitted to: Bill Culpepper, General Counsel, Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, NC 27609; phone (984) 236-1931; fax (984) 236-1871; email bill.culpepper@oah.nc.gov

Comment period ends: June 14, 2021

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 984-236-1850.

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

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

CHAPTER 03 - HEARINGS DIVISION

SECTION .0100 - HEARING PROCEDURES

26 NCAC 03 .0123 OFFICIAL RECORD

(a) The official record of a contested case shall be available for public inspection upon request. An administrative law judge may, consistent with law, order ~~part of~~ all or part of an official record sealed.

(b) The official record shall be prepared in accordance with G.S. 150B-37(a).

(c) Contested case hearings shall be recorded either by a hearing assistant provided by the Office of Administrative Hearings ~~four track recording system~~ or a court reporter authorized and approved to prepare transcripts of proceedings in the General Court of Justice by the Administrative Office of the Courts ~~procured directly by one or more parties to the contested case, using stenomask or stenotype.~~

~~(d) Transcript costs incurred shall be divided equally among the party(ies) requesting a transcript.~~

~~(e) Any other costs incurred when using a court reporter shall be divided equally among the requesting party(ies).~~

~~(d)(f) If a contested case hearing is cancelled, the party responsible shall provide a 24-hour cancellation notice is required in all cases in which a hearing assistant is provided by the Office of Administrative Hearings. eases. The party(ies) responsible for the cancellation are liable for any cancellation fees.~~

~~(e)(g) Transcripts of proceedings during which oral evidence is presented shall be made only upon request of a party. OAH shall contract with an independent contractor to provide transcript services. When proceedings are recorded by a court reporter, transcript Transcript requests shall must be made directly to the court reporter. When proceedings are recorded by a hearing assistant, transcript requests shall be made directly to a transcriptionist authorized and approved to prepare transcripts of proceedings in the General Court of Justice by the Administrative Office of the Courts. independent contractor. The name and phone number of the independent contractor may be obtained by calling the Office of Administrative Hearings. Transcript costs shall be provided to the requesting party by the independent contractor. An attorney requesting a transcript on behalf of a party shall be a guarantor of payment of the cost. The independent contractor may require an advance security deposit to cover the prospective cost.~~

(f) A party who orders a transcript shall use an Office of Administrative Hearings Transcript Contract form to order the transcript, which shall include the following information:

- (1) case name and number;
- (2) requestor information; and
- (3) transcriptionist information.

That form is available on the Office of Administrative Hearings website at <https://www.oah.nc.gov> and may be obtained from the Chief Hearings Clerk upon request. The party ordering the transcript shall file the transcript contract with the Office of Administrative Hearings and shall serve the transcript contract on all other parties and the transcriptionist. The transcriptionist shall deliver the transcript to the parties and file the transcript with the Office of Administrative Hearings by email to clerks@oah.nc.gov

in PDF format no later than 30 days after having been served with the transcript contract.

(g)(h) Copies of recordings made by a hearing assistant are available upon written request at a cost set out in 26 NCAC 01 .0103.

(i) ~~Copies of OAH Hearings recordings or non OAH certified transcripts therefrom are not part of the official record.~~

Note: Rule 5.3(B) of the Rules of Professional Conduct permits an attorney to advance or guarantee expenses of litigation provided the client remains ultimately liable for such expenses.

Authority G.S. 7A-751; 150B-37.

Note from the Codifier: The rules published in this Section of the NC Register are emergency rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code. The agency must subsequently publish a proposed temporary rule on the OAH website (www.ncoah.com/rules) and submit that adopted temporary rule to the Rules Review Commission within 60 days from publication of the emergency rule or the emergency rule will expire on the 60th day from publication. This section of the Register may also include, from time to time, a listing of emergency rules that have expired. See G.S. 150B-21.1A and 26 NCAC 02C .0600 for adoption and filing requirements.

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

Rule-making Agency: *Pesticide Board*

Rule Citation: *02 NCAC 09L .0502*

Effective Date: *March 25, 2021*

Findings Reviewed and Approved by the Codifier: *March 17, 2021*

Reason for Action: *Due to COVID-19, the North Carolina General Assembly in Session Law 2020-97 (H.B. 1105), Section 3.20, authorizes state agencies, including boards and commissions, to exercise regulatory flexibility during the emergency to protect the economic well-being of the citizens and businesses of the state. In accordance with the directive and spirit of Session Law 2020-97(H.B. 1105), Section 3.20, and to respond to the COVID-19 emergency, The North Carolina Pesticide Board finds it critical to exempt pesticides approved by the United States Environmental Protection Agency (EPA) on an emergency basis in accordance with 02 NCAC 09L .0318 for use in preventing, destroying, or mitigating COVID-19 from being restricted use pesticides as currently required by 02 NCAC 09L .0502(3). This exemption will bring North Carolina standards in line with other states and ensure North Carolina does not fall behind in its efforts to respond to COVID-19 by allowing for normal distribution of these pesticides.*

Particularly, this emergency rule will allow for the timely distribution and introduction of newly approved pesticides into the state that mitigate COVID-19. Currently, existing requirements classify these pesticides as restricted use pesticides, requiring their sale only by licensed pesticide dealers and application only by licensed applicators. These additional requirements make the pesticides' timely introduction into the state and access to the general public unfeasible. Therefore, for the reasons stated above, this Board finds it necessary and in the best interest of the State to not classify pesticides approved by the EPA for use in preventing, destroying, or mitigating COVID-19 as restricted use pesticides under the Board's Rules in 02 NCAC 09L .0502(3). This Board further finds that timing is the of essence in responding to COVID-19 and that emergency rulemaking are necessary.

CHAPTER 09 - FOOD AND DRUG PROTECTION

SUBCHAPTER 09L - PESTICIDE SECTION

SECTION .0500 - PESTICIDE LICENSES

**02 NCAC 09L .0502 LIST OF RESTRICTED USE
PESTICIDES**

(a) For the purpose of this Subchapter a "restricted use pesticide" shall be:

- (1) any pesticide required by the Environmental Protection Agency to bear the designation on its labeling "Restricted Use Pesticide;"
- (2) arsenic trioxide; and
- (3) any pesticide approved under Rule .0318 of this Subchapter.

(b) Any pesticide approved by the United States Environmental Protection Agency for use in the State of North Carolina in accordance with 02 NCAC 09L .0318 that is labeled as approved for use in preventing, destroying, or mitigating Covid-19 shall be exempt from the provisions of 02 NCAC 09L .0502(a)(3) and shall not be considered a Restricted Use Pesticide.

History Note: Authority G.S. 143-440(a),(b); 143-441; 143-458;

Eff. February 1, 1976;

Amended Eff. April 21, 1977;

Emergency Amendment [(e)] Eff. July 8, 1977, for a Period of 176 Days to Expire on December 31, 1977; Emergency Amendment [(e)] Expired Eff. December 31, 1977;

Amended Eff. January 1, 1990; August 1, 1982; January 1, 1979; June 30, 1978;

Readopted Eff. August 1, 2020;

Emergency Amendment Eff. March 25, 2021.

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

CHAPTER 57 - APPRAISAL BOARD

Rule-making Agency: *Appraisal Board*

Rule Citation: *21 NCAC 57B .0615*

Effective Date: *March 26, 2021*

Findings Reviewed and Approved by the Codifier: *March 18, 2021*

Reason for Action: *On March 11, 2021, the Governor of North Carolina, signed into law Session Law 2021-3, entitled, "An Act to Make Modifications to COVID-19 Relief Legislation and Provide Additional Appropriations for the Expenditure of Federal COVID-19 Pandemic Relief Funds." Section 2.11 of SL 2021-3, entitled, "Virtual Education Requirements/Real Estate*

Appraisers," authorizes the North Carolina Appraisal Board to amend, extend, or adopt emergency rules to modify any educational requirements implemented by the Board, in accordance with Section 3.20 of Session Law 2020-97. Any emergency rule adopted pursuant to Section 2.11 shall expire on December 31, 2021. The North Carolina Appraisal Board has made the determination that due to the impacts COVID-19, it is in the public interest, including public health, safety, and welfare and the economic well-being of its licensees to take the steps set forth in this emergency rule to modify continuing education and qualifying education requirements. Section 2.11(a) authorizes the Board to adopt this emergency rule without commencing temporary rule making.

**SUBCHAPTER 57B - REAL ESTATE APPRAISAL
EDUCATION**

SECTION .0600 - CONTINUING EDUCATION COURSES

**21 NCAC 57B .0615 EMERGENCY PROVISIONS
FOR EXTENSION FOR REMOTE LEARNING FOR
QUALIFYING EDUCATION, CONTINUING
EDUCATION AND TAKING OF LICENSING
EXAMINATION**

Due to the current State of Emergency in North Carolina and the United States, the North Carolina Appraisal Board is taking the following action:

- (1) Until December 31, 2021, schools and course sponsors may offer remote distance learning for continuing education courses. In order to offer remote distance learning, the school shall provide to the Board documentation that it has met the following requirements prior to the course taking place:
 - (a) The educational offering under consideration is currently approved for traditional classroom presentation;
 - (b) The platform utilized for distance education is live and interactive;
 - (c) The instructor verifies photo identification of the students; and
 - (d) The instructor maintains an attendance roster, which includes verifying 100 percent classroom attendance by, for example, taking attendance at various established times during the course.
- (2) Until December 31, 2021, qualifying education course offerings that are approved to be presented in a traditional live in person classroom setting, may be offered as synchronous delivery without the required

approval set forth in Item (4) of this Rule. The school shall provide to the Board documentation that it has met the following requirements prior to the course taking place:

- (a) The educational offering under consideration is currently approved for traditional classroom presentation;
 - (b) The platform utilized for distance education is live and interactive;
 - (c) The instructor verifies photo identification of the students;
 - (d) The instructor maintains an attendance roster, which includes verifying 100 percent classroom attendance by, for example, taking attendance at various established times during the course; and
 - (e) The examination required for qualifying education under Section III.E.7. of the AQB criteria remains in effect.
- (3) Until December 31, 2021, schools shall allow students to make-up qualifying education course hours by attending another course that is equivalent to the original course offered by the same school. The make-up hours attended by the student shall be for the same content that the student missed.
 - (4) Until December 31, 2021, schools and course sponsors may offer remote asynchronous distance learning for qualifying education courses, as long as the qualifying education courses are approved in accordance with Sections III D.3 and III.F.6 of the AQB criteria.
 - (5) All other Board rules that apply to continuing education or qualifying education that do not conflict with this Rule are in effect and enforced by the Board.

*History Note: Authority; G.S. 93E-1-6; 93E-1-7; 93E-1-8; 93E-2-6; S.L. 2020-97, s. 3.20; S.L. 2021-3, s. 2.11;
Emergency Adoption Eff. April 1, 2020;
Emergency Adoption Eff. May 21, 2020 to expire pursuant to S.L. 2020-3, s. 4.38 (e);
Emergency Adoption Expired Eff. August 1, 2020 pursuant to S.L. 2020-3, s. 4.38 (e);
Emergency Adoption Eff. October 19, 2020 to expire pursuant to S.L. 2020-97, s. 3.20(e);
Emergency Adoption Eff. March 26, 2021 to expire pursuant to S.L. 2021-3, s. 2.11(a).*

This Section contains information for the meeting of the Rules Review Commission March 18, 2021 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 984-236-1850. 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**

Jeanette Doran (Chair)
Robert A. Bryan, Jr.
Margaret Currin
Jeff Hyde
Vacant

Appointed by House

Anna Baird Choi (1st Vice Chair)
Andrew P. Atkins (2nd Vice Chair)
Paul Powell
Randy Overton
Vacant

COMMISSION COUNSEL

Amber Cronk May	984-236-1936
Amanda Reeder	984-236-1939
Ashley Snyder	984-236-1941

RULES REVIEW COMMISSION MEETING DATES

April 15, 2021	June 17, 2021
May 20, 2021	July 15, 2021

RULES REVIEW COMMISSION MEETING**MINUTES****March 18, 2021**

The Rules Review Commission met on Thursday, March 18, 2021 in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx. The Commissioners held a WebEx meeting to ensure compliance with Executive Orders limiting mass gatherings, and to encourage social distancing. The meeting was conducted in accordance with the provisions of G.S. 166A-19.24.

Commissioners present via WebEx were Bobby Bryan, Andrew Atkins, Anna Baird Choi, Margaret Currin, Jeanette Doran, Jeff Hyde, Randy Overton, and Paul Powell.

Staff member Alex Burgos was present in the Commission room. Commission Counsel Amber May, Amanda Reeder, and Ashley Snyder were present via WebEx.

The meeting was called to order at 9:00 a.m. with Chair Doran presiding.

The Chair 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 appearance of conflicts of interest.

APPROVAL OF MINUTES

The Chair asked for any discussion, comments, or corrections concerning the minutes of the February 18, 2021 meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the minutes was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

FOLLOW UP MATTERS**Department of Public Safety**

14B NCAC 19B .0107 was withdrawn at the request of the agency. No action was required by the Commission.

14B NCAC 19A .0101, .0102, .0103, .0104; 19B .0101, .0102, .0103, .0104, .0105, .0106; and 19C .0101 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

State Board of Education

16 NCAC 06B .0114 – In response to objections in September and January, the agency responded in accordance with the provisions of G.S. 150B-21.12 and requested the rule be returned to the agency. No further action was taken by the Commission.

State Board of Education

16 NCAC 06G .0508 – In November, the Commission determined the rewritten version of 16 NCAC 06G .0508 met the Commission's objections but the changes were substantial, and the agency would need to re-publish the rule. No action was required by the Commission.

Building Code Council

Residential Code, N1101.13(R401.2) – In February, the Commission voted pursuant to G.S. 150B-21.9 to ask the Office of State Budget and Management (OSBM) to determine if the rule has a substantial economic impact and therefore requires a fiscal note. This rule will remain under the Commission's review until after review by OSBM and subsequent action by the agency pursuant to G.S. 150B-21.12.

LOG OF FILINGS (PERMANENT RULES)**Department of Environmental Quality 01 NCAC 41C, D**

Upon the call of the Chair, the period of review was extended by roll-call vote, ayes 6, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Randy Overton, and Paul Powell – 6. Voting in the negative: None.

Department of Environmental Quality 04 NCAC 12C, D

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

Medical Care Commission

10A NCAC 13O .0301 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

Commission for Public Health 10A NCAC 41A

10A NCAC 41A .0101 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

Alarm Systems Licensing Board

14B NCAC 17 .0202 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

Coastal Resources Commission

Upon the call of the Chair, the period of review was extended by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

Commission for Public Health 15A NCAC 18A

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

Board of Barber Examiners

Prior to the review of the rules from the Board of Barber Examiners, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides general legal advice to the Board, including matters involving rulemaking.

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 6, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 6. Voting in the negative: None.

Landscape Contractors' Licensing Board

Prior to the review of the rule from the Landscape Contractors' Licensing Board, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm provides general legal advice to the Board, including matters involving rulemaking.

21 NCAC 28B .0406 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 6, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 6. Voting in the negative: None.

Board of Massage and Bodywork Therapy

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

Medical Board

Prior to the review of the rules from the Medical Board, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the rules because of a conflict.

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 6, noes 0 as follows: Voting in the affirmative: Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 6. Voting in the negative: None.

Board of Funeral Service

Prior to the review of the rule from the Board of Funeral Service, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm provides general legal advice to the Board, including matters involving rulemaking.

21 NCAC 34B .0309 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 6, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 6. Voting in the negative: None.

State Board of Opticians

21 NCAC 40 .0113 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

Veterinary Medical Board

21 NCAC 66 .0309 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

Office of Administrative Hearings

26 NCAC 03 .0502 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

EXISTING RULES REVIEW**Department of Environmental Quality**

15A NCAC 01C, D - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than March 31, 2022 pursuant to G.S. 150B-21.3A(d)(2).

COMMISSION BUSINESS

The meeting adjourned at 9:26 a.m.

The next regularly scheduled meeting of the Commission is Thursday, April 15, 2021 at 9:00 a.m.

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Jeanette Doran, Chair

**Rules Review Commission Meeting March 18, 2021
Held Via WebEx**

Name	Agency
Dennis Seavers	Barber Examiners
Elizabeth Kirk	Occupational Therapy
Calvin Kirven	Landscape Contractors
April McGill	
Jennifer Everett	DEQ
Brandon Walker	SBOE
Shane Smith	DHHS
Larry Michael	DHHS
Rob Pearsall	DHHS
Margaret McDonald	DPS
Sue Hodgins	Opticians
Jean-Marie Maillard	DHHS
Terri Ritter	DHHS
Wilson Mize	DHHS
Nadine Pfeiffer	DSHR
Lou Martin	SBOE
Virginia Niehaus	DSHR
Jana Busick	DHHS
Dr. Tod Schadler	Veterinary Bd
Ed Norman	DHHS
Kirsten Leloudis	DHHS
Wilson Mize	DHHS
Keith West	Veterinary Bd



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

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

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

March 18, 2021

Jennifer Everett, Rulemaking Coordinator
Department of Environmental Quality
1601 Mail Service Center
Raleigh, NC 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **15A NCAC 01C and D**

Dear Ms. Everett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, the scheduling of readoption for this set of rules was discussed at the March 18, 2021 Rules Review Commission meeting. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified to the attached document shall be readopted no later than March 31, 2022. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amber May
Commission Counsel

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

An Equal Employment Opportunity Employer

1

**RRC DETERMINATION
PERIODIC RULE REVIEW
April 20, 2017
APO Review: June 24, 2017**

**Environmental Quality, Department of
Total: 22**

RRC Determination: Necessary with substantive public interest

Rule	Determination
15A NCAC 01C .0101	Necessary with substantive public interest
15A NCAC 01C .0103	Necessary with substantive public interest
15A NCAC 01C .0104	Necessary with substantive public interest
15A NCAC 01C .0105	Necessary with substantive public interest
15A NCAC 01C .0106	Necessary with substantive public interest
15A NCAC 01C .0107	Necessary with substantive public interest
15A NCAC 01C .0108	Necessary with substantive public interest
15A NCAC 01C .0109	Necessary with substantive public interest
15A NCAC 01C .0205	Necessary with substantive public interest
15A NCAC 01C .0206	Necessary with substantive public interest
15A NCAC 01C .0207	Necessary with substantive public interest
15A NCAC 01C .0208	Necessary with substantive public interest
15A NCAC 01C .0304	Necessary with substantive public interest
15A NCAC 01C .0305	Necessary with substantive public interest
15A NCAC 01C .0306	Necessary with substantive public interest
15A NCAC 01C .0405	Necessary with substantive public interest
15A NCAC 01C .0406	Necessary with substantive public interest
15A NCAC 01C .0407	Necessary with substantive public interest
15A NCAC 01C .0408	Necessary with substantive public interest
15A NCAC 01C .0409	Necessary with substantive public interest
15A NCAC 01C .0410	Necessary with substantive public interest
15A NCAC 01C .0411	Necessary with substantive public interest

**RRC DETERMINATION
PERIODIC RULE REVIEW**

February 16, 2017

APO Review: April 23, 2017

Environmental Quality, Department of
Total: 3

RRC Determination: Necessary with substantive public interest

Rule	Determination
15A NCAC 01D .0102	Necessary with substantive public interest
15A NCAC 01D .0302	Necessary with substantive public interest
15A NCAC 01D .0303	Necessary with substantive public interest

LIST OF APPROVED PERMANENT RULES

March 18, 2021 Meeting

ENVIRONMENTAL QUALITY, DEPARTMENT OF

<u>Residential Conservation Service Program</u>	04 NCAC	12C	.0108
<u>Delegation of Authority for Rulemaking Hearings and State...</u>	04 NCAC	12D	.0101
<u>Submission and Content of Petition for Rulemaking</u>	04 NCAC	12D	.0102
<u>Contents of Petition</u>	04 NCAC	12D	.0103
<u>Issuance of Declaratory Rulings</u>	04 NCAC	12D	.0116
<u>Disposition of Requests for Declaratory Ruling</u>	04 NCAC	12D	.0117
<u>Disposition of Petitions for Rulemaking</u>	04 NCAC	12D	.0132
<u>Submission of Request for Declaratory Ruling</u>	04 NCAC	12D	.0133

MEDICAL CARE COMMISSION

<u>Nurse Aide I Training and Competency Evaluation</u>	10A NCAC	13O	.0301
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PUBLIC HEALTH, COMMISSION FOR

<u>Reportable Diseases and Conditions</u>	10A NCAC	41A	.0101
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ALARM SYSTEMS LICENSING BOARD

<u>Experience Requirements for a License</u>	14B NCAC	17	.0202
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PUBLIC SAFETY, DEPARTMENT OF

<u>Scope</u>	14B NCAC	19A	.0101
<u>Definitions</u>	14B NCAC	19A	.0102
<u>System Administrator Designation</u>	14B NCAC	19A	.0103
<u>Covered Entity System Access; Local Administrators</u>	14B NCAC	19A	.0104
<u>System Compatibility for Kits</u>	14B NCAC	19B	.0101
<u>Medical Service Providers</u>	14B NCAC	19B	.0102
<u>Law Enforcement Agencies</u>	14B NCAC	19B	.0103
<u>Law Enforcement Support Services</u>	14B NCAC	19B	.0104
<u>Forensic Laboratories</u>	14B NCAC	19B	.0105
<u>Previously Untested Kits</u>	14B NCAC	19B	.0106
<u>Compliance and Sanctions</u>	14B NCAC	19C	.0101

PUBLIC HEALTH, COMMISSION FOR

<u>Disinfection of Water Systems</u>	15A NCAC	18A	.1724
<u>Definitions</u>	15A NCAC	18A	.3101
<u>Lead Poisoning Hazard and Clearance Standard for Soil</u>	15A NCAC	18A	.3105
<u>Maintenance Standard</u>	15A NCAC	18A	.3107
<u>Sample Collection</u>	15A NCAC	18A	.3802

BARBER EXAMINERS, BOARD OF

<u>Barber School Curricula</u>	21 NCAC	06F	.0120
<u>Student Hours</u>	21 NCAC	06F	.0124

LANDSCAPE CONTRACTORS' LICENSING BOARD

<u>Emergency Extensions of Continuing Education Requirements...</u>	21 NCAC	28B	.0406
MESSAGE AND BODYWORK THERAPY, BOARD OF			
<u>Waiver of Requirements During Disaster or Emergency</u>	21 NCAC	30	.0636
<u>Waiver of Requirements During Disaster or Emergency</u>	21 NCAC	30	.0704
MEDICAL BOARD			
<u>COVID-19 Drug Preservation Rule</u>	21 NCAC	32B	.1708
<u>COVID-19 Drug Preservation Rule</u>	21 NCAC	32M	.0119
FUNERAL SERVICE, BOARD OF			
<u>License Renewal Form</u>	21 NCAC	34B	.0309
OPTICIANS, STATE BOARD OF			
<u>Waiver</u>	21 NCAC	40	.0113
VETERINARY MEDICAL BOARD			
<u>Petition for Inactive Status</u>	21 NCAC	66	.0309
ADMINISTRATIVE HEARINGS, OFFICE OF			
<u>General</u>	26 NCAC	03	.0502

CONTESTED CASE DECISIONS

This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at <http://www.ncoah.com/hearings/decisions/>. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: oah.clerks@oah.nc.gov or phone 984-236-1850.

OFFICE OF ADMINISTRATIVE HEARINGS**Chief Administrative Law Judge***JULIAN MANN, III***Senior Administrative Law Judge***FRED G. MORRISON JR.***ADMINISTRATIVE LAW JUDGES**

Melissa Owens Lassiter
J. Randall May
David Sutton
Selina Malherbe

J. Randolph Ward
Stacey Bawtinheimer
Tenisha Jacobs
Michael Byrne
Karlene Turrentine

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				Published			
20	ABC	03129	2/8/2021	NC Alcoholic Beverage Control Commission	v.	Ablaze Management LLC T/A Lounge 34	May
20	CPS	01803	2/11/2021	Nathaniel J. Bartlett and Jerry M. Tolson	v.	NC Victims Compensation Commission	Bawtinheimer
20	DHR	01910	2/11/2021	Michael Davidson	v.	NC Department of Health and Human Services, Food and Nutrition Services	Sutton
20	DOJ	02206	2/12/2021	Elainea Blair Kingsberry-Brodie	v.	NC Criminal Justice Education and Training Standards Commission	Ward
20	DOJ	03450	2/22/2021	Aaron Daniel Hubbard	v.	NC Sheriffs Education and Training Standards Commission	Byrne
20	DOJ	03452	2/12/2021	Leon Kent Brown	v.	NC Sheriffs Education and Training Standards Commission	Sutton
20	DOJ	03453	2/2/2021	Joshua Hugh Black	v.	NC Sheriffs Education and Training Standards Commission	Malherbe
20	DOJ	03786	2/4/2021	Jeremy Lamond Henderson	v.	NC Private Protective Services Board	Ward
20	DOJ	03866	2/18/2021	Dylan Lee Singleton	v.	NC Alarm Systems Licensing Board	Jacobs
20	DOJ	03887	2/22/2021	Homer Owen Weaver	v.	NC Alarm Systems Licensing Board	Jacobs
20	DOJ	03899	2/18/2021	James Maxwell Smith	v.	NC Alarm Systems Licensing Board	Jacobs
20	DOJ	04335	2/1/2021	Jennifer Marie Plymouth	v.	NC Private Protective Services Board	Byrne

CONTESTED CASE DECISIONS

20	DOJ	05404	2/1/2021	Geneviene Christine Penn	v.	NC Private Protective Services Board	Byrne
20	OSP	02124	2/25/2021	Judith Knechteges	v.	NC Department of Public Safety	Lassiter
20	OSP	02524	2/18/2021	Barbara Mullen	v.	North Carolina Department of Health and Human Services Disability Determination Services	Lassiter
				Unpublished			
20	CPS	03676	2/11/2021	Jordan Montgomery Matusik	v.	Department of Public Safety	Jacobs
20	CRA	02048	2/3/2021	Farooq I Khan	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
19	CSE	06063	2/9/2021	Jarmon Best	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Ward
19	CSE	06139	2/9/2021	Jennifer Forte	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Ward
19	CSE	06392	2/9/2021	Cedric E Lightfoot	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
19	CSE	06470	2/9/2021	Peter R Knott	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Ward
20	CSE	02168	2/9/2021	David Prado	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
20	CSE	02197	2/3/2021	David L Wright	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
20	CSE	04009	2/8/2021	Kevin Michael Smith	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
20	CSE	04010	2/9/2021	Leland M McCluskey	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
20	CSE	04029	2/9/2021	Garcia Howard	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
20	CSE	04049	2/25/2021	Roberto E Mendoza	v.	NC Department of Health and Human Services, Division of	Malherbe

CONTESTED CASE DECISIONS

						Social Services, Child Support Enforcement	
20	CSE	04051	2/1/2021	Michael Cassata	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
20	CSE	04077	2/12/2021	Roderick R Williams	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
20	CSE	04111	2/10/2021	Joseph Wayne Powell	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
20	CSE	04193	2/4/2021	Derwin A Bryant Sr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
20	CSE	04199	2/9/2021	Katie Stacy	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
20	CSE	04231	2/9/2021	Mark A Ortiz	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
20	CSE	04235	2/9/2021	Lauren N Stegall	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
20	CSE	04255	2/9/2021	James E Coggins	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
20	CSE	04258	2/22/2021	Anna M Duncan	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
20	CSE	04626	2/8/2021	Jeremy Ryan Watson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
20	CSE	04689	2/12/2021	Larry D McGee Jr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
20	CSE	04727	2/8/2021	David Penkava for Jason P Penkava	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
20	CSE	04993	2/11/2021	Larry J Watkins	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
20	CSE	05221	2/16/2021	Juan C Jimenezmoore	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Byrne

CONTESTED CASE DECISIONS

20	CSE	05228	2/16/2021; 2/17/2021	Samuel L Dent	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Byrne
20	CSE	05229	2/2/2021	Stephen D Vestal	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
20	CSE	05458	2/10/2021	Franklin O Woodley Jr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Bawtinheimer
21	CSE	00006	2/11/2021	Anthony Lewis	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Byrne
20	DHR	05044	2/12/2021	Little Bud Thorbs Economic Development Association for Minorities in Sports and Human Enrichment Linwood Earl Thorbs	v.	NC Department of Health and Human Services, Division of Public Health Child and Adult Care Food Program	Jacobs
20	DOJ	03805	2/24/2021	Harry Lee White III	v.	NC Criminal Justice Education and Training Standards Commission	May
20	DOT	04012	2/11/2021	Michael Punte and Ashley Punte	v.	North Carolina Department of Transportation	Malherbe
20	EHR	02626	2/2/2021	Nantahala Shores POA Richard P FitzGerald Jr	v.	NC Department of Environmental Quality, Div of Water Resources Public Water Supply Section	Mann
20	INS	05158	2/10/2021	Matthew Rosone	v.	North Carolina State Health Plan for Teachers and Employees	Sutton
20	OSP	03840	2/12/2021	Donald Mitchell Fowler Jr	v.	NC Department of Public Safety	Bawtinheimer
20	OSP	03968	2/11/2021	Shaquanna Deandra Holbrook	v.	North Carolina Department of Public Safety	Jacobs