

NORTH CAROLINA REGISTER

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November 15, 2021

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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
36:11	12/01/21	11/05/21	12/16/21	01/31/22	02/21/22	03/17/22	04/01/22	08/28/22
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.

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

TITLE 01 – DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to adopt the rules cited as 01 NCAC 05B .0318-.0321, amend the rules cited as 01 NCAC 05A .0112; 05B .0301, .0314, and repeal the rule cited as 01 NCAC 05B .1604.

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://ncadmin.nc.gov/about-doa/administrative-rules-review/proposed-rules-and-public-comment>

Proposed Effective Date: March 1, 2022

Public Hearing:

Date: December 6, 2021

Time: 9:00-11:00 a.m.

Location:

Via Webex at Meeting link:

<https://ncgov.webex.com/meet/shanon.gerger>

Meeting number (access code): 1783 46 8640

Join by phone: Tap to call in from a mobile device (attendees only) +1-415-655-0003 US Toll +1-904-900-2303 United States Toll (Jacksonville)

Reason for Proposed Action: Session Law 2020-90 (H902) revised G.S. 143-52.1 and 143-53 changing the benchmark stated in the attached rules. Additionally, new rules were created to clarify the requirements listed and reflect recent changes in the procurement process.

Comments may be submitted to: Shanon Gerger, 1301 Mail Service Center, Raleigh, NC 27603; phone (984) 236-0008; email shanon.gerger@doa.nc.gov

Comment period ends: January 14, 2022

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 (>= \$1,000,000)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required**

CHAPTER 05 - PURCHASE AND CONTRACT

SUBCHAPTER 05A – DIVISION OF PURCHASE AND CONTRACT

PROGRAM COULD NOT FIND SECTION RULE DOCUMENT IN CODE

01 NCAC 05A .0112 DEFINITIONS

For the purpose of this Chapter:

- (1) "Agency" or "Agencies" means all departments, institutions, boards, commissions, universities, community ~~colleges~~ colleges, or other units of the State, unless specifically exempted by statute.
- (2) "Best and Final Offer" ("BAFO") is a document that memorializes the details of Negotiations between the State and a Vendor and mutually modifies the Vendor's Offer.
- (3) "Best Value Procurement" shall have the same meaning as in G.S. 143-135.9.
- (4) "Bid Value Benchmark" or "General Delegation" means the maximum authorized expenditure set pursuant to G.S. 116-31.10, G.S. 115D-58.14, or G.S. 143-52(a) and 143-53.1 for which an ~~agency~~ Agency may contract to purchase Goods or Services without obtaining prior approval for the purchase from the Division.
- (5) "Clarification" means communications between the State and a Vendor that ~~may~~ occur after receipt of Vendor's Offer made for the purpose of eliminating irregularities, informalities, or apparent clerical mistakes in an Offer. A Clarification may also be used in order for the State to interpret an Offer or Offers

- or to facilitate the State's evaluation of all Offers. A Clarification shall not be used to cure material deficiencies in an Offer, alter the scope of an Offer, or to negotiate.
- (6) "Consultant Services" means contracted work or tasks performed by a Vendor or independent contractor possessing specialized knowledge, experience, ~~expertise~~ expertise, and professional qualifications to investigate assigned problems or projects and to provide counsel, review, ~~analysis~~ analysis, or advice in formulating or implementing improvements in programs or Services. This includes improvements related to the organization, planning, directing, control, ~~evaluation~~ evaluation, and operation of a program, Agency or department.
- (7) "Competition" in purchasing exists when the available market for the Goods or Services to be acquired consists of more than one Responsible Vendor that is qualified and willing to submit an Offer.
- (8) ~~"Competitive Range" means a rational grouping of the most competitive Offers as determined by the Purchasing Agency.~~
- (9)(8) "Contract" means any type of agreement entered into by ~~State~~ Agencies, regardless of what it may be titled or called, setting out the obligations of the parties concerning a Procurement of Goods or Services.
- (9) "Contract Term" means the time period in which a Contract is active and in effect.
- (10) "Deficiency" means either a failure to meet a stated ~~requirement~~ Requirement or a combination of weaknesses in an Offer that increases the risk that a Vendor will be unable to meet its contractual obligations.
- (11) "Division" means the Division of Purchase and Contract.
- (12) "Electronic" means electrical, digital, magnetic, optical, ~~electromagnetic~~ electromagnetic, or any other similar technology.
- (13) "Electronic Bid System" means the Division's Electronic system used variously to advertise Solicitations, notify Vendors, conduct Reverse Auctions, and post ~~contract~~ Contract awards.
- (14) "Emergency Situations" means unforeseen circumstances that endanger lives, property, or the continuation of a vital program, as determined by the ~~purchasing~~ Purchasing Agency Director, and that can be rectified only by immediate purchases or rental of Goods or Services.
- (15) "Extension" means an additional Contract Term not provided for in the Contract that is mutually agreed to by the State and all Vendor parties in a Contract amendment.
- (15)(16) "Goods" means any tangible property, including all equipment, materials, supplies and commodities. Unless the context requires otherwise, acquisition of printing shall be considered the purchase of Goods under these Rules.
- (16)(17) "Goods Contract" means any agreement involving the Procurement of Goods from a Vendor, but which may also have ancillary Services aspects.
- (18) "Initial Contract Term" means the initial period for performance under a Contract after which the Contract will either terminate or be extended pursuant to a Renewal or Extension.
- (17)(19) "Negotiation" means oral or written communications in a waived or open competitive Procurement between the State and Vendor undertaken with the intent of allowing a Vendor to revise ~~their~~ its ~~Offers~~. Offer. Revisions may apply to price, schedule, technical requirements, or other terms of the proposed ~~contract~~. Contract. Negotiations are specific to each Offer and shall be conducted to maximize the State's ability to obtain best value based on the evaluation factors set forth in the Solicitation. Negotiations shall be memorialized in any resulting Contract.
- (18)(20) "Offer" means a bid, proposal, ~~BAFO~~ BAFO, or other proposition submitted in response to any Solicitation, Negotiation, or other approved acquisition process, as well as responses to solution-based Solicitations and government-Vendor partnerships.
- (19)(21) "Personal ~~Service~~ Services Contract" has the same definition as in G.S. 143-48.6(b). ~~Personal Service Contracts may include Contracts with a doctor, dentist, attorney, architect, professional engineer, scientist or performer of the fine arts or similar professions.~~ A Personal Services Contract is a type of Service Contract.
- (20)(22) "Pressing Need" means a need arising from unforeseen causes outside the State's control, including delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, which can be satisfied only by immediate purchase or rental of Goods or Services.
- (21)(23) "Price" means the amount paid by the State to a Vendor for Goods or Services.
- (22)(24) "Procurement" means the process of acquiring Goods or Services.
- (25) "Professional Services" means the contracted work or tasks performed by a Vendor or independent contractor possessing specialized knowledge, experience, expertise, and professional qualifications, who provides ongoing Services. A Professional Services Contract is a type of Service Contract.
- (23)(26) "Progressive Award" means an award ~~of~~ for portions of a definite quantity requirement to

- more than one Vendor. Each portion is for a definite quantity and the sum of the portions is the total quantity procured. A Progressive Award may be in the Purchasing Agency's best interest when awards to more than one Vendor for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.
- (24)(27) "Public Funds" means any amount received, held, ~~disbursed~~ disbursed, or otherwise subject to or accounted for in accordance with the State Budget Act and amounts used to acquire Goods and Services that are required to be purchased in accordance with Article 3 of Chapter 143 of the General Statutes.
- (25)(28) "Purchasing Agency" or "Purchaser" means the Agency that issues a purchase order or otherwise acquires Goods or Services through a purchasing process.
- (26)(29) "Recalled Bid" means a Bid that is rescinded by the Vendor after the bid opening but prior to a contract being awarded.
- (30) "Renewal" means an optional, typically annual, term immediately following the Initial Contract Term provided for in the Contract that can be exercised as of right by the State.
- (27)(31) "Responsible Vendor" means a Vendor who demonstrates in its Offer that it has the capability to perform the requirements of the Solicitation.
- (28)(32) "Responsive Offer" means an Offer that conforms to the Requirements of the Solicitation. ~~Solicitation in all respects to be considered by the State for award.~~
- (29)(33) "Requirement" is a provision of a Solicitation and any resulting Contract ~~which that~~ prescribes the nature or details of a standard, ~~process~~ process, or procedure that must be complied with by the Vendor before any further evaluation of the Offer is conducted by the State.
- (30)(34) "Sealed Offer" means an Offer that remains unopened until the public opening time stated in the Solicitation.
- (31)(35) "Secretary" means the Secretary of the ~~NC~~ North Carolina Department of Administration.
- (32)(36) "Service Contract" means any agreement for compensation involving Services and requiring a particular or specialized knowledge, experience, ~~expertise~~ expertise, or similar capabilities in the Vendor. Contracts for Consultant ~~Services~~ Services, Professional Services, and Personal Services are also ~~types~~ examples of a Service Contract. A Service Contract may also involve the ancillary purchase of Goods.
- (33)(37) "Services" means the tasks and duties undertaken by a Vendor in a Service Contract to fulfill the ~~requirements~~ Requirements and Specifications of the Contract.
- (34)(38) "Signature" means a manual autograph, an Electronic ~~identifier~~ identifier, or an Electronic authentication technique, that is intended by the person using it to have the same force and effect as a manual signature.
- (35)(39) "Small Purchase" means the purchase of Goods and Services not covered by a Term Contract where the expenditure of Public Funds including Extensions and Renewals is equal to or less than the a Small Purchase Benchmark amount. ~~amount, pursuant to 01 NCAC 05B .0301.~~
- (36)(40) "Solicitation" means ~~a Written or Electronic Invitation for Bids (IFB), Request for Quotations (RFQ), Request for Proposal (RFP), Best and Final Offer (BAFO), Request for Information (RFI) or other such documents used to solicit to request or invite Vendor Offers, or to request information regarding the acquisition of Goods and Services, including all mutually agreed attachments and items incorporated by reference.~~ through the use of Solicitation Documents.
- (41) "Solicitation Documents" means a Written or Electronic:
- (a) Invitation for Bids (IFB);
 - (b) Request for Quotations (RFQ);
 - (c) Request for Proposals (RFP);
 - (d) Best and Final Offer (BAFO); or
 - (e) other documents to invite Vendor Offers, including all mutually agreed attachments and items incorporated by reference therein.
- (37)(42) "Specification" means any description of the physical or functional characteristics of, or the nature of, the Goods or Services to be procured.
- (38)(43) "SPO" means the State Procurement ~~Officer.~~ Officer or the Director of the Division.
- (39)(44) "Tabulation" means a list of Vendors submitting Offers in response to a particular Solicitation and, if applicable, the prices ~~Offered~~ offered as allowed under G.S. 143-52(a).
- (40)(45) "Technical Offer" means a proposal by a Vendor in response to the Solicitation, absent the price content.
- (41)(46) "Term Contract" is a binding agreement between purchaser and seller to buy and sell certain ~~commodities, printing, or services~~ Goods or Services at certain ~~prices~~ prices, for an agreed Contract Term, and under stipulated specific terms and conditions.
- (42)(47) "Total Cost of Ownership" means a summation of all purchase, operating, and related costs to be expended during the projected lifetime of a Good or Service or both.

- (43)(48) "Vendor" means a contractor, supplier, bidder, company, independent contractor, firm, corporation, partnership, ~~individual~~ individual, or other entity submitting a response to a Solicitation.
- (44)(49) "Voided Bid" means an Electronic bid that was submitted by a Vendor in connection with an Electronic Solicitation that has been cancelled, the bids voided and not opened electronically.
- (45)(50) "Weakness" means a flaw in the Offer that increases the risk of unsuccessful contract performance.
- (46)(51) "Withdrawal" or "Withdrawn Bid" means a Bid that is rescinded by the Vendor prior to the bid opening.
- (47)(52) "Written" or "Writing" means a communication recorded in a medium of expression that can be preserved, read, retrieved, and reproduced for an indefinite period of time, including information in a form that is electronically transmitted and stored.

Authority G.S. 143-48.3; 143-48.6; 143-49; 143-52; 143-53; 143-53.1; 143-57; 143-135.9.

SUBCHAPTER 05B - PURCHASE PROCEDURES

SECTION .0300 - PROCUREMENT AUTHORIZATION AND PROCEDURES

01 NCAC 05B .0301 CONTRACTING REQUIREMENTS

Except where a waiver, special delegation, exemption, or an emergency purchase is permitted ~~by rule, under Rule .1401, .1505(b), or Section .1600 of this Subchapter,~~ all purchases involving the expenditure of ~~public funds~~ Public Funds made by ~~universities and other agencies for commodities, services and printing,~~ an Agency for Goods or Services not covered by ~~statewide term contracts,~~ Statewide Term Contracts, shall comply with the following delegations and procedures: provisions of Rule .0314 of this Subchapter, and the following:

- (1) ~~Small Purchases. Purchases: A small purchase is defined as the purchase of commodities, services or printing, not covered by a term contract, involving an expenditure of public funds of five thousand dollars (\$5,000) or less. The executive officer of each agency, or his designee, shall set forth, in writing, purchasing procedures for making small purchases. The using agency shall award contracts for small purchases. The SPO may require a copy of the small purchase procedures be sent to the Division of Purchase and Contract.~~
 - (a) A Small Purchase, as defined in 01 NCAC 05A .0112, is the purchase of Goods and Services, where the total Contract value, including the amounts of Extensions and Renewals, is equal

- to or less than the Small Purchase Benchmark as set by the SPO.
- (b) The Small Purchase Benchmark value shall be twenty five thousand dollars (\$25,000) in 2021 dollars. The SPO shall adjust the Small Purchase value for inflation in June of odd-numbered years using the Consumer Price Index for All Urban Consumers (CPI-U), all items in U.S. city average, not seasonally adjusted. The inflation change shall be calculated by dividing the CPI-U index value in May of the current year by the index value from May of two years prior.
- (c) The executive officer of each Agency, or his or her designee, shall establish written procedures for making Small Purchases. The procedures shall be made available to the SPO upon request.
- (d) The Purchasing Agency shall award Contracts for Small Purchases.
- (e) An Agency may advertise Small Purchase Solicitations through the Electronic Bid System maintained by the Division and may utilize Division Solicitation Documents as specified in Rule .0314 of this Section.
- (2) ~~Purchases Governed by General Delegation or Statute: Informal Bidding Procedure.~~
 - (a) Where the total Contract value, including the amounts of Extensions and Renewals, involve an expenditure of Public Funds exceeding the Small Purchase Benchmark in Paragraph (1) of this Rule, and up to the Bid Value Benchmark For purchases made by a university or agency involving an expenditure of public funds over five thousand dollars (\$5,000), up to the benchmark established for a university under the provisions of G.S. 116-31.10, and up to the general delegation or the General Delegation limit for agencies an Agency established by the SPO under the provisions of G.S. 143-53(a)(2): G.S. 143-53(a)(2) and G.S. 143-53.1, the following procedure shall be utilized:
 - (i) Competition shall be solicited; solicited, but the Solicitation of Sealed Offers is not required. Agencies may utilize the Division's Electronic Bid System to advertise Solicitations subject to this Subsection or to solicit Vendor Offers.

- (ii) Division Solicitation documents Documents requesting or inviting offers shall be issued; and
 - (iii) Division Solicitation documents Documents and any resulting Contract shall include ~~standard language, including Contract language~~ and terms and conditions as set forth in Rule .0314 and .0318 of this Section, and may be found on the Division's webpage, published by the Division of Purchase and Contract on its home web page, unless prior written approval is obtained from the Division for unusual requirements. If additional terms and conditions are used, they used shall not conflict with the Division's standard terms and conditions, ~~conditions~~, unless prior written approval is obtained from the Division for unusual requirements; and
 - (iv) ~~Mailing lists, if available from the Division of Purchase and Contract, may be requested and used in addition to mailing lists maintained by the university or agency for the purpose of soliciting competition.~~
 - (b) ~~Agencies and universities shall advertise their solicitations through the Division of Purchase and Contract for the following purchases:~~
 - (i) ~~Agencies: For purchases involving an expenditure of public funds exceeding ten thousand dollars (\$10,000), up to the general delegation limit for an agency established by the SPO under the provisions of G.S. 143-53(a)(2);~~
 - (ii) ~~Universities: For purchases involving an expenditure of public funds exceeding twenty-five thousand dollars (\$25,000), up to the benchmark established for a university under the provisions of G.S. 116-31.10.~~
- ~~Agencies and universities may advertise solicitations on smaller dollar purchases through the Division of Purchase and Contract.~~
- (b) Contracts for purchases valued less than a university's Bid Value Benchmark or an Agency's General Delegation shall be awarded by the Purchasing Agency.
 - (c) ~~The using agency shall award contracts under the statutory limit for universities and the general delegation for all other agencies.~~
 - (3) Formal Competitive Bidding Procedure. ~~Procedure: Where the total requirements for commodities, services or printing jobs involve an expenditure of public funds in excess of the expenditure benchmark established under the provisions of G.S. 116-31.10 or the general delegations established by the SPO under the provisions of G.S. 143-53(a)(2), the competitive bidding procedure as defined in G.S. 143-52 shall be utilized as follows:~~
 - (a) ~~Sealed offers for commodities and printing shall be solicited by the Division of Purchase and Contract via advertisement;~~
 - (b) ~~For service contracts, the universities and other agencies shall solicit sealed offers for their university/agency in accordance with the rules established for Sub items (2)(a) and (b) of this Rule. After opening and completing the evaluation of offers received, the agency shall prepare a written recommendation for award, and if over the benchmark established under G.S. 116-31.10 or the general delegations established by the SPO, shall submit a copy of all offers received and their recommendation of award or other action to the Division of Purchase and Contract for approval or other action deemed necessary by the SPO (Examples: cancellation, negotiation, etc.). Notice of the Division of Purchase and Contract's decision shall be sent to the agency. The using agency shall award contracts for services;~~
 - (c) ~~Sealed offers for statewide term contracts for commodities, printing and services shall be solicited by the Division of Purchase and Contract via advertisement.~~
 - (a) Where the total Contract value, including the amounts of any Extensions and Renewals, involve an expenditure of Public Funds in excess of the Bid Value Benchmark established under G.S. 116-31.10,

G.S. 115D-58.14, or the General Delegation established by the SPO under G.S. 143-53(a)(2) and G.S. 143-53.1, the competitive bidding procedure as defined in G.S. 143-52 shall be utilized as follows:

- (i) Competition shall be solicited;
- (ii) Division Solicitation Documents requesting or inviting offers shall be issued;
- (iii) Solicitation Documents and any resulting Contract shall include contract language and terms and conditions as set forth in Rule .0314 and .0318 of this Section, and may be found on the Division's webpage, unless prior written approval is obtained from the Division for unusual requirements, such as for unique, complex, or highly technical Procurements. If additional terms and conditions for unusual requirements are used, they shall not conflict with the Division's standard terms and conditions, unless prior written approval is obtained from the Division;
- (iv) an Agency shall provide to the Division a draft Solicitation Document for review and approval prior to posting on the Electronic Bid System. The Division shall review for compliance in accordance with G.S. 143-50.1 and this Section; and
- (v) an Agency shall solicit Sealed Offers in accordance with this Section. After opening and completing the evaluation of Offers received, the Agency shall prepare and submit a written recommendation for award, along with a copy of all Offers received, to the Division for approval or other actions deemed necessary by the SPO. Notice of the Division's decision shall be sent to the Agency.
- (b) An Agency shall advertise all Solicitations subject to this Section

through the Electronic Bid System maintained by the Division.

- (c) Contracts for purchases in excess of a university's Bid Value Benchmark or an Agency's General Delegation shall be awarded by the Purchasing Agency upon approval from the Division.
- ~~(4) For each service contract handled by the agency, the agency shall prepare a task description of the services and desired results. Task descriptions shall contain all of the following:~~
 - ~~(a) The date(s) of service (The contract shall not be for more than three years including extensions and renewals, without the prior approval of the SPO for unusual requirements);~~
 - ~~(b) Detailed specifications or type and level of work required;~~
 - ~~(c) What the State shall furnish;~~
 - ~~(d) What the contractor shall furnish;~~
 - ~~(e) The method, schedule, and procedures for billing and payments; and~~
 - ~~(f) Other subject matters bearing on the conduct of the work.~~
- (4) The Procurement of Goods and Services shall be processed in the same manner.
- (5) Rules applying to service and printing contracts do not apply to local school administrative units or community colleges.

Authority G.S. 143-49; 143-52; 143-53; 143-53.1.

01 NCAC 05B .0314 SOLICITATION DOCUMENTS

- ~~(a) An alternate procurement method to the Invitation for Bids (IFB) is a Request for Proposals (RFP). When using a RFP, the rules of Subchapters 5A and 5B of this Chapter shall also apply. A RFP may also be handled as a two step process in accordance with Rule .0305 of this Section.~~
- ~~(b) For the purpose of Subchapters 5A and 5B of this Chapter, a solicitation document is defined as a written Request for Quotes (RFQ), RFP or an IFB.~~
- ~~(c) All agencies shall use the IFB or RFP document, whichever is applicable, when soliciting competition on contracts valued over twenty five thousand dollars (\$25,000). The IFB and RFP solicitation documents used by agencies shall require bidders or offerors to certify that each bid or offer is submitted competitively and without collusion.~~
- (a) In this Rule, the Division establishes standard Solicitation Documents for use in Contracts with the State. A Purchasing Agency shall use Division Solicitation Documents for purchases over the Small Purchase Benchmark.
- (b) Division Solicitation Documents shall act as templates for the Purchasing Agency, including provisions for:
 - (1) Purchasing Agency contract lead name, contact information, Solicitation identifying information, and commodity codes;
 - (2) Purpose and background information such as:

- (A) a description of the requested Goods or Services;
- (B) a description of the Purchasing Agency's needs; and
- (C) the intent of the solicitation;
- (3) Contract Term information, including any Renewal period;
- (4) General information regarding the Solicitation and bid process including:
 - (A) date and time when the bids will be opened;
 - (B) instruction as to how and when the Vendor is to respond to the Solicitation;
 - (C) the intended schedule of events and responsibilities of the Solicitation;
 - (D) instructions for submitting written questions to the Purchasing Agency;
 - (E) a list of content that should be included in the Vendor's response; and
 - (F) instructions on how to submit an alternate bid, if permitted;
- (5) The method of award and bid evaluation process including:
 - (A) the number, type, and structure of the intended award;
 - (B) description of the evaluation criteria; and
 - (C) notice of State's option to negotiate in accordance with 01 NCAC 05B .0503;
- (6) The terms of Vendor's performance, including:
 - (A) the terms of pricing, invoicing, and methods of delivery of the requested Goods or Services;
 - (B) the scope of work required by the Solicitation;
 - (C) Specifications for the required Good or Service;
 - (D) licensing requirements, as applicable;
 - (E) statement of warranty or maintenance option; and
 - (F) instructions for submitting samples, demonstrations, or descriptive literature;
- (7) Requirements and instructions for submitting references;
- (8) Notice of confidentiality and prohibited communications;
- (9) Contract administration requirements including:
 - (A) post award contract management meetings and periodic status reports schedule;
 - (B) review of Vendor performance based on measurable criteria and standards; and
 - (C) dispute resolution.
- (10) Terms and conditions approved by the Division pursuant to 01 NCAC 05B .0318.

(c) Provisions may be added or removed as required for certain Solicitations, such as those with unique, complex, or highly technical Specifications.

Authority G.S. 143-49; 143-52(a); 143-53.

01 NCAC 05B .0318 TERMS AND CONDITIONS

(a) In this Rule, the Division establishes standard terms and conditions for use in Contracts with the State. Contracts with the State shall conform to standard legal contract principles, as well as the applicable requirements of Constitutional provisions, statutes, and rules.

(b) In addition to any contract provisions specifically required by an applicable statute or rule, standard terms and conditions should contain provisions relating to:

- (1) The rights and responsibilities of the parties, including performance, payment terms, services terms, and condition and packaging of Goods;
- (2) Traditional contract terms, including:
 - (A) default;
 - (B) termination;
 - (C) remedies;
 - (D) governing law;
 - (E) insurance coverage requirements;
 - (F) assignment and delegation;
 - (G) confidentiality;
 - (H) indemnification;
 - (I) conflict of terms;
 - (J) order of precedence;
 - (K) warranties;
 - (L) integration;
 - (M) amendments;
 - (N) no waiver;
 - (O) licensing provisions; and
 - (P) force majeure;
- (3) Contract terms required in Contracts with the State such as protections for State data and property, availability of State funds, vendor advertising, access by the State Auditor to persons and records, electronic procurement and related fees, electronic records, applicability of taxes, sovereign immunity, compliance with non-discrimination statutes, and provisions relating to the utilization of federal funds; and
- (4) Other provisions to protect the State from legal and other risks, as necessitated by current legal, market, and business conditions.

(c) Specific terms and conditions may be added or removed for certain Contracts, such as those with unique, complex or highly technical Procurements.

Authority G.S. 143-49; 143-50.1; 143-52; 143-53; 143-60; 143-135.9.

01 NCAC 05B .0319 CONTRACT TERM

(a) Except as allowed in G.S. 143-53(d), the Agency's executive officer, or his or her designee, shall develop procedures consistent with this Chapter for approving Contract terms up to three years.

(b) Except as otherwise provided by statute, a Contract with a term that exceeds three years, including the Initial Contract Term and any Renewal and Extension, requires prior approval of the SPO.

(c) No Contract may contain a provision that provides for more than two one-year Renewals without prior approval of the SPO.

(d) SPO approval may be granted after consideration of the factors in Rule .0321 or when the SPO determines it is in the best interest of the State.

Authority G.S. 143-49; 143-52; 143-53; 143-135.9.

01 NCAC 05B .0320 CONTRACT EXTENSIONS

(a) Except as allowed in G.S. 143-53(d), any Extension beyond the term originally provided in the Contract that would result in a total Contract term that exceeds three years shall be by prior approval of the SPO, as provided in Rule .0319, after consideration of the factors set forth in Rule .0321 of this Section.

(b) When an Agency determines, through consideration of the factors listed in Rule .0321, that a Contract Extension is in the best interest of the State, the Agency shall publicly post a notification of the Extension on the Electronic Bid System. The notification shall state for any Contract Extension:

- (1) the original bid number;
- (2) the awarded Vendor;
- (3) the Contract start and end dates;
- (4) the original Contract amount;
- (5) the revised end date;
- (6) an explanation of any pricing or minor scope modification to be included; and
- (7) Agency and Contract Manager contact information.

(c) When in the best interest of the State, Vendors may be requested to extend the scheduled termination dates of Contracts. Extensions shall not result in a change in the prices stated in the original Contract unless agreed to by the Purchasing Agency in writing. Extensions that result in a total contract value that exceeds a Purchasing Agency's General Delegation or Bid Value Benchmark shall be submitted to the Division for approval.

Authority G.S. 143-49; 143-52; 143-53; 143-135.9.

01 NCAC 05B .0321 FACTORS FOR CONTRACT EXTENSION OR RENEWAL

(a) Before exercising a Renewal or seeking an Extension of a Contract as provided in this Section, the Agency shall consider and document in the official file, in accordance with 01 NCAC 05B .1903, the following factors:

- (1) market research that reveals any changes in the relevant industry;
- (2) the Vendor's past performance under the Contract;
- (3) existence of new risk factors not present at award that increase the risk of unsuccessful contract performance;

- (4) the presence and effectiveness of any performance-based contract provisions and metrics;
- (5) the impact of transitioning to a new Vendor on the Agency's ability to meet the requirements of its programs; and
- (6) any other requirements of State or federal statutes or rules.

(b) Subject to the limitations in Rule .0319 of this Section, an Agency's decision to renew or extend a Contract Term shall be approved by the Agency's head of Procurement.

(c) Contracts shall only be extended or renewed prior to the expiration of the last active Contract Term.

(d) An Agency shall obtain prior SPO approval to modify an existing Contract where the factors in Paragraph (a) of this Rule do not support a Renewal or Extension or where a Renewal or Extension would result in a total contract value that exceeds the Agency's General Delegation or Bid Value Benchmark.

Authority G.S. 143-49; 143-52; 143-53; 143-135.9.

SECTION .1600 - EXEMPTIONS, EMERGENCIES AND SPECIAL DELEGATIONS

01 NCAC 05B .1604 GENERAL DELEGATIONS

Authority G.S. 143-53.

TITLE 07 – DEPARTMENT OF NATURAL AND CULTURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Department of Natural and Cultural Resources intends to adopt the rules cited as 07 NCAC 13B .0507, .0905, amend the rules cited as 07 NCAC 13B .0204, .0602, .0701, .0702, .1201, .1204, readopt with substantive changes the rules cited as 07 NCAC 13B .0101, .0104, .0901, .1004, .1101, .1102, .1205, and repeal through readoption the rule cited as 07 NCAC 13B .1105.

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.ncdcr.gov/request-public-comments>

Proposed Effective Date: March 1, 2022

Public Hearing:

Date: December 7, 2021

Time: 10:00 a.m. - 11:00 a.m.

Location: This public hearing will be held by teleconference at (919) 814-6771 (no access code needed)

Reason for Proposed Action:

The following rules are being updated to reflect current operating procedures of the managing state agency: 07 NCAC 14B .0204; 07 NCAC 13B .0602; 07 NCAC 13B .0701; 07 NCAC 13B .0702; 07 NCAC 13B .1201; 07 NCAC 13B .1204.

The following rules are being readopted pursuant to the required rules review process and updated to reflect current Division of Park and Recreation operations: 07 NCAC 13B .0101; 07 NCAC 13B .0104; 07 NCAC 13B .0901; 07 NCAC 13B .1004; 07 NCAC 13B .1101; 07 NCAC 13B .1102; 07 NCAC 13B .1205.

The following rules are being repealed because they are no longer necessary because of proposed changes in the readopted rules: 07 NCAC 13B .1105.

The following rules are being proposed for adoption to provide additional guidance regarding developing operational issues: 07 NCAC 13B .0507; 07 NCAC 13B .0905.

Comments may be submitted to: Jonathan Avery, 1615 Mail Service Center, Raleigh, NC 27699-1615; phone (919) 814-6771; email jonathan.avery@ncdcr.gov

Comment period ends: January 14, 2022

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 13 - PARKS AND RECREATION AREA RULES

SUBCHAPTER 13B - PARKS AND RECREATION AREAS

SECTION .0100 - GENERAL PROVISIONS

07 NCAC 13B .0101 DEFINITIONS OF TERMS

Whenever used in this Subchapter:

- (1) "Bridle Trail" means any trail maintained for persons riding on horseback;

- (2) "Hiking Trail" means any trail maintained for pedestrians;
- (3) "Swimming Area" means any beach or water area designated by the Division as a swimming and bathing area;
- (4) ~~Unnecessary Stopping. Bringing~~ "Unnecessary Stopping" means a vehicle to a complete stop at a point other than in a parking place, or other than in conformity with traffic regulations and other than because of a defect in said vehicle.
- (5) "Public nudity" means a person's intentional failure to cover with a fully opaque covering the person's genitals, pubic area, anal area, or female breasts below a point from the top of the areola while in a public place.
- (6) "Multi-Use Trail" means any trail that is designated for more than one type of use;
- (7) "Mountain Bike Trail" or "Single-Track Trail" means any trail maintained for mountain biking;
- (8) "Division Property" or "State Parks" means any and all state park, recreation areas, natural areas, state lakes, or other property leased or managed by the Division, unless otherwise specified in this Subchapter; and
- (9) "E-bike" means a two- or three-wheeled cycle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.). Devices with electric motors of 750 watts (1 h.p.) or more of power and not included in the definition above shall be managed as motor vehicles. E-bike shall be further classified pursuant to the following definitions:
 - (a) "Class 1 e-bike" shall mean an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour.
 - (b) "Class 2 e-bike" shall mean an electric bicycle equipped with a motor that may be used exclusively to propel the bicycle, even when the rider is not pedaling, and that is not capable of providing assistance when the bicycle reaches the speed of 20 miles per hour.
 - (c) "Class 3 e-bike" shall mean an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 28 miles per hour.

Authority G.S. 143B-135.16.

07 NCAC 13B .0104 PERMITS

- (a) Applications for permits may be made by contacting individual Park and Recreation Area offices or Chief Deputy Director of Operations, North Carolina Division of Parks and

Recreation, 1615 Mail Service Center, Raleigh NC 27699-1615. Violation of the terms and conditions of a permit issued in accordance with this Section is prohibited and shall result in revocation of the permit by the Park Superintendent or his or her designee.

(b) ~~Activities or~~ The following uses which are eligible for Division property shall require a Special Use Permit ~~are as follows; authorized by the Division; metal detector use; rock or cliff climbing; climbing, rappelling and bouldering; licensed vehicle operations on the unpaved areas of Fort Fisher State Recreation Area; overnight parking; athletic contests; horse and~~ bridle trails; use of the Bullhead—Special Catch and Release Stream at Stone Mountain State Park; camping; aviation activities using unmanned aerial vehicles (UAV) or drones; pyrotechnics; and other activities or uses requested by park visitors. not otherwise expressly allowed. Special Use Permits may be obtained at the park level from the Park Superintendent or ~~his or her~~ designee on the day of the activity. An application for a Special Use Permit shall include the name, address, and phone number of the applicant; the name of the organization (if any); the name, address, and phone number of a contact person; the date, time, duration, nature, and location of the proposed activity or use; the estimated number of persons expected to participate; and the equipment and facilities to be used. A Special Use Permit for rock climbing, rappelling, and bouldering shall only be used for individual climbers. A Group Climbing Permit, as outlined in Paragraph (f) of this Rule, shall be required for all organized group rock climbing, rappelling, and bouldering.

(c) ~~The Park Superintendent or his or her designee shall issue a Special Use Permit on proper application unless:~~

- (1) ~~A prior application for a permit for the same activity or use has been made and had been or will be granted; and the activities or uses authorized by that permit do not reasonably allow multiple occupancy or use of that particular location;~~
- (2) ~~It reasonably appears that the activity or use will threaten the health, safety and welfare of persons using the Park;~~
- (3) ~~The activity or use is of such a nature or duration that it cannot be reasonably conducted or performed in the particular location applied for, considering such things as safety of the applicant or other Park visitors; damage to Park resources or facilities; impairment of the atmosphere of peace and tranquility in specially designated protected natural or historic areas; interference with interpretative programs, visitor services or other program activities, or the administrative activities of the Park; or impairment of public use facilities or services of Park concessionaires or contractors;~~
- (4) ~~The activity or use would constitute a violation of applicable law or regulation; or~~
- (5) ~~The activity would create conditions that are not reasonably consistent with the protection and use of the Park for the purposes for which it is operated, including limitations on the time, location, number of participants, use and~~

~~facilities, number and types of equipment used in the activity.~~

(d)(c) ~~Activities or uses which are eligible for~~ The following activities occurring on Division property shall require a Special Activity Permit are as follows; authorized by the Division: natural or cultural research activity; boating access area use; sports or games; athletic contests; events; aviation activities using any aviation apparatus other than unmanned aerial vehicles (UAV) or drones; pack animals and goats; commercial enterprises; commercial photography; advertising; public assemblies and demonstrations; entry to restricted areas and other activities or uses requested by park visitors. not otherwise expressly allowed. Notwithstanding the requirements of this Rule, ~~public assemblies and meetings are governed by 07 NCAC 13B .1105, and uses of intoxicating liquors and controlled substances or beverages are governed by 07 NCAC 13B .1003.~~

(e)(d) ~~An application for a Special Activity Permit shall be made at least 14 days in advance of the activity or use; shall set for~~ include the name, address address, and phone number of the applicant; the name of the organization (if any); the name, address address, and phone number of a contact person; the date, time, duration, nature nature, and location of the proposed activity or use; the estimated number of persons expected to participate; and the equipment and facilities to be used. Special Activity Permit applications will be approved or denied within 10 business days.

(e) ~~A Research Activity Permit authorized by the Division shall be required for any academic, historic, scientific, or other research, study or project occurring on Division property, including studies which involve the collection, removal, or disturbance of any natural or cultural resource of any state park unit and projects that require placing monitoring equipment on any Division property. An application for a Research Activity Permit shall set forth the name, address, e-mail address, phone number, and resume/curriculum vitae of the principal investigator and project director; the name of the organization (if any); the name, address, and phone number of a contact person; the date, time, duration, nature, and location(s) of the proposed activity or use; the title and description of the proposed activities to be performed; the estimated number of persons expected to participate; the equipment and facilities requested to be used; and copies of any permits or licenses required by federal or state law.~~

(f) ~~A Group Climbing Permit authorized by the Division shall be required for all rock climbing, rappelling, or bouldering by organized private, commercial, governmental, or non-profit groups occurring on Division property. An application for a Group Climbing Permit shall set forth the name, address, e-mail address, and phone number of the organizer; the name of the organization (if any); the date, time, duration, nature, and location(s) of the proposed activity; the estimated number of persons expected to participate; proof of general liability insurance; and the equipment and facilities requested to be used.~~

(f)(g) ~~The Park Superintendent or his or her~~ their designee shall issue a ~~Special Use Permit, Special Activity Permit Permit, or Group Climbing Permit; and the Division's Director or designee shall issue a Research Activity Permit, on receipt of a completed application unless:~~

- (1) ~~A prior application for a permit for the same activity or use has been made and had been or will be granted; and the activities or uses~~

authorized by that permit do not reasonably allow multiple occupancy of that particular location;

- (2) It reasonably appears that the activity or use will threaten the health, ~~safety~~ safety, and welfare of persons using the Park;
- (3) The activity or use is of such a nature or duration that it cannot be reasonably conducted or performed in the particular location applied for, considering such things as safety of the applicant or other Park visitors; damage to Park resources or facilities; impairment of the atmosphere of peace and tranquility in specially protected natural or historic areas; interference with interpretative programs, visitor services or other program activities, or the administrative activities of the Park; or impairment of public use facilities or services of Park concessionaires or contractors; ~~or~~
- (4) The activity or use would constitute a violation of applicable law or ~~regulation~~ regulation; or
- (5) The activity would create conditions that are not consistent with or are detrimental to the protection and use of the Park for the purposes for which it is operated.

~~(g)~~(h) The permit may contain such additional conditions or restrictions as are ~~reasonably~~ consistent with protection and use of the Park for the purposes for which it is operated, including limitations on the time, location, number of participants, use and facilities, and number and types of equipment used. Locations requested for permitted activities which may not be appropriate include archaeological and interpretive program areas, historic structures; boat ramps; trails; sensitive or fragile natural areas; campgrounds; designated swimming beaches; scenic overlooks; and the habitats of threatened or endangered species.

~~(h)~~(i) If a permit is denied, the applicant shall be so informed ~~in writing~~, with the reason(s) for the denial set forth.

~~(i)~~(j) Participants in activities or uses covered under this Rule ~~shall otherwise shall:~~

- (1) be subject to Park rules or directives, including adherence to locations specified for their activity or use while partaking in such event or ~~activity~~ activity;
- (2) be subject to usual fees for parking, admission, or use;
- (3) not place printed material on Park signs, infrastructure, natural resources, or vehicles;
- (5) not obstruct or impede pedestrians or vehicles;
- (6) not harass Park visitors with physical contact or persistent demands; and
- (7) not threaten the health, safety, and welfare of persons using the Park.

(k) Violation of the terms and conditions of a permit issued in accordance with this Section is prohibited and shall result in revocation of the permit by the Park Superintendent or designee.

Authority G.S. 143B-135.16.

SECTION .0200 - PRESERVATION OF THE PARK

07 NCAC 13B .0204 ROCK ~~OR CLIFF~~ CLIMBING AND RAPPELLING

(a) Rock climbing, bouldering, ~~cliff climbing~~ or rappelling is prohibited except in designated areas. A ~~climbing, rappelling and bouldering permit~~ Special Use Permit, as provided by Rule .0104 of this Subchapter, is ~~required~~ Application required for a all climbing, rappelling rappelling, and bouldering that is not part of an organized group as described in Paragraph (d) of this Rule. permit shall be made as provided by Rule .0104 of this Subchapter.

(b) The installation of permanent or fixed rock climbing anchors, such as pitons and expansion bolts, is prohibited in any climbing area unless the Park Superintendent has determined the installation may be made safely and without affecting park resources or facilities.

(c) The superintendent may designate a daily capacity limit for specific climbing routes and areas based on natural resource protection and public safety.

(d) Organized private, ~~commercial~~ commercial, governmental, or non-profit groups shall obtain a ~~special activity permit~~ Group Climbing Permit prior to the activity. Application for a ~~special activity permit~~ Group Climbing Permit shall be made as provided by Rule .0104 and .1101 of this Subchapter.

(e) Violation of the terms and conditions of a permit issued in accordance with this Section is prohibited and shall result in the revocation of the ~~climbing, rappelling and bouldering~~ permit.

Authority G.S. 143B-135.16.

SECTION .0500 - TRAFFIC AND PARKING

07 NCAC 13B .0507 BICYCLES

(a) Bicycles, including Class 1 and 2 e-bikes (as defined in Rule .0101 of this Subchapter), may be used on park roads, paved or hardened trails, Multi-Use Trails, and Mountain Bike Trail or Single-Track Trails, if designated for bicycle use. Class 3 e-bikes shall not be considered bicycles and shall be governed by Rule .0501 of this Section.

(b) Park Superintendents or their designees may limit, restrict, or impose conditions on bicycle use or close any park road, trail, or portion thereof to bicycle use based on considerations for public health and safety, natural and cultural resource protection, and other management activities and objectives.

(c) E-bike motorized pedal assistance must be accompanied by manual pedaling from the operator when using any trails designated for bicycle use. Complete motorized propulsion of the E-bike without manual pedaling may only be used on park roads and other locations where use of motor vehicles by the public is allowed.

Authority G.S. 143B-135.16.

SECTION .0600 - BOATING AND CAMPING

07 NCAC 13B .0602 CAMPING

(a) A person shall not camp ~~in a state park or recreation area on Division property~~ except:

- (1) in a designated camping area; and
- (2) ~~under with~~ a valid camping permit, reservation.

~~(b) All camping permits shall be issued at the desired state park or recreation area by an authorized Division representative no earlier than the first day of the desired period of continuous and actual occupancy.~~

~~(c)(b)~~ Reservations for camping permits shall only be accepted in accordance with the provisions of 07 NCAC 13B .1205, Reservations.

~~(d)(c)~~ Payment of the camping permit fee, in full, is required at the time the camping permit is issued or when the reservation is made.

~~(e)(d)~~ The maximum period of consecutive overnight camping in on any state park or recreation area Division property is 14 days within any 30 day period beginning with the first night of stay. Multiple camping areas within on an individual park or recreation area Division property are considered as a single camping facility for determining the maximum period of overnight camping within any 30 day period. The maximum consecutive nights shall be extended by the Park Superintendent, upon written request with reasons supporting the extension, if the Park Superintendent determines equitable public access, visitor services and staffing levels will not be affected.

~~(f)(e)~~ No camper shall leave a set up camp unattended for more than 12 hours. Any set up camp left unattended for more than 12 hours is subject to forfeiture of the campsite. Camping equipment, tents, trailers, recreation vehicles and articles on a campsite left unattended for more than 12 hours are subject to removal at the owner's expense and use of the campsite. expense.

~~(g)(f)~~ At least one adult, 18 or older, shall accompany each camper group.

~~(h)(g)~~ No campfires shall be left unattended.

~~(i)(h)~~ Tents shall only be used in areas delineated for such use.

~~(j)(i)~~ Connecting to a utility system without payment of required fees is prohibited.

~~(k)(j)~~ A Division representative may designate portions of a park Division property where food products, garbage, cosmetics, cleaning supplies supplies, and equipment used to cook or store food products are required to be kept in a Division supplied food locker, a vehicle, recreational vehicle vehicle, or suspended at least 10 feet above the ground and four feet horizontally from a post, tree trunk, or other object. Food, garbage garbage, and cooking equipment shall not be stored except as specified in these designated areas. This Paragraph does not apply to food products, garbage garbage, and cooking equipment being transported, consumed consumed, or being prepared for consumption.

~~(l)(k)~~ Designated camping areas shall be for use by registered campers with a camping permit reservation for that site and their guests only.

~~(m)(l)~~ Violation of the terms and conditions of a camping permit reservation issued in accordance with this section Section is prohibited and shall result in the suspension or revocation of the permit. reservation.

~~(n)~~ Group and family campsite checkout time is 3:00 PM on the day of departure.

Authority G.S. 143B-135.16.

SECTION .0700 - SPORTS AND GAMES

07 NCAC 13B .0701 SPORTS AND GAMES: WHEN PERMITTED

(a) Athletic contests, sports sports, and games are allowed in designated areas or by special activity permit, as provided by Rule .0104 of this Subchapter.

(b) The use of skate boards, roller blades, roller skates, scooters, other electronically powered devices, and similar devices transportation methods are prohibited on park roads, sidewalks, and pedestrian areas and on park infrastructure to include walls, railings railings, and culverts. culverts, except in areas where designated for such use.

Authority G.S. 143B-135.16.

07 NCAC 13B .0702 HORSES

(a) A person shall not use, ride, or drive a horse except along a bridle trail or other designated park area. Horses shall be prohibited from camping areas, swimming areas, cabin areas, picnic areas areas, and other day-use areas. Horses are only permitted in camping areas that are designated for such use.

(b) A person shall not load or unload a horse in a state park area on Division property or along a bridle trail except in designated park areas for this purpose.

(c) Special use permits will be required for use of bridle trails in certain parks where permits will help with the management and maintenance of such trails.

(d) Horses shall not be unattended at any time on any Division property unless the horse is secured in a horse trailer, in a stall, or otherwise securely hitched so as to prevent the animal to wander.

(e) Any horse causing a nuisance on any Division property shall be removed by the owner from the property upon the request by a Division official.

(f) Between the hours of 9 p.m. and 7 a.m., all horses must be secured in a horse trailer, in a stall, or otherwise securely hitched so as to prevent the animal to wander.

(g) Paragraphs (a), (b), (c) and (f) of this Rule shall not apply to service animals that meet the criteria specified in the Americans with Disabilities Act (42 U.S.C. 12101 et seq) or G.S. 168-4.2. This Rule shall not apply to animals used by the Division, its agents, or contractors for operations or educational programming.

Authority G.S. 143B-135.16.

SECTION .0900 - FIREARMS: EXPLOSIVES: FIRES: ETC.

07 NCAC 13B .0901 FIREARMS: WEAPONS: EXPLOSIVES

~~(a) Except as provided in Paragraph (b) or G.S. 14-269, no No person except authorized park employees, their agents, or contractors, the following shall carry or possess firearms, air guns, air soft guns, paint ball guns, bows and arrows, sling shots, or lethal missiles of any kind within on any park. Division property:~~

- (1) Authorized park employees, their agents or contractors;
- (2) Law enforcement officials with jurisdictional authority, including park rangers;
- (3) Family members residing with Division employees in a residence within a park;

- (4) Individuals actively participating in Division-led archery programming, only in respect to the bows and arrows supplied to them by Division staff;
- (5) Individuals with a valid concealed handgun permit issued by one of the United States that adheres to the requirements of G.S. 14-415.11; and
- (6) Other persons as defined in G.S. 14-269(b) and G.S. 14-415.27.

Subparagraphs (a)(1), (3), and (5) of this Rule shall not apply on property owned by the U.S. Army Corps of Engineers and leased by the Division including Falls Lake State Recreation Area, Jordan Lake State Recreation Area, and Kerr Lake State Recreation Area.

(b) A person with a valid concealed handgun permit issued by one of the United States that adheres to the requirements set forth in G.S. 14-415.11 may carry a concealed handgun on the grounds and waters of a state park. Persons acting under this exception should take notice that certain Division managed properties are owned by the U.S. Army Corps of Engineers and subject to separate regulations governing firearms. Accordingly, concealed handguns are prohibited at Falls Lake, Jordan Lake and Kerr Lake State Recreation Areas.

(c) The possession or use of cap pistols is prohibited. The possession or use of dynamite or other powerful explosives as defined in G.S. 14-284.1 is prohibited.

(d) The possession or use of pyrotechnics is prohibited except for pyrotechnics exhibited, used, or discharged in connection with an authorized public exhibition; authorized in writing by the board of commissioners of the county in which the pyrotechnics are to be exhibited, used or discharged; supervised by experts in the field of pyrotechnics; and approved by the Director of the Division of Parks and Recreation, or designee, as part of a special use permit in accordance with Rule .0104 of this Subchapter. Persons wishing to possess or use pyrotechnics in connection with a public exhibition, such as a public celebration, shall file an application for a special use permit with the park superintendent. All applicants shall enter an indemnification agreement with the Department and obtain general liability and property damage insurance, with limits as determined by the Secretary or designee, which are reasonably necessary to cover possible liability for damage to property and bodily injury or damage to persons which may result from, or be caused by, the public exhibition of pyrotechnics or any act(s) or omission(s) on the part of the applicant(s) or the applicant's agents, servants, employees, or subcontractors presenting the public exhibition. The Division Director or designee may deny an application as deemed necessary to protect the public health, safety, and welfare, or to protect the natural resources of the park unit.

Authority G.S. 14-269; 14-410; 14-415; 14-415.11; 14-415.24; 143-8; 14-215.27; 143B-135.16; 143B-135.43.

07 NCAC 13B .0905 SMOKING

Smoking is prohibited in all buildings on Division property. Smoking is prohibited in outdoor areas of Division property except in parking lots, reserved campsites, and where smoking is designated. The Division may forbid smoking in any part of any

Division property when the risk of fire hazard makes such action advisable.

Authority G.S. 143B-135.16.

SECTION .1000 - DISORDERLY CONDUCT: PUBLIC NUISANCE: ETC.

07 NCAC 13B .1004 ANIMALS AT LARGE

(a) A person shall not cause or permit any animal owned by him, them, in his their custody, or under his their control, except an animal restrained by a leash or other restraint not exceeding six feet in length, to enter any park area. Use of an electronic leash or collar is not permitted in lieu of a physical leash or restraint. Each animal found at large may be seized and disposed of as provided by local law covering disposal of stray animals on public property.

(b) Animals, with the exception of service animals, Animals shall not be allowed in swimming areas, bathhouses, restaurants, visitor centers, park offices, community buildings, buildings, or cabin areas unless an area or facility is designated as pet friendly.

(c) Animals shall not be unattended at any time within any park area.

(d) Between 9:00 p.m. and 7:00 a.m., animals shall be confined to owner's enclosed vehicle or tent, tent, except horses, as set forth in Rule .0702 of this Subchapter.

(e) Any animal causing a nuisance within a park area shall be removed by the owner from the park area upon the request by a division Division official.

(f) Pack animals and goats are not allowed in any park except by Special Activity Permit, as provided by Rule .0104 of this Subchapter.

(g) Paragraphs (a), (b), and (d) of this Rule shall not apply to service animals that meet the criteria specified in the Americans with Disabilities Act (42 U.S.C. 12101 et seq) or G.S. 168-4.2. This Rule shall not apply to animals owned by Division staff who reside on Division property or to animals used by the Division for educational programming. Horses on Division property shall be governed by Rule .0702 of this Subchapter.

Authority G.S. 143B-135.16.

SECTION .1100 - COMMERCIAL ENTERPRISES: ADVERTISING: MEETINGS: EXHIBITIONS: ETC.

07 NCAC 13B .1101 COMMERCIAL ENTERPRISES

(a) Only park employees, contractors contractors, or their agents may engage in business or conduct commercial activity in a park, unless authorized by a special activity permit for a specific event, as provided by Rule .0104 of this Subchapter.

(b) Craftsman are not allowed to display their crafts in a park except when authorized for a special event under a special activity permit. Sales shall not be made except in conjunction with a park sponsored special event under permit as provided by Rule .0104 of this Subchapter.

(c) Applications for permits shall be made as provided by Rule .0104 of this Subchapter.

Authority G.S. 143B-135.16.

**07 NCAC 13B .1102 COMMERCIAL
PHOTOGRAPHY PHOTOGRAPHY, FILMING AND
RECORDING**

A person shall not ~~take photographs or moving pictures~~ photograph, film, or make other recordings within any park for commercial purposes unless ~~he~~ the person has a Special Activity permit. Permit. Applications for permits may be made as provided by Rule .0104 of this Subchapter.

Authority G.S. 143B-135.16.

**07 NCAC 13B .1105 PUBLIC ASSEMBLIES AND
MEETINGS; SPECIAL ACTIVITY PERMIT**

Authority G.S. 143B-135.16.

SECTION .1200 - MISCELLANEOUS

**07 NCAC 13B .1201 CLOSING AND OPENING
HOURS; RESTRICTED AREAS**

(a) No person is allowed ~~within the park~~ on any Division property between posted closing and opening hours except under a Special Activity ~~Permit~~, Permit or camping reservation, as provided by Rule .0104 and .0602, respectively, of this Subchapter.

~~(b) General hours of operation are as follows:~~

Nov., Dec., Jan., & Feb. 8:00 a.m. – 6:00 p.m.

March, April, May, Sept., & Oct. 8:00 a.m. – 8:00 p.m.

June, July, & August 8:00 a.m. – 9:00 p.m.

Note: The hours of operation for natural areas and undeveloped parks may vary from the listed hours in this Rule and if the hours vary, are posted at such natural areas and undeveloped parks.

~~(c)~~(b) The Division may prohibit or restrict public activity within designated environmentally sensitive areas, areas exceeding capacity levels, construction areas, storm damaged ~~areas~~ areas, and other similar locations for natural resource protection and public safety.

Authority G.S. 143B-135.16.

07 NCAC 13B .1204 AVIATION

(a) Except under authorization of a Special Activity or Special Use Permit (depending on the apparatus type) in areas designated for aviation activities, a A person shall not voluntarily bring, ~~land~~ land, or cause to descend or alight, ~~ascend~~ ascend, or take off within or upon any ~~park area~~, Division property, any airplane, flying machine, unmanned aerial vehicle (UAV) or drones, balloon, parachute, glider, hang glider, or other apparatus for aviation. ~~Voluntarily in this connection~~ In this Rule, "voluntarily" shall mean anything other than a forced landing.

~~(b) In park areas where aviation activities are part of the planned park activities, a special use permit will be required.~~ Requests for permits may be made in the manner prescribed by Rule .0104 of this Subchapter.

Authority G.S. 143B-135.16.

**07 NCAC 13B .1205 RESERVATION PERIODS
RESERVATIONS**

(a) Reservations for ~~camping permits, camping~~, cabins, shelters, community ~~buildings~~ buildings, and other reservable facilities ~~will~~ shall be made using the Division's central reservation system, pursuant to any contract terms or conditions as set forth in the system at the time of reservation. ~~Permits shall be issued upon arrival at the park from a Division representative.~~ Reservations are non-transferable and the individual who made the reservation must be present during the reservation period. Reservation confirmation or issued permits must be displayed or produced upon request by Division staff.

(b) Reservations for park facilities ~~in state parks will~~ on Division property shall be accepted up to a maximum of 11 months in advance of the requested arrival ~~date with a minimum of 48 hours before arrival.~~ date.

(c) Reservations for group camping ~~permits~~ are required prior to any group camping ~~in a state park or recreation area.~~ on any Division property.

(d) Campsites may be reserved for a maximum of 14 ~~consecutive~~ nights at any one Division property within any 30 day period beginning with the first night of stay or as provided by 07 NCAC 13B .0602.

(e) Payment for a ~~Reservation permit~~ reservation must be made at the time the reservation is made.

~~(f) A refund of a camping permit fee, resulting from the cancellation of a reservation for a camping permit, shall be made using the Division's central reservation system. Any changes or cancellations made prior to the scheduled arrival date shall result in a ten dollar (\$10.00) charge. Cancellations made on the scheduled arrival date shall be charged one night's camping for each reservation as well as the ten dollar (\$10.00) service charge. No refunds shall be issued for no shows, cancellations, or early departures after the date of arrival. Refunds shall be made using the same method of the original transaction, (e.g. credit shall refund credit). This applies to all methods of payment, including credit card, gift card, check and cash payment.~~

Authority G.S. 143B-135.16.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the HHS - Division of Health Benefits intends to amend the rule cited as 10A NCAC 23A .0102.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://medicaid.ncdhhs.gov/meetings-notice/rules-actions>

Proposed Effective Date: March 1, 2022

Public Hearing:

Date: December 1, 2021

Time: 11:30 a.m.

Location: Join by dialing (877) 336-1839, entering access code 3956100

Reason for Proposed Action: *The definition of "Caretaker Relative" is being removed from rule 10A NCAC 23A .0102. This term is no longer used in any other rule and conflicts with the definition in the North Carolina Medicaid State Plan.*

Comments may be submitted to: *Shazia A. Keller, NC DHHS Division of Health Benefits, 2501 Mail Service Center, Raleigh, NC 27699-2501; phone (919) 218-1372; email MedicaidRulesComments@dhhs.nc.gov*

Comment period ends: *January 14, 2022*

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

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

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

**CHAPTER 23 - MEDICAL ASSISTANCE
ADMINISTRATION**

**SUBCHAPTER 23A - GENERAL PROGRAM
ADMINISTRATION**

SECTION .0100 - GENERAL

10A NCAC 23A .0102 DEFINITIONS

For purposes of this Chapter, the following definitions apply:

- (1) "M-AA" means a program of medical assistance to persons 65 years of age and older, and also means the assistance itself.
- (2) "M-AB" means a program of medical assistance to blind persons, and also means the assistance itself.
- (3) "M-AD" means a program of medical assistance to disabled persons less than 65 years of age, and also means the assistance itself.
- (4) "M-AF" means a program of medical assistance for families and children, and also means the assistance itself.

- (5) "M-IC" means a program of medical assistance for infants and children, and also means the assistance itself.
- (6) "M-PW" means a program of medical assistance for pregnant women, and also means the assistance itself.
- (7) "M-QB" means a program of medical assistance for qualified Medicare beneficiaries described at 42 U.S.C. 1396d(p), and also means the assistance itself.
- (8) "AFDC" means a program of assistance for families with dependent children, and also means the assistance itself.
- (9) "AFDC-MA" has the same meaning as "M-AF".
- (10) "Adequate Notice" means a written notice to inform the client of intended action. The client must receive this notice no later than the effective date of the action.
- (11) "Advance Notice" means a written notice to inform the client at least 10 work days prior to terminating assistance, beginning or increasing a deductible, or beginning or increasing patient monthly liability.
- (12) "Agency" means the Division of Health Benefits and the county departments of social services, unless separately identified.
- (13) "Appeal" means an oral or written request from a client for a hearing to review the action of a county department of social services or the disability decision when the client is dissatisfied with the decision in his case.
- (14) "Application" means a written request for assistance on a form prescribed by the state that is signed under penalty of perjury by a client or an individual authorized by the client to be his representative for establishing his eligibility for medical assistance.
- (15) "Authorization Period" means the period for which all conditions of eligibility have been established and for which the client is authorized to receive a Medicaid card and benefits.
- (16) "Award Letter" means a statement to an individual from a governmental or private agency indicating benefits for which he is eligible.
- (17) "BENDEX" means Beneficiary Data Exchange with the Social Security Administration for social security status and amount of benefits.
- (18) "Budget Unit" means all persons whose income and needs are considered in the determination of eligibility for Medicaid.
- (19) ~~"Caretaker Relative" means a parent or a person in one of the following groups with whom a child lives:~~
 - (a) ~~any blood relative, including those of half blood, and including first cousins, nephews, or nieces, and persons of~~

- ~~preceding generations as denoted by prefixes of grand, great, or great great;~~
- (b) ~~stepfather, stepmother, stepbrother, and stepsister;~~
- (c) ~~persons who legally adopt a child, their parents as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;~~
- (d) ~~spouses of any persons named in the groups in Subitem (19)(a) – (c) of this Rule even after the marriage is terminated by death or divorce.~~
- (19)(20) "Certification Period" means the months for which eligibility is being established.
- (20)(21) "Client" means any applicant for or recipient of Medicaid, or someone who makes inquiries, is interviewed, or has been otherwise served or someone acting for the client.
- (21)(22) "Client Information" or "Client Record" means any information, including information stored in computer data banks or computer files relating to a client that was received in connection with the performance of any function of the agency.
- (22)(23) "Collateral" means a person or agency who can substantiate or verify information necessary to establish eligibility.
- (23)(24) "Contiguous Property" means real property with boundaries joining the homesite of the client.
- (24)(25) "Court Order" means any written order from a judge or a written document from a judicial official that explicitly directs the release of client information.
- (25)(26) "Deductible" means the amount that the client or budget unit member must personally spend or incur for medical expenses before he can be authorized to receive a Medicaid card and services that may be billed to the Medicaid program.
- (26)(27) "Delegated Representative" means a staff member designated by the director to carry out the responsibilities established by the rules in this Subchapter. Designation is implied when the assigned duties of an employee require access to confidential information.
- (27)(28) "Deprivation" means the lack of support or care from one or both parents (including adoptive parents) of a dependent child, as a result of the absence, incapacity, unemployment, or death of either parent.
- (28)(29) "Director" means the head of the Division of Health Benefits or the county department of social services.
- (29)(30) "Disregard of Earned Income" means the procedure for exempting portions of earned income as a resource when determining the amount of payment.
- (30)(31) "Documentary Evidence" means information or records that can be relied on to prove the client's statements of fact.
- (31)(32) "Effective Date" means the date on which an action will take effect.
- (32)(33) "Equity" means the tax value of a resource less the amount of debts, liens, or other encumbrances.
- (33)(34) "Excluded Income" means money received by a member of the budget unit that is not counted in determining eligibility for assistance.
- (34)(35) "Foster Care Resource" means any private home or facility licensed to provide full time care to children.
- (35)(36) "Fraud" means an act in which a client makes false statements or withholds information willfully and knowingly with the intent to deceive, or both, and as a result obtains assistance for which he is not eligible.
- (36)(37) "Full-Time Student" means a student so designated by the school in which he is enrolled.
- (37)(38) "Good Cause" includes death, incapacity, hospitalization of the applicant/recipient (a/r), failure to receive written notice, or failure of a representative acting on the a/r's behalf to meet required time frames.
- (38)(39) "Grandfathered Status" means Medicaid eligibility based on the individual's status as a blind or disabled client or as an essential spouse of aged, blind, or disabled client in December, 1973.
- (39)(40) "Greater Weight of Evidence" means evidence of such quality as to persuade an ordinary and prudent person of the truth or falsity of a statement.
- (40)(41) "Guardian" means an individual, corporation, or disinterested public agent appointed by the clerk of superior court to replace an individual's authority to make decisions about his person, family, or property when the individual does not have adequate capacity to make such decisions and has been adjudicated incompetent. A guardian may be a guardian of the person, a guardian of the estate, or a general guardian which is guardian of both the person and the estate.
- (41)(42) "HCT (Healthy Children and Teens)" means a program which provides health screenings and treatment for clients from birth through age 20.
- (42)(43) "Incapacity" has the same meaning as in the North Carolina State plan approved under Part A of Title IV of the Social Security Act as in effect on July 16, 1996, as is required by 42 U.S.C. 1396u-1.
- (43)(44) "Income" means money that is available to members of the budget unit for their needs.

- ~~(44)~~~~(45)~~ "Income, Earned" means money received as a result of employment.
- ~~(45)~~~~(46)~~ "Income, Gross" means total income before allowable deductions.
- ~~(46)~~~~(47)~~ "Income, Net" means income after all allowable deductions.
- ~~(47)~~~~(48)~~ "Income, Unearned" means money received from any source other than employment.
- ~~(48)~~~~(49)~~ "Incompetent Adult" means an adult who lacks sufficient capacity to manage his own affairs or to make or communicate decisions concerning his person, family, or property whether such lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, senility, disease, injury, or similar cause or condition.
- ~~(49)~~~~(50)~~ "Inmate of a Public Institution" means a person who lives in an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control and that provides treatment or services, food and shelter.
- ~~(50)~~~~(51)~~ "Institutionalized Spouse" means an individual who:
- (a) is in a medical institution or nursing facility or who is described under 42 U.S.C. 1396a (a)(10)(A)(ii)(VI); and
 - (b) is married to an individual who is not in a medical institution or nursing facility; but does not include any such individual who is not likely to meet the requirements of ~~Subitem (51)(a)~~ Subitem (a) of this Item for at least 30 consecutive days.
- ~~(51)~~~~(52)~~ "Life Estate Interest" means the right to use property and receive income from the property for the remainder of one's life.
- ~~(52)~~~~(53)~~ "Long-Term Care" means care in:
- (a) general or specialty hospital in excess of 30 continuous days;
 - (b) a state mental hospital;
 - (c) a skilled nursing facility; or
 - ~~(d)~~~~(e)~~ an intermediate care facility.
- ~~(53)~~~~(54)~~ "Patient Monthly Liability" means the amount of a long-term care patient's income that must be paid towards his cost of care.
- ~~(54)~~~~(55)~~ "Remainder Interest" means ownership interest in property that will be inherited in full or jointly with other remainder interest holders at a life interest holder's death.
- ~~(55)~~~~(56)~~ "Representative" means a person who is authorized by the client to act on behalf of the client.
- ~~(56)~~~~(57)~~ "Reserve" means assets owned by members of the budget unit and that have a market value.
- ~~(57)~~~~(58)~~ "Residence" means the county where a client lives with intent to remain for an indefinite time as governed by 10A NCAC 23E .0103. Also, an individual under age 21 has the residence of the

person with whom he resides unless he is in the custody of a social services agency, in which case he is a resident of the county of the custodial agency.

- ~~(58)~~~~(59)~~ "Revocable Trust" means funds held in trust that are available for the client's use.
- ~~(59)~~~~(60)~~ "RSDI (Retirement, Survivors, Disability Insurance)" means social security benefits.
- ~~(60)~~~~(61)~~ "SDX" means State Data Exchange with the Social Security Administration for the purpose of providing a listing of all persons receiving supplemental security income, their current payment status and amount of SSI and other sources of income.
- ~~(61)~~~~(62)~~ "SSI" means Supplemental Security Income, a federal assistance payment for aged, blind and disabled persons administered by the Social Security Administration.
- ~~(62)~~~~(63)~~ "Stepparent" means that a person is not the parent of a child but the person is married to the parent of the child who wants to receive Medicaid.
- ~~(63)~~~~(64)~~ "Timely Notice" means the same as "Advance Notice".
- ~~(64)~~~~(65)~~ "Time Standard" means the requirement to process an application within 45 or 90 days from the date of application in accordance with 42 C.F.R. 435.911.
- ~~(65)~~~~(66)~~ "Verification" means the confirmation of facts and information used in determining eligibility.

Authority G.S. 108A-25(b); 108A-54; P.L. 99-509; P.L. 100-360; P.L. 100-485; 42 C.F.R. 431.211; 42 C.F.R. 431.214; Alexander v. Bruton, U.S.D.C., File No. C-C-74-183-M, Consent Order dismissed effective February 1, 2002.

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 .0405.

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: March 1, 2022

Public Hearing:

Date: December 14, 2021

Time: 9:00 a.m.

Location: 1700 Tryon Park Drive, Raleigh, NC 27610

Reason for Proposed Action: *12 NCAC 10B .0405: The Report of Separation form is submitted by the separating agency to the Sheriffs' Standards Division. In instances where there is nothing to indicate the agency notified the officer of the separation, this rule currently requires the Sheriffs' Standards Division staff to*

forward a copy of the form to the separated officer. This amendment would remove this notification responsibility from the Division.

Comments may be submitted to: Diane Konopka, 1700 Tryon Park Drive, Raleigh, NC 27610; email dkonopka@ncdoj.gov

Comment period ends: January 14, 2022

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

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

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

CHAPTER 10 - SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

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

SECTION .0400 - CERTIFICATION OF JUSTICE OFFICERS

12 NCAC 10B .0405 REPORT OF SEPARATION

- (a) An agency separating a person from employment or appointment as a justice officer shall, not later than 10 days after separation, forward to the Division a completed Report of Separation (F-5).
- (b) Although not presently required by these Rules, it is recommended by the Commission that the employing agency cancel the oath of office of a justice officer who has separated.
- (c) The employing agency will notify the justice officer of the effective date of separation as reported to the Division, and provide documentation of such notification at the time Report of Separation (Form F-5) (Form F-5 or Form F-5T) is submitted to the Division. ~~Where no such documentation is provided, the Division will mail a copy of the Report of Separation (Form F-5) to the justice officer's last known address.~~

Authority G.S. 17E-4.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Department of Environmental Quality intends to adopt the rule cited as 15A NCAC 01D .0305, and readopt with substantive changes the rules cited as 15A NCAC 01D .0102, .0302 and .0303.

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

Proposed Effective Date: March 1, 2022

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Send to: Jennifer Everett, DEQ Rulemaking Coordinator, Office of General Counsel, 1601 Mail Service Center, Raleigh NC 27699-1601 or email: Jennifer.everett@ncdenr.gov

Reason for Proposed Action: The rules in 15A NCAC 01D establish the procedures within DEQ related to certifying projects for which the N.C. Department of Commerce requests project certification prior to the issuance of revenue bonds for a project. These rules are being readopted pursuant to G.S. 150B-21.3A.

Comments may be submitted to: Jennifer Everett, 1601 Mail Service Center, Raleigh, NC 27699-1601; email jennifer.everett@ncdenr.gov

Comment period ends: January 14, 2022

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

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

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

☒ No fiscal note required

CHAPTER 01 - DEPARTMENTAL RULES

SUBCHAPTER 01D - PROJECT CERTIFICATION RELATING TO INDUSTRIAL AND PRIVATE POLLUTION CONTROL REVENUE BONDS

SECTION .0100 - PURPOSE AND DEFINITIONS

15A NCAC 01D .0102 DEFINITIONS OF TERMS

The terms used in this Subchapter shall be as defined in G.S. 159C-3 and as follows:

- (1) EHNR "DEQ" shall mean means the Department of Environment, Health, and Natural Resources. Environmental Quality.
- (2) Secretary "Secretary" shall mean means the Secretary of EHNR DEQ or his or her appointed designee.
- (3) Project certification "Project certification" shall mean means a written statement by the Secretary, Secretary of EHNR, the state agency having jurisdiction over environmental matters, as provided in G.S. 113A-1 et seq. and G.S. 143-215.11 et seq., that a proposed industrial project will meet the criteria contained in Rule .0302 of this Subchapter-Subchapter, and a proposed pollution control project will meet the criteria contained in Rule .0303 of this Subchapter- Subchapter, or a proposed hazardous waste facility will meet the criteria contained in Rule .0305 of this Subchapter.

Authority G.S. 159C-7; 159C-7(d).

SECTION .0300 - CERTIFICATION CRITERIA

15A NCAC 01D .0302 PROPOSED INDUSTRIAL PROJECT NO MATERIALLY ADVERSE EFFECT ON THE ENVIRONMENT TEST

In the case where the Secretary of ECD the Department of Commerce requests has requested a project certification for a proposed industrial project, project or for a proposed industrial project that includes a pollution control project project, connected to a new or expanded industrial facility, the Secretary shall of EHNR will apply the "materially adverse" test, as follows: If the Secretary determines that no state water or air quality standard or limitation will be violated, that use of water by the industrial project will not substantially affect other users, and that the project will have no other materially adverse effect on the environment, the Secretary will certify that the project will not have a materially adverse effect on the environment. environment if the Secretary determines that no applicable State and federal environmental laws, rules, standards or limitations will be violated, that use of water by the proposed industrial project will not substantially affect other users, and that the proposed project will have no other materially adverse effect on the environment. Issuance to the operator of the proposed project of valid wastewater discharge, air pollution control, water withdrawal

permits and any other major the required environmental permits determined by the Secretary to be required for the proposed project, or a determination by EHNR that such permits would not be required for a specific operation, may be considered as "compelling proof" indicates that the certain environmental impacts considerations surrounding of a the proposed project have been were evaluated, and the Secretary may consider such evaluations in making a certification decision. duly evaluated.

Authority G.S. 159C-7; 159C-7(d).

15A NCAC 01D .0303 PROPOSED POLLUTION CONTROL PROJECT MATERIALLY FAVORABLE IMPACT TEST

In the case where the Secretary of ECD the Department of Commerce requests a project certification for a proposed water and/or air pollution control project, the Secretary of EHNR will apply the "materially favorable" test. If the Secretary determines that the project meets all relevant state emission control standards, water effluent limitations, pretreatment standards (if applicable), new source performance standards, and toxic substances emission effluent limitations, does not contravene any ambient air or water quality standard, and has no other materially adverse effect on the environment, the Secretary will shall certify that the proposed project will have a materially favorable impact on the environment, environment or will prevent or diminish materially the impact of the pollution which that would otherwise occur. occur, as set forth in G.S. 159C-7(d), if the Secretary determines that: the proposed project meets all applicable State and federal emission control standards, water effluent limitations, pretreatment standards, new source performance standards, and toxic substances emission effluent limitations, does not contravene ambient air or water quality standards, and has an otherwise materially favorable impact on the environment. Issuance to the operator of the proposed project of the required environmental permits valid wastewater discharge, air pollution control, water withdrawal permits and any other major permits determined by the Secretary to be required for the project, or determination by EHNR that such permits would not be required for a specific operation, may be considered as compelling proof indicates that the certain environmental impact impacts of a the proposed project has been duly considered: were evaluated, and the Secretary may consider such evaluations in making a certification decision.

Authority G.S. 159C-7; 159C-7(d).

15A NCAC 01D .0305 PROPOSED HAZARDOUS WASTE FACILITY

In the case where the Secretary of the Department of Commerce requests a project certification for a hazardous waste facility, the Secretary shall certify that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina, in accordance with G.S. 159C-7(d), if the Secretary determines that the proposed project meets applicable State and federal laws and regulations, has applied for and received the required environmental permits, including those outlined in G.S. 130A-295, 130A-295.01, and 130A-295.04 for hazardous waste

facilities, and meets the current and anticipated waste management needs of the State. Issuance to the operator of the proposed project of the required environmental permits indicates that certain environmental impacts of the proposed project were evaluated, and the Secretary may consider such evaluations in making a certification decision.

Authority G.S. 159C-7(d).

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 12 – LICENSING BOARD FOR GENERAL CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Licensing Board for General Contractors intends to adopt the rule cited as 21 NCAC 12A .0508 and amend the rules cited as 21 NCAC 12A .0209, .0210 and .0303.

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

Proposed Effective Date: *March 1, 2022*

Public Hearing:

Date: *December 15, 2021*

Time: *9:00 a.m.*

Location: *NC Licensing Board for General Contractors, 5400 Creedmoor Road, Raleigh, NC 27612*

Reason for Proposed Action:

21 NCAC 12A .0209 - To clarify the use of assumed names.

21 NCAC 12A .0210 - To comply with recent statutory changes (S.L. 2021-122).

21 NCAC 12A .0303 - To include criminal background check information in the application process per recent statutory changes (S.L. 2021-121).

21 NCAC 12A .0508 - To require affirmative reporting of criminal convictions.

Comments may be submitted to: *C. Frank Wiesner, NC Licensing Board for General Contractors, 5400 Creedmoor Road, Raleigh, NC 27612; phone (919) 571-4183; fax (919) 571-4703; email Frank.Wiesner@nclbgc.org*

Comment period ends: *January 14, 2022*

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m.

on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

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

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

SUBCHAPTER 12A – GENERAL PROVISIONS

SECTION .0200 - LICENSING REQUIREMENTS

21 NCAC 12A .0209 ASSUMED NAME APPLICATION

(a) Any application made pursuant to G.S. 87-10 shall be accompanied by a Certificate of Assumed Name filed in accordance with Chapter 66, Article 14A of the General Statutes. Applications submitted to the Board on behalf of corporations, limited liability companies and partnerships shall be accompanied by a copy of any documents required to be filed with the North Carolina Secretary of State's office, such as Articles of Incorporation or Certificate of Authority.

(b) All licensees shall comply with the requirements of G.S. 66-71.4 and shall notify the Board within 30 days of any change in the name in which the licensee is conducting business in the State of North Carolina.

(c) No applicant or licensee shall use or adopt an assumed name used by any other licensee, or any name so similar to an assumed name used by another licensee that could confuse or mislead the public.

(d) No applicant or licensee that is a legal entity registered with the North Carolina Secretary of State shall use or adopt an assumed name of a separate legal entity registered with the North Carolina Secretary of State.

Authority G.S. 66-71.4; 87-1; 87-4; 87-10.

21 NCAC 12A .0210 PUBLIC BUILDING PROJECTS

If a public building project is performed pursuant to G.S. 87-1.1, the total amount of work to be performed by all licensed general contractors shall not exceed 25% of the total bid price. A licensed general contractor shall hold the applicable classifications and limitation for the work undertaken by such licensed general contractor. ~~For the purpose of this Rule, a public building project is a building project that is governed by G.S. 143, Article 8.~~

Authority G.S. 87-1.1; 87-4.

SECTION .0300 - APPLICATION PROCEDURE

21 NCAC 12A .0303 APPLICATION FOR LICENSURE

(a) General. Applications for licensure shall contain the following:

- (1) the Social Security Number of examinee(s) and qualifier(s) and tax identification numbers for corporate applicants;
- (2) the applicant's contact information;
- (3) the name of business under which the licensee will be operating, if any;
- (4) requested designation of license limitation and classifications;
- (5) information about all crimes of which the applicant has been convicted;
- (6) certified copies of court records reflecting information regarding all crimes of which the applicant and qualifier(s) have been convicted;
- (7) information indicating whether the applicant or qualifier(s) has any disciplinary history with the Board or any other occupational licensing, registration, or certification agency;
- (8) information establishing financial responsibility as required by G.S. 87-10(a) and Rule .0204 of this ~~Chapter~~; Subchapter;
- (9) letters of reference as prescribed in Rule .0308 of this ~~Chapter~~; Subchapter; and
- (10) the application fee as set forth in Rule .0304 of this ~~Chapter~~; Subchapter.

(b) Criminal Background Check. In addition to the requirements set forth above, all new applicants shall consent to criminal background checks to be performed by a third-party vendor identified by the Board. The cost of the background check shall be paid directly to the vendor. For the purposes of the criminal background check, the following individuals shall submit to the background check, based upon the entity or person applying for the license:

- (1) Sole proprietor license: The sole proprietor;
- (2) Corporation: The president;
- (3) Limited liability company: All managers and members;
- (4) Partnerships (including limited liability partnerships): All partners.

~~(b)~~(c) Reciprocity. Applicants based on reciprocity shall submit with the application form a copy of the applicant's license in the

other state, certified by the other state licensing board as being a copy of a valid license. Applicants shall have taken and passed the exam offered in the state from which they are seeking reciprocity, or an examination offered by the National Association of State Contractors Licensing Agencies (NASCLA). Applicants shall also be required to take and pass the Board's North Carolina law, rule, and building code examination prior to licensure.

Authority G.S. 87-1; 87-10.

SECTION .0500 - LICENSE

21 NCAC 12A .0508 REPORTING CRIMINAL CONVICTIONS AND DISCIPLINARY ACTIONS

Any licensee who is convicted of any felony or misdemeanor, or who is disciplined by or enters into a conciliation agreement or consent order with any governmental agency in connection with any occupational license, shall file with the Board a Criminal Conviction Disciplinary Action Reporting Form of such conviction or action within 60 days of the final judgment, order, or disposition in the case. The Criminal Conviction Disciplinary Action Reporting Form is available on the Board's website at www.ncilbdc.org or upon request to the Board. In the Form, the licensee shall set forth the following:

- (1) full legal name of individual reporting the conviction or conciliation;
- (2) physical and mailing address;
- (3) license number;
- (4) telephone number;
- (5) email address;
- (6) date of birth; and
- (7) description of the criminal conviction and disciplinary action, including the jurisdiction and file number.

For the purposes of reporting under this Rule, the individuals required to report the above-listed information are the same as those required to submit to a criminal background check and identified in Rule .0303 of this Subchapter.

Authority G.S. 87-10.

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.
This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

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

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Rule-making Agency: Board of Dental Examiners

Rule Citation: 21 NCAC 16G .0109

Effective Date: November 1, 2021

Date Approved by the Rules Review Commission: October 21, 2021

Reason for Action: The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: S.L. 2021-95. On July 23, 2021, S.L. 2021-95 became law. Section 2 of S.L. 2021-95 provides for dental hygienists to become certified to administer local anesthetics by infiltration and block techniques under the direct supervision of a North Carolina licensed dentist. Section 7 of S.L. 2021-95 provides that Section 2 becomes effective on October 1, 2021. Section 6 of S.L. 2021-95 authorizes the North Carolina State Board of Dental Examiners to adopt temporary rules to implement the provisions of the act.

SUBCHAPTER 16G – DENTAL HYGIENISTS

**SECTION .0100 – FUNCTIONS THAT MAY BE
DELEGATED**

**21 NCAC 16G .0109 DENTAL HYGIENIST
CERTIFICATION TO ADMINISTER LOCAL
ANESTHETICS**

(a) To apply for certification to administer local anesthetics by block or infiltration techniques:

- (1) a dental hygienist holding a valid dental hygiene license issued by the Board on or after October 1, 2021, shall submit to the Board a certificate of completion from a dental hygiene program meeting the requirements set out in G.S. 90-225.2; ~~and or~~

- (2) a dental hygienist licensed in North Carolina or any other state or territory who has been practicing dental hygiene for the two year period set out in G.S. 90-225.3(a)(2) shall submit to the ~~Board:~~ Board evidence of completion of a course meeting the requirements of G.S. 90-225(a)(3), including a notarized letter from a licensed dentist instructor stating the applicant's completion of the required injections in a course.

~~(A) — evidence of successful completion of a course meeting the requirements of G.S. 90-225.3(a)(3)(a) (c); or~~

~~(B) — evidence of successful completion of a course meeting the requirements of G.S. 90-225.3(a)(3)(a) and (b), and a notarized letter from a North Carolina licensed dentist stating the applicant's experience and competency in satisfaction of G.S. 90-225(a)(3)(c).~~

(b) The requirements set out in Paragraph (a) of this Rule are in addition to any other applicable requirements set out in this Chapter for the issuance or renewal of a dental hygiene license.

(c) As a condition to renew a certificate to administer local anesthetics, each dental hygienist shall complete two clock hours of continuing education each calendar year in satisfaction of the requirements of G.S. 90-225.3(c), which may be among those chosen to satisfy the requirements set out in 21 NCAC 16I .0201(a).

(d) A dental hygienist certified in accordance with this Rule shall conduct administration of local anesthetics only with under the direct supervision ~~physical presence~~ of a ~~supervising~~ North Carolina licensed dentist.

History Note: Authority G.S. 90-221; 90-223; 90-225.2; 90-225.3; S.L. 2021-95;

Temporary Adoption Eff. November 1, 2021.

This Section contains information for the meeting of the Rules Review Commission October 21, 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. (2nd Vice Chair)
Margaret Currin
Jeff Hyde
Robert A. Rucho

Appointed by House

Andrew P. Atkins (1st Vice Chair)
Wayne R. Boyles, III
Barbara A. Jackson
Randy Overton
Paul Powell

COMMISSION COUNSEL

Amber Cronk May 984-236-1936
Amanda Reeder 984-236-1939

RULES REVIEW COMMISSION MEETING DATES

November 18, 2021 January 20, 2022
December 16, 2021 February 17, 2022

**RULES REVIEW COMMISSION MEETING
MINUTES****October 21, 2021**

The Rules Review Commission met on Thursday, October 21, 2021, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx.

Commissioners Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jeanette Doran, Margaret Currin, and Bob Rucho were present in the Commission Room. Commissioners present via WebEx were Barbara Jackson and Randy Overton.

Staff members present were Alexander Burgos, Commission Counsel Amber May, and Codifier of Rules Ashley Snyder. Commission Counsel Amanda Reeder was present via WebEx.

The meeting was called to order at 9:04 a.m. with Chair Doran presiding.

Chair Doran introduced Supreme Court Associate Justice Tamara Barringer to the Commission.

Justice Tamara Barringer administered the oath of office to new Commissioner Wayne R. Boyles III.

Chair Doran read into the record the following statement of economic interest for Wayne R. Boyles, III, which stated there was no actual conflict of interest.

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 September 16, 2021 meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the minutes were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Barbara Jackson, Randy Overton, and Bob Rucho – 7. Voting in the negative: None.

FOLLOW UP MATTERS**Department of Insurance**

11 NCAC 04 .0117, .0118, .0119, .0123, .0124, .0312, .0313, .0320, .0416, .0420, .0422, .0423, .0426, .and .0431 - 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, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Barbara Jackson, Randy Overton, and Bob Rucho – 7. Voting in the negative: None.

11 NCAC 04 .0115, .0120, .0314, .0315, .0316, .0317, .0318, .0319, .0415, .0427, .0429, .0432, .0433, .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, and .0509 - The agency is addressing the technical change requests from the September meeting. No action was required by the Commission.

Building Code Council

2020 Electrical Code - Upon the call of the Chair, the revised Code was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Barbara Jackson, Randy Overton, and Bob Rucho – 7. Voting in the negative: None.

LOG OF FILINGS (PERMANENT RULES)**Department of Insurance**

Upon the call of the Chair, Rules 11 NCAC 05D .0113, .0114, and .0115 were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Barbara Jackson, Randy Overton, and Bob Rucho – 7. Voting in the negative: None.

Upon the call of the Chair the Commission objected to 11 NCAC 05B .0301 for lack of statutory authority. Specifically, the Commission found that professional minimum qualifications for fire service personnel are within the authority of the State Fire and Rescue Commission, rather than the Department of Insurance. As attached, the Commission also voted to reschedule the readoption deadline for 11 NCAC 05B .0301 to October 31, 2022 to allow the State Fire and Rescue Commission to readopt this Rule. Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Barbara Jackson, Randy Overton, and Bob Rucho – 7. Voting in the negative: None.

Alarm Systems Licensing Board

Upon the call of the Chair, 14B NCAC 17 .0201 was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Barbara Jackson, Randy Overton, and Bob Rucho – 7. Voting in the negative: None.

Coastal Resources Commission

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, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Barbara Jackson, Randy Overton, and Bob Rucho – 7. Voting in the negative: None.

Department of Transportation - Division of Motor Vehicles

Prior to the review of the rules from the Department of Transportation, Commissioner Bryan recused himself and did not participate in any discussion or vote concerning the rules because his family is involved in litigation with the agency.

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, Wayne R. Boyles III, Margaret Currin, Barbara Jackson, Randy Overton, and Bob Rucho – 6. Voting in the negative: None.

Board of Dental Examiners

Upon the call of the Chair, 21 NCAC 16O .0402 was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Barbara Jackson, Randy Overton, and Bob Rucho – 7. Voting in the negative: None.

Board of Pharmacy

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, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Barbara Jackson, Randy Overton, and Bob Rucho – 7. Voting in the negative: None.

LOG OF FILINGS (TEMPORARY RULES)**Board of Dental Examiners**

Upon the call of the Chair, 21 NCAC 16G .0109 was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Barbara Jackson, Randy Overton, and Bob Rucho – 7. Voting in the negative: None.

COMMISSION BUSINESS

Newly-appointed Commissioner Wayne R. Boyles III addressed the Commission and entered into the record the attached Statement for the Record to the RRC.

The meeting adjourned at 9:23 a.m.

The next regularly scheduled meeting of the Commission is Thursday, November 18, 2021, at 9:00 a.m.

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Jeanette Doran, Chair

**Rules Review Commission Meeting October 21, 2021
Held Via WebEx**

Name	Agency
Helen Landi	DOT
Loretta Peace-Bunch	DOI
James Buchanan	
Carrie Hollis	OSBM
Carl Martin	BCC
Jennifer Everett	DEQ
Hannah Jernigan	DOT
Clint Pinyan	Pharmacy
Dauna Bartley	Dental Examiners

[illegible]

STATEMENT FOR THE RECORD
COMMISSIONER WAYNE RONALD BOYLES III
NORTH CAROLINA RULES REVIEW COMMISSION

October 21, 2021

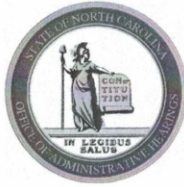
Madam Chairwoman Doran and fellow commissioners I am honored to join you in service to the citizens of our great and wonderful state. I thank and am grateful to Speaker Tim Moore of the North Carolina House of Representatives for this appointment and the trust that he and his fellow members of the General Assembly have placed in me with this posting.

I thank and am grateful to NC Associate Supreme Court Justice Tamara Barringer for her time in swearing me in to this office today. I thank her for her service to our state.

My aim and goal in service on this commission is to ensure that the will of our citizens as expressed through their elected state representatives and state senators of the North Carolina General Assembly is fully carried out and realized. And just as important that all rules are constitutionally consistent with and within the boundaries of The Constitution of our glorious state.

My pledge to our citizens is that I will give you my all as a servant to all. I pray the Lord's guiding hand be upon me as I undertake these sacred duties for the people of North Carolina. I ask my fellow citizens to pray for me and us as we carry out your will and most importantly that of our Lord and God.

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

October 21, 2021

Loretta Peace-Bunch
Department of Insurance
Sent via email only to: loretta.peace-bunch@ncdoi.gov

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **11 NCAC 05B .0301**

Dear Ms. Peace-Bunch:

At its meeting on October 21, 2021, the Rules Review Commission rescheduled the readoption deadline of the above-referenced Rule in order to allow the State Fire and Rescue Commission to readopt this Rule.

Pursuant to G.S. 150B-21.3A(d)(2), 11 NCAC 05B .0301 shall be readopted by the agency no later than October 31, 2022.

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

Sincerely,

Amber May
Commission Counsel

cc: John Hoomani, Department of Insurance

Donald R. van der Vaart, Director
Chief Administrative Law Judge

Fred G. Morrison, Jr.
Senior Administrative Law Judge

Linda T. Worth
Deputy Director

An Equal Employment Opportunity Employer

1711 New Hope Church Road, Raleigh, NC 27609
Telephone: (984) 236-1850 | Facsimile: (984) 236-1871
www.oah.nc.gov

LIST OF APPROVED PERMANENT RULES
October 21, 2021 Meeting

INSURANCE, DEPARTMENT OF

<u>Statement of Action</u>	11 NCAC	04	.0117
<u>Insurance Carriers as Lenders</u>	11 NCAC	04	.0118
<u>Insurer Defined</u>	11 NCAC	04	.0119
<u>Use of Specific Company Name in Responses</u>	11 NCAC	04	.0123
<u>Insurance Company Contact Persons</u>	11 NCAC	04	.0124
<u>Information Used in Claim Settlements</u>	11 NCAC	04	.0312
<u>Provisions of Contracts</u>	11 NCAC	04	.0313
<u>Student Loans</u>	11 NCAC	04	.0320
<u>Billing Procedures for Automobile Insurance</u>	11 NCAC	04	.0416
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