

# NORTH CAROLINA REGISTER

VOLUME 37 • ISSUE 04 • Pages 296 – 357

August 15, 2022

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**PUBLISHED BY**

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## Contact List for Rulemaking Questions or Concerns

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

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

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Raleigh, North Carolina 27603-8005

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984-236-0689

NC Association of County Commissioners

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Amy Bason

919-715-2893

amy.bason@ncacc.org

NC League of Municipalities

424 Fayetteville Street, Suite 1900

Raleigh, North Carolina 27601

contact: Monica Jackson

919-715-2925

mjackson@nclm.org

### **Legislative Process Concerning Rulemaking**

545 Legislative Office Building

300 North Salisbury Street

Raleigh, North Carolina 27611

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Jason Moran-Bates, Staff Attorney

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**NORTH CAROLINA REGISTER**  
 Publication Schedule for January 2022 – December 2022

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 <sup>th</sup> day from publication in the Register
36:13	01/03/22	12/08/21	01/18/22	03/04/22	03/21/22	04/21/2022	05/01/22	09/30/22
36:14	01/18/22	12/22/21	02/02/22	03/21/22	04/20/22	05/19/2022	06/01/22	10/15/22
36:15	02/01/22	01/10/22	02/16/22	04/04/22	04/20/22	05/19/2022	06/01/22	10/29/22
36:16	02/15/22	01/25/22	03/02/22	04/18/22	04/20/22	05/19/2022	06/01/22	11/12/22
36:17	03/01/22	02/08/22	03/16/22	05/02/22	05/20/22	06/16/2022	07/01/22	11/26/22
36:18	03/15/22	02/22/22	03/30/22	05/16/22	05/20/22	06/16/2022	07/01/22	12/10/22
36:19	04/01/22	03/11/22	04/16/22	05/31/22	06/20/22	07/21/2022	08/01/22	12/27/22
36:20	04/18/22	03/25/22	05/03/22	06/17/22	06/20/22	07/21/2022	08/01/22	01/13/23
36:21	05/02/22	04/08/22	05/17/22	07/01/22	07/20/22	08/18/2022	09/01/22	01/27/23
36:22	05/16/22	04/25/22	05/31/22	07/15/22	07/20/22	08/18/2022	09/01/22	02/10/23
36:23	06/01/22	05/10/22	06/16/22	08/01/22	08/22/22	09/15/2022	10/01/22	02/26/23
36:24	06/15/22	05/24/22	06/30/22	08/15/22	08/22/22	09/15/2022	10/01/22	03/12/23
37:01	07/01/22	06/10/22	07/16/22	08/30/22	09/20/22	10/20/2022	11/01/22	03/28/23
37:02	07/15/22	06/23/22	07/30/22	09/13/22	09/20/22	10/20/2022	11/01/22	04/11/23
37:03	08/01/22	07/11/22	08/16/22	09/30/22	10/20/22	11/17/2022	12/01/22	04/28/23
37:04	08/15/22	07/25/22	08/30/22	10/14/22	10/20/22	11/17/2022	12/01/22	05/12/23
37:05	09/01/22	08/11/22	09/16/22	10/31/22	11/21/22	12/15/2022	01/01/23	05/29/23
37:06	09/15/22	08/24/22	09/30/22	11/14/22	11/21/22	12/15/2022	01/01/23	06/12/23
37:07	10/03/22	09/12/22	10/18/22	12/02/22	12/20/22	01/19/2023	02/01/23	06/30/23
37:08	10/17/22	09/26/22	11/01/22	12/16/22	12/20/22	01/19/2023	02/01/23	07/14/23
37:09	11/01/22	10/11/22	11/16/22	01/03/23	01/20/23	02/16/2023	03/01/23	07/29/23
37:10	11/15/22	10/24/22	11/30/22	01/17/23	01/20/23	02/16/2023	03/01/23	08/12/23
37:11	12/01/22	11/07/22	12/16/22	01/30/23	02/20/23	03/16/2023	04/01/23	08/28/23
37:12	12/15/22	11/22/22	12/30/22	02/13/23	02/20/23	03/16/2023	04/01/23	09/11/23

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

## EXPLANATION OF THE PUBLICATION SCHEDULE

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

### GENERAL

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

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

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

### FILING DEADLINES

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

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

### NOTICE OF TEXT

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

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

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



# State of North Carolina

**ROY COOPER**  
GOVERNOR

July 15, 2022

**EXECUTIVE ORDER NO. 264**

**DISASTER DECLARATION FOR THE TOWN OF WENTWORTH IN  
ROCKINGHAM COUNTY**

**WHEREAS**, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes, authorizes the issuance of a disaster declaration for an emergency area as defined in N.C. Gen. Stat. § 166A-19.3(7) that has been impacted by a Type I disaster as defined in N.C. Gen. Stat. § 166A-19.21(b); and

**WHEREAS**, on May 6, 2022, the Town of Wentworth (hereinafter "the Town" or "Wentworth") in Rockingham County, North Carolina experienced damages from severe weather and a tornado; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.22, local states of emergency declarations were issued on May 6, 2022, by Wentworth and Rockingham County; and

**WHEREAS**, due to the impacts of the events, local and state emergency management officials conducted a joint preliminary damage assessment on May 20, 2022, for the Town of Wentworth in Rockingham County, North Carolina; and

**WHEREAS**, the Town of Wentworth has incurred more than \$10,000 in disaster-related damages, the damages exceed one (1) percent of the Town's operating budget, and the Town has a current Hazard Mitigation plan in place through Rockingham County and participates in the National Flood Insurance Program; and

**WHEREAS**, the President of the United States has not declared a Robert T. Stafford Disaster Relief and Emergency Assistance Act (hereinafter "Stafford Act"), as amended (42 U.S.C. § 5121-5206), declaration for Wentworth or Rockingham County; and

**WHEREAS**, Wentworth would not qualify for Federal Public Assistance based on the preliminary damage assessment, according to the requirements of 44 C.F.R. § 206.48; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.21(a)-(b), the criteria for a Type I disaster are met if: (a) the Secretary of the North Carolina Department of Public Safety has provided a preliminary damage assessment to the undersigned and the General Assembly; (b) local state of emergency declarations have been issued pursuant to N.C. Gen. Stat. § 166A-19.22 in the areas impacted by the Type I disaster; (c) the preliminary damage assessment meets or exceeds the state infrastructure criteria set out in N.C. Gen. Stat. § 166A-19.41(b)(2)a; and (d) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared for Public Assistance; and

WHEREAS, the undersigned has determined that a Type I disaster, as defined in N.C. Gen. Stat. § 166A-19.21(b)(1), exists in the State of North Carolina in the Town of Wentworth in Rockingham County, North Carolina; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.41, if a disaster is declared, the undersigned may make state funds available for emergency assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of residents in the emergency area.

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

**Section 1.**

For purposes of this Executive Order only, the emergency area as defined in N.C. Gen. Stat. § 166A-19.3(7), is the Town of Wentworth in Rockingham County, North Carolina (“the Emergency Area”).

**Section 2.**

Pursuant to N.C. Gen. Stat. § 166A-19.21(b)(1), a Type I disaster is hereby declared for the Emergency Area.

**Section 3.**

I authorize state disaster assistance in the form of public assistance grants to the eligible local governments located within the Emergency Area that meet the terms and conditions under N.C. Gen. Stat. § 166A-19.41(b)(2). The public assistance grants are for the following:

- a. Debris clearance.

**Section 4.**

I hereby order that this declaration be (a) distributed to the news media and other organizations calculated to bring its contents to the attention of the public; (b) promptly filed with the Secretary of the North Carolina Department of Public Safety, the North Carolina Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) distributed to others as necessary to ensure proper implementation of this declaration.

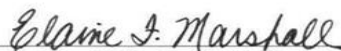
**Section 5.**

Pursuant to N.C. Gen. Stat. § 166A-19.21(c)(1), this Type I disaster declaration shall expire sixty (60) days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of thirty (30) days each, not to exceed a total of 120 days from the date of first issuance.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 15<sup>th</sup> day of July in the year of our Lord two thousand and twenty-two.

  
\_\_\_\_\_  
Roy Cooper  
Governor

ATTEST:

  
\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State





# State of North Carolina

**ROY COOPER**  
GOVERNOR

July 15, 2022

EXECUTIVE ORDER NO. 265

**EXTENDING TRANSPORTATION-RELATED PROVISIONS  
IN PREVIOUS EXECUTIVE ORDERS AND FACILITATING THE  
TRANSPORTATION OF BABY FORMULA IN THE STATE**

**WHEREAS**, on March 10, 2020, the undersigned issued Exec. Order No. 116, 34 N.C. Reg. 1744-1749 (April 1, 2020), which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

**WHEREAS**, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

**WHEREAS**, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act"); and

**WHEREAS**, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq.* and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency, retroactive to March 1, 2020; and

**WHEREAS**, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

**WHEREAS**, in responding to the COVID-19 pandemic, and for the purposes of protecting the health, safety and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, 161-165, 169-173, 176-177, 180-181, 183-185, 188-193, 195, 197-198, 200, 204-207, 209-212, 215-217, 219-221, 224-225, 228-232, 234, 236, 238-240, 244-245, 252-253, 256-257 and 261; and

**WHEREAS**, on March 13, 2020, in response to the emerging COVID-19 pandemic, and to facilitate the transportation of essential emergency relief supplies, the Federal Motor Carrier Safety Administration ("FMCSA") issued Emergency Declaration No. 2020-02 ("FMCSA

Emergency Declaration”), which provided exemptions from certain Federal Motor Carrier Safety Regulations; and

**WHEREAS**, Executive Order No. 116 included suspensions of related state regulations; and

**WHEREAS**, the FMCSA has subsequently made several modifications to the FMCSA Emergency Declaration to expand the categories of goods, equipment and persons covered by the declaration to respond to the changing needs of emergency relief; and

**WHEREAS**, the FMCSA has determined that the production and transport of fuels, including gasoline, diesel, jet fuel, and others, is significantly impacted by the COVID-19 emergency; and

**WHEREAS**, on May 27, 2022, the FMCSA extended the FMCSA Emergency Declaration through August 31, 2022; and

**WHEREAS**, as of the date of this Executive Order, due to a national shortage of certain specialty baby formulas, families across the United States are experiencing difficulty procuring infant formula; and

**WHEREAS**, on May 18, 2022, the President of the United States invoked the Defense Production Act to increase baby formula production and require suppliers to direct ingredients to baby formula manufacturers as a priority; and

**WHEREAS**, on May 23, 2022, the FMCSA issued Emergency Declaration No. 2022-005, effective through June 30, 2022, to provide regulatory relief for commercial motor vehicle operations that are responding to product recall and unplanned closure of a key manufacturing facility of baby formula by waiving certain federal regulations governing the maximum hours of service for a commercial motor vehicle operator; and

**WHEREAS**, on June 30, 2022, the FMCSA extended Emergency Declaration No. 2022-005 through July 31, 2022; and

**WHEREAS**, Emergency Declaration No. 2022-005, as extended, provides necessary relief by addressing nationwide emergency conditions creating a need for immediate transportation of baby formula, its ingredients for production, and baby formula containers and packaging to manufacturers, distributors, and stores; and

**WHEREAS**, the unencumbered transportation of baby formula and its ingredients to manufacturers, distributors, and stores is an essential need of the public and any interruption in the delivery and stocking of these items threatens public health; and

**WHEREAS**, on July 11, 2022, the undersigned announced that the State of Emergency declared in response to COVID-19 will be lifted on August 15, 2022; and

**WHEREAS**, the undersigned has determined that provisions in Executive Order No. 116, as amended herein, need to remain in place through the termination of the State of the Emergency to allow for the continued expedited movement of vehicles in the state to facilitate the delivery of baby formula, as well as essential supplies necessary to wind-down certain COVID-19 relief efforts in the state; and

**WHEREAS**, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

**WHEREAS**, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

**WHEREAS**, N.C. Gen. Stat. § 166A-19.70(b), allows the undersigned to declare by executive order that the health, safety, or economic well-being of persons or property in this state require that the maximum hours of service prescribed by the Department of Public Safety (“DPS”) pursuant to N.C. Gen. Stat. § 20-381 and similar rules be waived for persons transporting essentials or assisting in the restoration of utility services; and

**WHEREAS**, for the reasons described above, the undersigned has made the determinations required pursuant to N.C. Gen. Stat. § 166A-19.70(b).

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

**Section 1. Extension**

For the reasons and pursuant to the authority set forth above and set forth in the relevant Executive Orders referenced below, the undersigned orders as follows:

**A. Executive Order No. 116.**

1. Section 5 of Executive Order No. 116 (which was amended by Section 6 of Executive Order No. 119, Section 1 of Executive Order No. 146, Section 1 of Executive Order No. 150, Section 1 of Executive Order No. 157, and Section 1 of Executive Order No. 192, and extended by Executive Order Nos. 133, 140, 146, 150, 157, 164, 197, 217, 230, 239, 252, and 261, and reissued in Executive Order No. 192) is amended herein and extended pursuant to N.C. Gen. Stat. § 166A-19.70(b) through the end of the calendar day on August 15, 2022.

Section 5 of Executive Order No. 116 is amended to read as follows:

In order to ensure adequacy and location of supplies and resources to respond to COVID-19 or to fuel or baby formula shortages, DPS, in conjunction with the North Carolina Department of Transportation (“DOT”), shall waive the maximum hours of service for drivers prescribed by DPS pursuant to N.C. Gen. Stat. § 20-381 subject to the restrictions and limitations in this Executive Order, if the driver is transporting (1) livestock and livestock feed; (2) medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19; (3) vaccines, constituent products, and medical supplies and equipment including ancillary supplies/kits for the administration of vaccines, related to the prevention of COVID-19; (4) supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19 such as masks, gloves, hand sanitizer, soap and disinfectants; (5) food, paper products and other groceries for emergency restocking of distribution centers or stores; (6) gasoline, diesel, jet fuel, ethyl alcohol, and heating fuel including propane, natural gas, and heating oil; (7) supplies to assist individuals impacted by the consequences of the COVID-19 pandemic (e.g., building materials for individuals displaced or otherwise impacted as a result of the emergency); or (8) baby formula, baby formula containers and packaging, and the ingredients for baby formula production, including but not limited to corn syrup, casein, hydrolyzed protein, and whey. Direct assistance does not include non-emergency transportation of qualifying commodities or routine commercial deliveries, including mixed loads with a nominal quantity of qualifying emergency relief added to obtain the benefits of this Executive Order.

**Section 2. Enforcement**

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

**Section 3. Distribution**

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

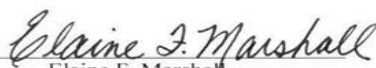
**Section 4. Effective Date**

This Executive Order is effective immediately. This Executive Order shall remain in effect through the end of the calendar day on August 15, 2022, unless repealed, replaced, or rescinded by another applicable Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 15<sup>th</sup> day of July in the year of our Lord two thousand and twenty-two.

  
\_\_\_\_\_  
Roy Cooper  
Governor

ATTEST:

  
\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State



1                   NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

2  
3                                   NORTH CAROLINA BUILDING CODE COUNCIL

4  
5   **Notice of Rule-making Proceedings** is hereby given by NC Building Code Council in accordance with  
6   G.S. 150B-21.5(d).

7  
8   **Citation to Existing Rule Affected by this Rule-Making:** *North Carolina, Administrative, and*  
9   *Residential, Code amendments.*

10  
11   **Authority for Rule-making:** *G.S. 143-136; 143-138.*

12  
13   **Reason for Proposed Action:** *To incorporate changes in the NC State Building Codes as a result of*  
14   *rulemaking petitions filed with the NC Building Code Council and to incorporate changes proposed by the*  
15   *Council.*

16  
17   **Public Hearing:** *Tuesday, September 13, 2022, 9:00AM, Albemarle Building, 325 North Salisbury Street,*  
18   *Raleigh, NC 27603, 2<sup>nd</sup> Floor Training Room 240. Comments on both the proposed rule and any fiscal*  
19   *impact will be accepted.*

20  
21   **Comment Procedures:** *Written comments may be sent to Carl Martin, Secretary, NC Building Code*  
22   *Council, NC Department of Insurance, 1202 Mail Service Center, Raleigh, NC 27699-1202 (email*  
23   *carl.martin@ncdoi.gov). Comments on both the proposed rule and any fiscal impact will be accepted.*  
24   *Comment period expires on October 14, 2022.*

25  
26   **Link to Agency Notice:**  
27   <https://www.ncosfm.gov/codes/building-code-council-bcc/bcc-hearing-notices>

28  
29   **Statement of Subject Matter:**

30  
31   **1. Request by Charlie Johnson representing NCDOT/OSFM to amend the 2018 NC Fire Code,**  
32   **Section D107.1 as follows:**

33  
34   **D107.1 One- or two-family dwelling residential developments.**  
35   Developments of one- or two-family dwellings where the number of *dwelling units* exceeds 100 ~~30~~ shall be  
36   provided with two separate and *approved* fire apparatus access roads.  
37

1    **Exceptions:**

2    1. Where there are more than 100 ~~30~~ *dwelling units* on a single public or private fire apparatus access road  
3    and all *dwelling units* are equipped throughout with an *approved automatic sprinkler system* in accordance  
4    with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3 of the *International Fire Code*, access from two directions  
5    shall not be required.

6

7    **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is  
8    December 1, 2022, (earliest through RRC) unless the BCC assigns a delayed effective date (January 1,  
9    2023).

10   **Reason Given** – To update the 2018 NC Fire Code to reflect changes from Session Law 2021-121 (H489)  
11   An Act to Provide Various Building Code and Development Regulatory Reforms.

12   **Fiscal Statement** – This rule is anticipated to provide a net decrease in cost. This rule is not expected to  
13   either have a substantial economic impact or increase local and state funds. A fiscal note has not been  
14   prepared.

15

16   **2. Request by Charlie Johnson representing NCDOL/OSFM to amend the 2018 NC Fire Code,**  
17   **Section D107.2 as follows:**

18

19   **D107.2 Remoteness.** Where two fire apparatus access roads are required, they shall be placed a distance  
20   apart equal to not less than one-half of the length of the maximum overall diagonal dimension of the  
21   property or area to be served, measured in a straight line between accesses.

22

23   **Exception:** For developments where compliance is technically infeasible because of road connectivity  
24   limitations, real property dimensions or limitations, real property acquisition constraints, or environmental  
25   constraints, as determined by the property owner or developer, the *fire code official* shall either not require  
26   two fire apparatus access roads or allow for alterations that provide for fire apparatus access road  
27   remoteness to the maximum extent technically feasible.

28

29   **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is  
30   December 1, 2022, (earliest through RRC) unless the BCC assigns a delayed effective date (January 1,  
31   2023).

32   **Reason Given** – To update the 2018 NC Fire Code to reflect changes from Session Law 2021-183 (S308)  
33   An Act To Prevent Delay In The Issuance Of Temporary Certificates Of Occupancy, To Clarify Electric  
34   Wiring Requirement References, And To Modify One- Or Two-Family Dwelling Residential Development  
35   Fire Apparatus Access Road Requirements.

1 **Fiscal Statement** – This rule is anticipated to provide a net decrease in cost. This rule is not expected to  
2 either have a substantial economic impact or increase local and state funds. A fiscal note has not been  
3 prepared.

4

5 **3. Request by Colin Triming representing the NC Fire Code Revision Committee to amend the 2018**  
6 **NC Fire Code Sections 510.4.2, 510.5, 510.5.4, and Chapter 80 as follows:**

7

8 **510.4.2 System design.** The in-building 2- way emergency responder communication coverage system  
9 shall be designed in accordance with Sections 510.4.2.1 through 510.4.2.8 and NFPA ~~1221~~-1225.

10

11 **510.5 Installation requirements.** The installation of the in-building 2- way emergency responder  
12 communication coverage system shall be in accordance with NFPA ~~1221~~ 1225 and Sections 510.5.1  
13 through 510.5.5.

14

15 **510.5.4 Acceptance test procedure.** Where an in-building 2- way emergency responder communication  
16 coverage system is required, and upon completion of installation, the building owner shall have the radio  
17 system tested to verify that two-way coverage on each floor of the building is not less than 95 percent. The  
18 test procedure shall be conducted as follows:

19

- 20 1. Each floor of the building shall be divided into a grid of 20 approximately equal test areas. Where a floor  
21 exceeds 128,000 ft<sup>2</sup> (11,900 m<sup>2</sup>), which is the floor area that can be covered by the maximum grid  
22 dimension of 80 ft. (24.4m), the floor shall be subdivided into sectors each having an area less than or equal  
23 to 128,000 ft<sup>2</sup> (11,900 m<sup>2</sup>), and each sector be tested individually with 20 grid cells in each sector. Signal  
24 strength measurements should be taken at the center of each grid and should be performed using  
25 standardized parameters as specified by NFPA ~~1221~~ 1225.

26

27 **Chapter 80 Referenced Standards**

28

29 ~~NFPA 1221 – 19 Standard for the Installation, Maintenance, and Use of Emergency Services~~  
30 ~~Communications Systems.....510.4.2, 510.5, 510.5.4.~~

31

32 NFPA 1225 – 22 Standard for Emergency Services Communications..... 510.4.2, 510.5, 510.5.4.

33

34 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is  
35 December 1, 2022, (earliest through RRC) unless the BCC assigns a delayed effective date (January 1,  
36 2023).

1 **Reason Given** – Changing the NFPA referenced standard from NFPA 1221 to NFPA 1225 makes it clearer  
 2 for installers of Emergency Responder Communications systems as to what is required.

3 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase  
 4 in cost. This rule is not expected to either have a substantial economic impact or increase local and state  
 5 funds. A fiscal note has not been prepared.

6  
 7

8 **4. Request from Mark Burns representing NC DOI / OSFM to amend the 2018 Plumbing Code,**  
 9 **Table 605.3 as follows:**

10  
 11  
 12  
 13

**TABLE 605.3**  
**WATER SERVICE PIPE**

MATERIAL	STANDARD
Polyvinyl chloride (PVC) plastic pipe	ASTM D1785; ASTM D2241; ASTM D2672; CSA B137.3; <u>ANSI/AWWA C900</u>

14  
 15

16 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is  
 17 December 1, 2022, (earliest through RRC) unless the BCC assigns a delayed effective date (January 1,  
 18 2023).

19 **Reason Given** – C900 pipe was added to the Table above by the Legislature in House Bill 489, Session  
 20 Law 2021-121, General Statute 87-10, Sections 7. (c) and 7. (d). It was approved on August 30, 2021.

21 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase  
 22 in cost. This rule is not expected to either have a substantial economic impact or increase local and state  
 23 funds. A fiscal note has not been prepared.

24  
 25

26 **5. Request from Mark Burns representing NCDOT / OSFM to amend the 2018 Residential Code,**  
 27 **Table P2906.4 as follows:**

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 29  
 30  
 31

**TABLE P2906.4**  
**WATER SERVICE PIPE**

MATERIAL	STANDARD
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Polyvinyl chloride (PVC) plastic pipe	ASTM D1785; ASTM D2241; ASTM D2672; CSA B137.3; <u>ANSI/AWWA C900</u>
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**Motion/Second/Approved** – The request was granted. The BCC proposed effective date of this rule is January 1, 2025, as per G.S 143-138 (d).

**Reason Given** – C900 pipe was added to the Table above by the Legislature in House Bill 489, Session Law 2021-121, General Statute 87-10, Sections 7. (c) and 7. (d). It was approved on August 30, 2021.

**Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

**NOTICE:**

**Appeals and Interpretations** of the North Carolina State Building Codes are published online at the following link.

**<https://www.ncosfm.gov/codes/codes-current-and-past>**

**NOTICE:**

**Objections and Legislative Review** requests may be made to the NC Office of Administrative Hearings in accordance with G.S. 150B-21.3(b2) after Rules are adopted by the Building Code Council.

**<http://www.ncoah.com/rules/>**

**BOARD OF ELECTROLYSIS EXAMINERS**  
Notice of Public Hearing

Due to technical issues, the Board of Electrolysis Examiners was unable to hold the public hearing at the date and time as originally published in 37:02 NCR 201. The board is rescheduling the hearing as follows:

Date: September 9, 2022  
Time: 10:00 AM

The hearing will take place remotely. To join by videoconference, please go to <https://bit.ly/3bkIbdW>. To join by teleconference, please call (984) 204-1487, access code 587 142 106#.

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 05E .0101-.0106 and amend the rule cited as 01 NCAC 05A .0112.

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: December 1, 2022

Public Hearing:

Date: September 7, 2022

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

Location:

https://ncgov.webex.com/ncgov/j.php?MTID=m6ec63d526b11aac916194686af01b366

Join by meeting number Meeting number (access code): 2439 099 7809

Meeting password: c78sUA4SMsh

Reason for Proposed Action: New rules were created to encourage and promote the use of historically underutilized businesses when purchasing goods and services on behalf of the State of North Carolina. Additionally, new definitions were added for further clarification.

Comments may be submitted to: Donya Strong, 116 W. Jones St., Raleigh, NC 27603; phone (984) 236-0003; email donya.strong@doa.nc.gov

Comment period ends: October 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

01 NCAC 05A .0112 DEFINITIONS

For the purpose of this Chapter:

- (1) "Agency" or "Agencies" means all departments, institutions, boards, commissions, universities, community colleges, or other units of the State subject to G.S. 143, Article 3, 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 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 occur after receipt of a 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, and professional qualifications to investigate a Purchasing Agency's defined problems or projects and to provide counsel, review, analysis, or advice in

- formulating or implementing improvements in programs or Services. This includes improvements related to the organization, planning, directing, control, 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) "Contract" means any type of agreement entered into by 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 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, 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 awards.
- (14) "Emergency Situations" means unforeseen circumstances as stated in G.S. 143-57, that endanger lives, property, or the continuation of a vital program such as those essential for health or safety, as determined by the 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.
- (16) "Goods" means any tangible property, including all equipment, materials, supplies, and commodities. Where the printing is not the predominant aspect of a service contract, acquisition of printing shall be considered the purchase of Goods under these Rules.
- (17) "Goods Contract" means any agreement involving the Procurement of Goods from a Vendor, but that may also have ancillary Services aspects.
- (18) "HUB" means Historically Underutilized Business as defined in G.S. 143-128.4 and certified in accordance with G.S. 143-48.4.
- (19) "HUB Office" means the North Carolina Department of Administration Office for Historically Underutilized Business.
- ~~(18)~~(20) "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.
- ~~(19)~~(21) "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 its Offer. Revisions may apply to price, schedule, technical requirements, or other terms of the proposed 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.
- ~~(20)~~(22) "Offer" means a bid, proposal, 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.
- ~~(21)~~(23) "Personal Services Contract" has the same definition as in G.S. 143-48.6(b). A Personal Services Contract is a type of Service Contract.
- ~~(22)~~(24) "Pressing Need" means a need arising from unforeseen causes as stated in G.S. 143-57, outside the State's control, including delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, as determined by the Purchasing Agency Director, which can be satisfied only by immediate purchase or rental of Goods or Services.
- ~~(23)~~(25) "Price" means the amount paid by the State to a Vendor for Goods or Services.
- ~~(28)~~(26) "Procurement" means the process of acquiring Goods or Services.
- ~~(25)~~(27) "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.
- ~~(26)~~(28) "Progressive Award" means an award 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.
- ~~(27)~~(29) "Public Funds" means any amount received, held, 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.
- ~~(28)~~(30) "Purchasing Agency" or "Purchaser" means the Agency that issues a purchase order or otherwise acquires Goods or Services through a purchasing process.
- ~~(29)~~(31) "Recalled Bid" means a Bid that is rescinded by the Vendor after the bid opening but prior to a contract being awarded.
- ~~(30)~~(32) "Renewal" means an optional term provided for in the Contract that can be exercised as of right by the State.
- ~~(31)~~(33) "Responsible Vendor" means a Vendor who demonstrates in its Offer that it has the capability to perform the requirements of the Solicitation.
- ~~(32)~~(34) "Responsive Offer" means an Offer that conforms to the Requirements of the Solicitation.
- ~~(33)~~(35) "Requirement" is a provision of a Solicitation and any resulting Contract that prescribes the nature or details of a standard, process, or procedure that must be complied with by the Vendor before any further evaluation of the Offer is conducted by the State.
- ~~(34)~~(36) "Sealed Offer" means an Offer that remains unopened until the public opening time stated in the Solicitation.
- ~~(35)~~(37) "Secretary" means the Secretary of the North Carolina Department of Administration.
- ~~(36)~~(38) "Service Contract" means any agreement for compensation involving Services and requiring a particular or specialized knowledge, experience, expertise, or similar capabilities in the Vendor. Contracts for Consultant Services, Professional Services, and Personal Services are also examples of a Service Contract. A Service Contract may also involve the ancillary purchase of Goods.
- ~~(37)~~(39) "Services" means the tasks and duties undertaken by a Vendor in a Service Contract to fulfill the Requirements and Specifications of the Contract.
- ~~(38)~~(40) "Signature" means a manual autograph, an Electronic 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.
- ~~(39)~~(41) "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 Small Purchase Benchmark amount, pursuant to 01 NCAC 05B .0301.
- ~~(40)~~(42) "Solicitation" means to request or invite Vendor Offers, or to request information regarding the acquisition of Goods and Services, through the use of Solicitation Documents.
- ~~(41)~~(43) "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.
- ~~(42)~~(44) "Specification" means any description of the physical or functional characteristics of, or the nature of, the Goods or Services to be procured.
- ~~(43)~~(45) "SPO" means the State Procurement Officer who is also the Director of the Division.
- ~~(46)~~ "Subcontractor" means a firm under contract with the prime contractor/vendor for supplying materials, labor, or materials and labor.
- ~~(44)~~(47) "Tabulation" means a list of Vendors submitting Offers in response to a particular Solicitation and, if applicable, the prices offered as allowed under G.S. 143-52(a).
- ~~(45)~~(48) "Technical Offer" means a proposal by a Vendor in response to the Solicitation, absent the price content.
- ~~(46)~~(49) "Term Contract" is a binding agreement between purchaser and seller to buy and sell certain Goods or Services at certain prices, for an agreed Contract Term, and under specific terms and conditions.
- ~~(47)~~(50) "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.
- ~~(48)~~(51) "Vendor" means a contractor, supplier, bidder, company, independent contractor, firm, corporation, partnership, individual, or other entity submitting a response to a Solicitation.
- ~~(49)~~(52) "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.
- ~~(50)~~(53) "Weakness" means a flaw in the Offer that increases the risk of unsuccessful contract performance.
- ~~(51)~~(54) "Withdrawal" or "Withdrawn Bid" means a Bid that is rescinded by the Vendor prior to the bid opening.
- ~~(52)~~(55) "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 05E – HISTORICALLY UNDERUTILIZED BUSINESS**

- (11) Providing quick pay agreements and policies to enable HUBs and suppliers to meet cash-flow demands.

*Authority G.S. 143-48.*

**01 NCAC 05E .0101 GOOD FAITH EFFORTS**

Agencies shall require Vendors subcontracting all or part of a contract for the purchase of goods or services to undertake good faith efforts to recruit HUB participation when contracting with the State. Good faith efforts shall include at least five of the following:

- (1) Notify HUBs to be included in a response to a Solicitation at least 10 calendar days before the opportunity to respond to the Solicitation ends. The notification shall be made by electronic means and must include:
  - (a) a description of the Goods or Services being solicited;
  - (b) the date, time and location where Offers are to be submitted;
  - (c) the name of the individual within the company who shall be available to answer questions about the opportunity to participate in the response to the Solicitation;
  - (d) where Solicitation documents may be reviewed; and
  - (e) any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.
- (2) Making plans, Specifications and Requirements available to prospective HUBs at least 10 calendar days before the opportunity to respond to the Solicitation ends.
- (3) Dividing or combining elements of work into economically feasible units to facilitate HUB participation.
- (4) Working with minority trade, community, or similar organizations identified by the HUB Office that provide assistance in recruitment of HUBs.
- (5) Attending any pre-bid conferences or site visits provided for in the Solicitation.
- (6) Providing assistance in obtaining required bonding or insurance or providing alternatives for subcontractors.
- (7) Negotiating in good faith with interested HUBs. Any rejection of a HUB should have the reasons documented in writing.
- (8) Providing assistance to an otherwise qualified HUB in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit.
- (9) Assisting HUBs in obtaining the same unit pricing with the Vendor's suppliers.
- (10) Negotiating joint venture and partnership arrangements with HUBs to increase opportunities for HUB participation.

**01 NCAC 05E .0102 HUB PARTICIPATION GOAL**

The Secretary shall set the statewide percentage goal for HUB participation biannually based upon the most recent disparity study commissioned by the HUB Office, the preceding year's HUB participation data, and the availability of HUB businesses by commodity code. The participation goal will be published on the NC Department of Administration website, www.doa.nc.gov, and in the yearly State of North Carolina Historically Underutilized Business Plan for Goods and Services.

*Authority G.S. 143-48; 143-53.*

**01 NCAC 05E .0103 OFFICE FOR HISTORICALLY UNDERUTILIZED BUSINESSES RESPONSIBILITIES**

(a) Interested businesses may register as a HUB in accordance with 01 NCAC 44A, STATEWIDE UNIFORM CERTIFICATION. The information provided by the HUB shall be used by the HUB Office to:

- (1) assist public entities in developing a HUB participation plan;
- (2) identify areas of work where there are HUBs;
- (3) create and maintain a list of certified HUB vendors; and
- (4) assess the need for technical assistance for HUBs.

(b) The HUB Office shall also:

- (1) Provide training and technical assistance to HUBs on how to identify and obtain State purchasing and contract opportunities through the Division of Purchase and Contract and other public entities.
- (2) Provide training and technical assistance to public entities on how to identify and obtain HUB participation on projects or contracts.
- (3) Develop relationships with North Carolina trade and professional organizations by providing periodic meetings, such as networking and information sessions, obtaining input and feedback regarding HUB issues, legislation, and policies to improve the ability of HUBs to participate in State purchases and contracts.
- (4) Collaborate with the Division of Purchase and Contract to monitor Agencies' compliance with the State HUB Plan for Goods and Services. Compliance monitoring will be conducted by reviewing quarterly spend reports and other procurement documentation provided by the agency upon written request by the HUB office, such as contracts, purchase orders, and responses to solicitations.

- (5) Notify Agencies in writing of the outcomes of any compliance review with the State HUB Plan for Goods and Services.
- (6) Work collaboratively with Agencies found to be out of compliance to create a corrective action plan.

Authority G.S. 143-48; 143-49; 143-53; 143-128.4.

**01 NCAC 05E .0104 AGENCY REQUIREMENTS**

(a) The Agency shall develop and implement a HUB participation plan to identify HUBs that can provide Goods and Services and implement outreach efforts to encourage HUB participation. The plan shall include education, recruitment, and interaction between HUBs and non-HUBs.

(b) Before awarding a contract, the Agency shall:

- (1) Attend any pre-bid conference and explain the HUB participation goals and objectives of the State specific to the Agency.
- (2) Notify HUBs from the Agency's HUB vendor list or HUBs that have otherwise indicated interest in the type of work in the Solicitation at least 10 calendar days before the opportunity to respond to the Solicitation ends. The notification shall be made by electronic means and must include:
  - (A) a description of the work being solicited;
  - (B) the date, time, and location where Offers are to be submitted;
  - (C) the name of the Purchasing Officer or individual who will be available to answer questions;
  - (D) where Solicitation requirements may be reviewed; and
  - (E) any special requirements that may exist.
- (3) Utilize media likely to inform potential HUBs of the Solicitation being sought.
- (4) Maintain documentation of any contacts, correspondence, or conversation with HUB firms in accordance with 01 NCAC 05B .1903 and this Subchapter.
- (5) Evaluate documentation to determine that good faith efforts pursuant to 01 NCAC 05E .0101 has been achieved prior to recommendation of award.
- (6) Notify Vendors of the Agency's annual HUB participation goal or project specific participation goal.

(c) After a contract has been awarded, the Agency shall:

- (1) review Vendors' pay applications for compliance with HUB utilization commitments prior to payment; and
- (2) submit a report electronically to the HUB Office regarding payments made to HUBs.

(d) Provide documentation of compliance with this Rule to the HUB Office upon request, such as for a compliance review, complaint, investigation, or other inquiry.

Authority G.S. 143-48; 143-49; 143-53; 143-128.4.

**01 NCAC 05E .0105 VENDOR REQUIREMENTS**

Vendors responding to Solicitations for the purchase of Goods and Services who intend to use a Subcontractor shall:

- (1) Attend any scheduled pre-bid conference.
- (2) Identify opportunities where HUBs may have an interest in providing Goods or Services.
- (3) Identify the HUBs that will be utilized on the project with the corresponding total dollar value of the work they will perform.
- (4) Provide one of the following to the Purchasing Agency:
  - (a) an affidavit including a description of the work by HUBs, expressed as a percentage of the total Contract price, equal to or more than the HUB participation goal; or
  - (b) an affidavit of all good faith efforts taken pursuant to Rule .0101 of this Section, if the percentage is not equal to the HUB participation goal. Failure to comply with the requirements of Item (4) of this Rule shall be grounds for rejection of the Offer and shall be handled in accordance with 01 NCAC 05B .0501.
- (5) Submit notification for approval by the Purchasing Agency and the HUB Office within five calendar days of the replacement of a participating HUB. Notification shall be in writing to the contracted address stating the circumstances involved. The Vendor shall make good faith efforts in accordance with Rule .0101 of this Section to replace a participating HUB with another HUB.
- (6) Make good faith efforts in accordance with Rule .0101 of this Section to solicit bids from HUBs should additional Goods or Services opportunities become available after the Contract is awarded.

Authority G.S. 143-48.

**01 NCAC 05E .0106 HISTORICALLY UNDERUTILIZED BUSINESS RESPONSIBILITIES**

(a) HUBs shall be certified or designated as HUB by the HUB Office to be counted toward HUB participation.

(b) HUB businesses shall make a good faith effort by:

- (1) attending the scheduled pre-bid conference;
- (2) responding when contacted by Purchasing Agencies;
- (3) attending training and outreach sessions given by Purchasing Agencies;
- (4) participating in training or other business development programs offered by Purchasing Agencies; or
- (5) negotiating in good faith with Purchasing Agencies.

Authority G.S. 143-48.

TITLE 08 – STATE BOARD OF ELECTIONS

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Elections intends to adopt the rules cited as 08 NCAC 21 .0206, .0207 and amend the rule cited as 08 NCAC 21 .0201.

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

Proposed Effective Date:

08 NCAC 21 .0206 – January 1, 2023
08 NCAC 21 .0201 and .0207 – April 1, 2023

Public Hearing:

Date: September 19, 2022
Time: 1:00 p.m.

Location: Remote via WebEx:
https://ncgov.webex.com/ncgov/onstage/g.php?MTID=e0fdfce193d3881a76cae69cffd70feb6

Reason for Proposed Action: The State Board of Elections is considering new processes for political committees and referendum committees that fail to file a campaign finance disclosure report within the time required by Article 22A. Proposed Rule 08 NCAC 21 .0206 defines the process by which a candidate or treasurer may request a good cause waiver of a civil late penalty assessed by the State Board under G.S. 163-278.34. Proposed Rule 08 NCAC 21 .0207 outlines the notices to be provided and the opportunity to submit a written explanation prior to the State Board imposing additional civil remedies under G.S. 163-278.34(c) for a failing to file a given report. As part of these proposed changes, the State Board is proposing to amend Rule 08 NCAC 21 .0201 to delete language in paragraph (b), elements of which will be modified and incorporated in Rule 08 NCAC 21 .0207.

Comments may be submitted to: Lindsey Wakely, Rulemaking Coordinator, PO Box 27255, Raleigh, NC 27611-7255; email rulemaking.sboe@ncsbe.gov

Comment period ends: October 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 21 - DEPARTMENTAL RULES

SECTION .0200 – NONCOMPLIANCE POLITICAL COMMITTEES AND REFERENDUM COMMITTEES

08 NCAC 21 .0201 PROCEDURES FOR POLITICAL AND REFERENDUM COMMITTEES COMMITTEE ACCOUNTS

(a) All bank accounts, safety deposit boxes, and other depositories utilized by political committees and referendum committees listed on the statement of organization as required by G.S. 163-278.7(b)(8) or G.S. 163-278.8(b) must be maintained in North Carolina.

(b) Whenever a political committee or referendum committee fails to file with the State Board any report required to be filed under the provisions of Article 22A of Chapter 163, the Board, by certified mail, shall issue a formal Notice of Noncompliance to the political treasurer of the committee and shall order that the report be filed within 30 days of issuance. In the event the committee does not file its report within 30 days of the issuance of the Notice of Noncompliance, the Board by certified mail shall issue a Notice of Termination of Active Status, which shall render the committee ineligible to receive or make contributions until such time as it has filed the delinquent report and has satisfied any statutory penalty incurred pursuant to G.S. 163-278.34.

Authority G.S. 163-278.7; 163-278.8; 163-278.21, 163-278.21; 163-278.23; 163-278.27; 163-278.34.

08 NCAC 21 .0206 REQUESTING A WAIVER OF A CIVIL LATE PENALTY

(a) A political committee, referendum committee, individual, or entity requesting a waiver of a civil late penalty under G.S. 163-278.34 shall complete and file the form available on the State Board's website within 60 days of service of the notice of penalty assessment. The form shall be signed and notarized, and set forth any facts or circumstances that support good cause for a waiver of the penalty.

(b) Waiver requests shall be filed with the State Board using one of the following methods:

- Hand-delivery during regular business hours to the State Board's offices.
United States Postal Service to the mailing address listed on the State Board's website.
Delivery service authorized by G.S. 1A-1, Rule 4 to the physical address published on the State Board's website.

(3) Email to [campaign.reporting@ncsbe.gov](mailto:campaign.reporting@ncsbe.gov) so long as the original signed copy is retained by the political committee, referendum committee, individual or entity for at least two years counting from the date of the election to which the late report affects.

(c) A waiver request is considered filed on the date it is postmarked by the United States Postal Service or marked with an equivalent marking by a delivery service authorized by G.S. 1A-1, Rule 4. An email is considered filed if received by 11:59 pm.

(d) If a waiver request is denied by the State Board, a new notice of penalty assessment shall be served by any means authorized under G.S. 1A-1, Rule 4. The new notice of penalty assessment shall direct the political committee, referendum committee, individual, or entity to pay the assessment within 30 days. The political committee, referendum committee, individual or entity is not eligible to request of a waiver of the new penalty assessment. Reconsideration of a waiver request may only be granted under extenuating circumstances as determined by the Campaign Finance Director of the State Board of Elections.

Authority G.S. 163-278.34; 163-278.21.

**08 NCAC 21 .0207 PROCEDURES FOR COMMITTEES WITH MISSING REPORTS**

(a) A political committee or referendum committee that fails to file a report required by Article 22A within 30 days after service of the Notice of Penalty Assessment under G.S. 163-278.34(e) shall be issued a Notice of Noncompliance directing the treasurer to file the missing report. A copy of the Notice of Noncompliance shall be posted to the State Board's website.

(b) A political committee or referendum committee that fails to file a missing report within 30 days after service of the Notice of Noncompliance shall be referred to the State Board for issuance of an order requiring the committee to file the missing report and to cease receiving contributions and making expenditures if the missing report is not filed within 30 days of the order, except in extenuating circumstances as determined by the State Board. The treasurer shall be provided notice of the referral and given the opportunity to submit a written affidavit stating any facts or circumstances for the State Board's consideration.

(c) Any order issued by the State Board of Elections under Paragraph (b) of this Rule shall be served by any means authorized under G.S. 1A-1, Rule 4. A copy of the order shall be posted to the State Board's website.

(d) A political committee or referendum committee that fails to file the missing report within 30 days of the State Board's order under Paragraph (b) of this Rule shall have the committee's status changed from active to suspended. While suspended, the committee shall not receive any contributions or make any expenditures except for the payment of any civil penalties or forfeitures under G.S. 163-278.14 or G.S. 163-278.34. To be removed from suspended status, the political committee or referendum committee shall file all missing reports identified in any order of the State Board and pay all civil late penalties incurred pursuant to G.S. 163-278.34.

Authority G.S. 163-278.34; 163-278.21.

**TITLE 12 – DEPARTMENT OF JUSTICE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to adopt the rules cited as 12 NCAC 09G .0208, .0209 and amend the rules cited as 12 NCAC 09G .0302, .0504, and .0505.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** <https://ncdoj.gov/law-enforcement-training/criminal-justice/forms-and-publications/>

**Proposed Effective Date:** *January 1, 2023*

**Public Hearing:**

**Date:** *November 2, 2022*

**Time:** *10:00 a.m.*

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

**Reason for Proposed Action:** *To ensure consistency with the rules previously passed with respect to Minimum Standards for Law Enforcement Officers, and also to address the need for changes with respect to the prior criminal history rules for correctional officers and probation/parole officers as requested by the Department of Public Safety. This includes modifying some rules and repealing others.*

**Comments may be submitted to:** *Michelle Schilling, NC Department of Justice, Criminal Justice Standards Division, PO Drawer 149, Raleigh, NC 27602-0149*

**Comment period ends:** *November 2, 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 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09G - STANDARDS FOR CORRECTIONS EMPLOYMENT, TRAINING, AND CERTIFICATION

12 NCAC 09G. 0208 MINIMUM STANDARDS FOR CORRECTIONAL OFFICERS

Every correctional officer employed by the North Carolina Department of Public Safety, Division of Adult Correction shall:

- (1) be a citizen of the United States;
- (2) be at least 20 years of age;
- (3) be a high school graduate, or the equivalent as defined in 12 NCAC 09G .0204;
- (4) have been fingerprinted by the employing agency in the manner provided in 12 NCAC 09G .0207;
- (5) have had a medical examination as required by 12 NCAC 09G .0205;
- (6) have produced a negative result on a drug screen as described in 12 NCAC 09G .0205;
- (7) have been administered a psychological screening examination in accordance with G.S. 17C-10(c). The psychological screening examination shall be valid for a period of one year from the date on which it was administered;
- (8) have a background investigation conducted by the Division of Adult Correction, including a personal interview.
- (9) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 09G .0302;
- (10) for personnel who are authorized to carry a firearm in the execution of their duties, satisfactorily Complete the Division of Adult Correction's departmental firearms training program as prescribed in 12 NCAC 09G .0411. Such firearms training compliance must have occurred within one year of the date of employment and by using the department approved service handgun(s); and
- (11) be of good moral character as defined in: In re Willis 288 N.C. 1.215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); In re Legg, 325 N.C. 658, 386 S.E. 2d 174 (1989); in re Applicants for License, 143 N.C.1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 47 (1983); and later court decisions;
- (12) Make the following notifications:
  - (a) within 30 days of the qualifying event, notify the Standards Division and the appointing agency head in writing of all criminal offenses for which the officer is charged or arrested. This shall include traffic offenses identified

in the Class B Misdemeanor Manual and offenses of driving under the influence (DUI) or driving while impaired (DWI);

- (b) within 30 days of the qualifying event, notify the Standards Division and the appointing agency head in writing of all criminal offenses for which the officer pleads no contest, pleads guilty, or of which the officer is found guilty. This shall include traffic offenses identified in the Class B Misdemeanor Manual and offense of driving under the influence (DUI) or driving while impaired (DWI);
- (c) within 30 days of service, officers shall notify the Standards Division of all Domestic Violence Protective Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C) that are issued by a judicial official against the officer;
- (d) within 30 days of the date the case was disposed of in court, the agency head, provided he or she has knowledge of the officer's arrests or criminal charges and final dispositions, shall also notify the Standards Division of arrests or criminal charges and final disposition;
- (e) within 30 days of the issuance of all Domestic Violence Protective Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C), the agency head, provided he or she has knowledge of the order, shall also notify the Standard Division of these orders;
- (f) The required notifications in this Rule shall be in writing and shall specify the nature of the offense or order, the court in which the case as handled, the date of the arrest, criminal charge, or service of the order, and the final disposition. The notification shall include a certified copy of the order or court documentation and final disposition from the Clerk of Court in the county of adjudication. The requirements of this Item shall be applicable at all times during which the officer is employed and certified by the Commission and shall also apply to all applicants for certification. Receipt by the Standards Division of a single notification, for the officer or the agency head, shall be sufficient notice for compliance with this Item.
- (13) The requirements of this Rule shall apply to all applicants for certification and shall also apply

at all times during which the correctional officer is certified by the Commission.

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

**12 NCAC 09G. 0209 MINIMUM STANDARDS FOR PROBATION/PAROLE OFFICERS**

Every probation/parole officer employed by the North Carolina Department of Public Safety, Division of Adult Correction shall:

- (1) be a citizen of the United States;
- (2) be at least 20 years of age;
- (3) have attained a bachelor's degree from a regionally accredited institution of higher learning;
- (4) have been fingerprinted by the employing agency in the manner provided in 12 NCAC 09G .0207;
- (5) have had a medical examination as required by 12 NCAC 09G .0205;
- (6) have produced a negative result on a drug screen as described in 12 NCAC 09G .0205;
- (7) have been administered a psychological screening examination in accordance with G.S. 17C-10(c). The psychological screening examination shall be valid for a period of one year from the date on which it was administered;
- (8) have a background investigation conducted by the Division of Adult Correction, including a personal interview;
- (9) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 09G .0302;
- (10) for personnel who are authorized to carry a firearm in the execution of their duties, satisfactorily Complete the Division of Adult Correction's departmental firearms training program as prescribed in 12 NCAC 09G .0412. Such firearms training compliance must have occurred within one year of the date of employment and by using the department approved service handgun(s); and
- (11) be of good moral character as defined in: In re Willis 288 N.C. 1.215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); In re Legg, 325 N.C. 658, 386 S.E. 2d 174 (1989); in re Applicants for License, 143 N.C.1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 47 (1983); and later court decisions;
- (12) Make the following notifications:
  - (a) within 30 days of the qualifying event, notify the Standards Division and the appointing agency head in writing of all criminal offenses for which the officer is charged or arrested. This shall include traffic offenses identified

in the Class B Misdemeanor Manual and offenses of driving under the influence (DUI) or driving while impaired (DWI);

- (b) within 30 days of the qualifying event, notify the Standards Division and the appointing agency head in writing of all criminal offenses for which the officer pleads no contest, pleads guilty, or of which the officer is found guilty. This shall include traffic offenses identified in the Class B Misdemeanor Manual and offense of driving under the influence (DUI) or driving while impaired (DWI);
- (c) within 30 days of service, officers shall notify the Standards Division of all Domestic Violence Protective Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C) that are issued by a judicial official against the officer;
- (d) within 30 days of the date the case was disposed of in court, the agency head, provided he or she has knowledge of the officer's arrests or criminal charges and final dispositions, shall also notify the Standards Division of arrests or criminal charges and final disposition;
- (e) within 30 days of the issuance of all Domestic Violence Protective Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C), the agency head, provided he or she has knowledge of the order, shall also notify the Standard Division of these orders;
- (f) The required notifications in this Rule shall be in writing and shall specify the nature of the offense or order, the court in which the case as handled, the date of the arrest, criminal charge, or service of the order, and the final disposition. The notification shall include a certified copy of the order or court documentation and final disposition from the Clerk of Court in the county of adjudication. The requirements of this Item shall be applicable at all times during which the officer is employed and certified by the Commission and shall also apply to all applicants for certification. Receipt by the Standards Division of a single notification, for the officer or the agency head, shall be sufficient notice for compliance with this Item.
- (13) The requirements of this Rule shall apply to all applicants for certification and shall also apply

at all times during which the correctional officer is certified by the Commission.

- (1) a felony;
- (2) a crime or unlawful act constituting a misdemeanor as defined in 12 NCAC 09G .0102(10) or having completed any corrections supervision imposed by the courts for such crimes within three years of issuance of certification, whichever is later; or
- (3) for personnel who are authorized to carry a firearm in the execution of their duties, an offense that, pursuant to 18 USC 922(g)(8) would prohibit the possession of a firearm or ammunition;

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

**12 NCAC 09G .0302 NOTIFICATION OF CRIMINAL CHARGES/CONVICTIONS CRIMINAL HISTORY RECORD**

~~(a) Every person employed and certified as a correctional officer or probation/parole officer shall make the following notifications:~~

- ~~(1) within 30 days of the qualifying event notify the Standards Division and the appointing department head in writing of all criminal offenses for which the officer is charged or arrested;~~
- ~~(2) within 30 days of the qualifying event notify the Standards Division and the appointing department head in writing of all criminal offenses for which the officer pleads no contest, pleads guilty, or of which the officer is found guilty. This shall include traffic offenses identified in the Class B Misdemeanor Manual and offenses of driving under the influence (DUI) or driving while impaired (DWI);~~
- ~~(3) within 30 days of service, officers shall notify the Standards Division of all Domestic Violence Protective Order (G.S. 50B) and Civil No Contact Orders (G.S. 50C) that are issued by a judicial official against the officer;~~

~~(b) The Department Head shall make the following notifications:~~

- ~~(1) within 30 days of the date the case was disposed of in court, the department head, provided he or she has knowledge of the officer's arrests or criminal charges and final dispositions, shall also notify the Standards Division of arrests or criminal charges and final disposition; and~~
- ~~(2) within 30 days of the issuance of a Domestic Violence Protective Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C), the department head, provided he or she has knowledge of the order, shall also notify the Standards Division of these orders.~~

~~(c) The required notifications in this Rule shall be in writing and shall specify the nature of the offense or order, the court in which the case was handled, the date of the arrest, criminal charge, or service of the order, and the final disposition. The notification shall include a certified copy of the order or court documentation and final disposition from the Clerk of Court in the county of adjudication. The requirements of this subparagraph shall be applicable at all times during which the officer is employed and certified by the Commission and shall also apply to all applicants for certification. Receipt by the Standards Division of a single notification, from the officer or the department head, shall be sufficient notice for compliance with this Rule.~~

(a) Consistent with and subject to the requirements of 12 NCAC 09G .0504, every correctional officer applicant, probation/parole officer applicant, and probation/parole officer in North Carolina shall not have been convicted by a local, state, federal or military court of:

(b) Consistent with and subject to the requirements of 12 NCAC 09G .0504, every correctional officer employed or certified in North Carolina shall not have been convicted by a local, state, federal or military court of:

- (1) a felony;
- (2) a crime for which the punishment could have been imprisonment for more than two years;
- (3) a crime or unlawful act constituting a misdemeanor as defined in 12 NCAC 09G .0102(10) or having completed any corrections supervision imposed by the courts for such crimes within three years of issuance of certification, whichever is later; or
- (4) an offense that, pursuant to 18 USC 922(g)(8) would prohibit the possession of a firearm or ammunition.

Authority G.S. 17C-6.

**12 NCAC 09G .0504 SUSPENSION: REVOCATION: OR DENIAL OF CERTIFICATION**

(a) The Commission shall revoke the certification of a correctional officer or probation/parole officer when the Commission finds that the officer has committed or been convicted of a felony offense.

(b) The Commission shall deny the certification of a correctional officer when the Commission finds the officer has been convicted of a felony.

(c) The Commission shall deny the certification of a probation/parole officer when the Commission finds the officer has committed or been convicted of a felony offense.

(d) The Commission may, based on the evidence for each case, suspend, revoke, or deny the certification of a corrections officer, as defined in 12 NCAC 09G .0102(4) when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and completed with passing scores the required basic training course in its entirety in time periods prescribed in 12 NCAC 09G .0400 applicable to a specified position or job title;
- (2) fails to meet or maintain one or more of the employment standards required by 12 NCAC 09G .0200 for the category of the officer's certification or fails to meet or maintain one or more of the training standards required by 12 NCAC 09G .0400 for the category of the officer's certification;

- (3) for correctional officers as defined in 12 NCAC 09G .0102(3), been convicted of a misdemeanor as defined in 12 NCAC 09G .0102(12) for a three year period prior to the date of application for employment;
- ~~(3)~~(4) for correctional officers as defined in 12 NCAC 09G .0102(3), have committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 after certification;
- ~~(4)~~(5) for probation/parole officers as defined in 12 NCAC 09G .0102(12), have committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 for a three year period prior to the date of application for employment or after certification;
- ~~(5)~~(6) has been discharged by the North Carolina Department of Public Safety, Division of Adult Correction ~~and Juvenile Justice~~ for:
  - (A) commission or conviction of a motor vehicle offense requiring the revocation of the officer's drivers license; or
  - (B) lack of good moral character as defined in 12 NCAC 09G .0206;
- ~~(6)~~(7) has been discharged by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice because the officer lacks the mental or physical capabilities to fulfill the responsibilities of a corrections officer;
- ~~(7)~~(8) has knowingly made a material misrepresentation of any information required for certification or accreditation;
- ~~(8)~~(9) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation, or cheating whatsoever, obtained or attempted to obtain credit, training, or certification from the Commission;
- ~~(9)~~(10) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation, or cheating whatsoever, aided another person in obtaining or attempting to obtain credit, training, or certification from the Commission;
- ~~(10)~~(11) has failed to notify the Standards Division of all criminal charges or convictions as required by 12 NCAC 09G ~~.0302~~, .0208 or .0209;
- ~~(11)~~(12) has been removed from office by decree of the Superior Court in accord with the provisions of G.S. 128-16 or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230;
- ~~(12)~~(13) has refused to submit to an applicant drug screen as required by 12 NCAC 09G .0206; or has refused to submit to an in-service drug screen pursuant to the guidelines set forth in the Drug Screening Implementation Guide as required by the Department of Public Safety,

Division of Adult Correction and Juvenile Justice;

- ~~(13)~~(14) has produced a positive result on a drug screen reported to the Commission as specified in 12 NCAC 09G .0206, where the positive result cannot be explained to the Commission's satisfaction. For the purposes of this Rule, "to the Commission's satisfaction" shall be determined on a case-by-case basis, and the use of a prescribed drug shall be satisfactory; or
- ~~(14)~~(15) has been denied certification or had such certification suspended or revoked by a previous action of the North Carolina Criminal Justice Education and Training Standards Commission, the North Carolina Company Police Program, the North Carolina Campus Police Program, the North Carolina Sheriffs' Education and Training Standards Commission, or a similar North Carolina, out of state, or federal approving, certifying, or licensing agency whose function is the same or similar to the agencies if the certification was denied, suspended, or revoked based on grounds that would constitute a violation of this Subchapter.

(e) Following suspension, revocation, or denial of the person's certification, the person shall not remain employed or appointed as a corrections officer and the person shall not exercise any authority of a corrections officer during a period for which the person's certification is suspended, revoked, or denied.

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

**12 NCAC 09G .0505 PERIOD OF SUSPENSION: REVOCATION: OR DENIAL**

(a) When the Commission revokes or denies the certification of a corrections officer pursuant to 12 NCAC 09G .0504 of this Section, the period of the sanction shall be 10 years where the cause of sanction is:

- (1) commission or conviction of a felony offense;
- (2) the second suspension of an officer's certification for any of the causes requiring a three-year period of suspension; or
- (3) revocation or denial of certification by the North Carolina Sheriffs' Education and Training Standards Commission based on grounds that would constitute a violation of this Subchapter.

(b) When the Commission suspends or denies the certification of a corrections officer pursuant to 12 NCAC 09G .0504 of this Section, the period of sanction shall be not less than three years; however, the Commission may either reduce or suspend the period of sanction under Paragraph (c) of this Rule or substitute a period of probation in lieu of suspension of certification following an administrative hearing, where the cause of sanction is:

- (1) conviction of a misdemeanor as defined in 12 NCAC 09G .0102, for a three year period prior to the date of application;

- ~~(1)~~(2) commission or conviction of a misdemeanor as defined in 12 NCAC 09G ~~.0102~~; .0102, after certification;
- ~~(2)~~(3) discharge by the North Carolina Department of Public Safety, Division of Adult Correction ~~and Juvenile Justice~~ pursuant to 12 NCAC 09G .0504(b)(4) and (b)(5) of this Section;
- ~~(3)~~(4) refusal to submit to the applicant drug screen required by the Rules in this Subchapter;
- ~~(4)~~(5) production of a positive result on a drug screen reported to the Commission under 12 NCAC 09G ~~.0206~~ .0205, where the positive result cannot be explained to the Commission's satisfaction. For the purposes of this Rule, "to the Commission's satisfaction" shall be determined on a case-by-case basis, and the use of a prescribed drug shall be satisfactory;
- ~~(5)~~(6) has knowingly made a material misrepresentation of any information required for certification or accreditation;
- ~~(6)~~(7) has knowingly and willfully obtained, attempted to obtain, aided another person to obtain, or aided another person attempt to obtain credit, training or certification by any means of false pretense, deception, fraud, misrepresentation or cheating;
- ~~(7)~~(8) failure to make either of the notifications as required by 12 NCAC 09G ~~.0302~~; .0208 or .0209.
- ~~(8)~~(9) removal from office under the provisions of G.S. 128-16 or the provisions of G.S. 14-230; or
- ~~(9)~~(10) certification revoked or denied by the North Carolina Sheriffs' Education and Training Standards Commission, if such certification was revoked or denied based on grounds that would constitute a violation of Section 09G of these Rules.

(c) When the Commission suspends or denies the certification of a corrections officer, the period of sanction shall be for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:

- (1) failure to meet or satisfy relevant basic training requirements;
- (2) failure to meet or maintain the minimum standards for certification; or
- (3) discharge from the North Carolina Department of Correction for impairment of physical or mental capabilities.

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

**TITLE 14B – DEPARTMENT OF PUBLIC SAFETY**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Public Safety intends to adopt the rules cited as 14B NCAC 03 .0401-.0410.

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

**Proposed Effective Date:** December 1, 2022

**Instructions on How to Demand a Public Hearing:** (must be requested in writing within 15 days of notice): A request for public hearing must be made within 15 days of notice. Email Rulemaking Coordinator Will Polk at [will.polk@ncdps.gov](mailto:will.polk@ncdps.gov) to request a public hearing.

**Reason for Proposed Action:** The Department of Public Safety, Division of Emergency Management is promulgating permanent rules as required under N.C. Sess. Law 2014-27. The necessity of a State Search and Rescue Program has been made apparent through the significant number of local, state, and federal states of emergency that have required coordinated and qualified resources to augment local search and rescue capabilities. Rules are required to ensure the equitable implementation of the NC Search and Rescue Program. The NC Search and Rescue Program is a partnership between local and state governments where the state augments local response capabilities to enhance disaster response capabilities. These rules establish standards for eligibility, resource types, and response expectations both administratively as well as operationally when responding under the authorities of the NC Search and Rescue Program. The rules of this section only apply to those entities who elect to participate in the program and establish the standards and requirements of program participation and the expectations of the NC Division of Emergency Management in the administration of this program.

**Comments may be submitted to:** Will Polk, NC Department of Public Safety, 4201 Mail Service Center, Raleigh, NC 27699-4201; phone (919) 825-2706; email [will.polk@ncdps.gov](mailto:will.polk@ncdps.gov)

**Comment period ends:** October 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 03 – EMERGENCY MANAGEMENT

SECTION .0400 – NORTH CAROLINA SEARCH AND RESCUE PROGRAM

14B NCAC 03 .0401 PURPOSE

- (a) The purpose of this section is to prescribe requirements pertaining to the North Carolina Department of Public Safety Division of Emergency Management administered North Carolina Search and Rescue Program.
- (b) This section applies to Sponsoring Agencies and other participants in the North Carolina Search and Rescue Program that have executed agreements administered by the North Carolina Division of Emergency Management.

Authority G.S. 166A-66.

14B NCAC 03 .0402 ABBREVIATIONS AND DEFINITIONS

As used in this the following abbreviations and terms mean:

- (1) All-hazards Disaster Response Model – a response methodology where resources provide all applicable capability to respond to any threats or hazard that is impacting the state or has the potential to impact the state.
- (2) Authority Having Jurisdiction (AHJ) - means those local, state, or federal entities having response authority to act over a specific aspect of search and rescue in a specific geographic area.
- (3) Contract Response Team – A regional all-hazards disaster response contract response team as defined in G.S. 166A-65 which is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6 with self-sustaining logistical support allowing for responses into disaster areas.
- (4) County to County Mutual Aid – Resource sharing between county public safety resources under the conditions of the NC Statewide Mutual Aid Agreement or another similar agreement between local governments.
- (5) Federal Emergency Management Agency (FEMA) – is an agency of the United States Department of Homeland Security with the responsibility to coordinate the response to a Presidentially-declared disasters that has occurred in the United States and that overwhelms the resources of local and state authorities.
- (6) FEMA Public Assistance Program – is a federal reimbursement grant program that provides federal funding to help communities respond to and recover from disasters.

- (7) Incident Command System (ICS) - A standardized on-scene emergency management construct specifically designed to provide an integrated organizational structure that reflects the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries. The Incident Command System is the combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure, designed to aid in the management of resources during incidents. ICS is used for all kinds of emergencies and is applicable to small as well as large and complex incidents. ICS is used by various jurisdictions and functional agencies, both public and private, to organize field-level incident management operations.
- (8) Incident Support Team (IST) – A group of search and rescue experts who assist local and state emergency management in management and support of deployed search and rescue system resources.
- (9) Local Emergency Management Coordinator (LEMC) – The County Emergency Management Coordinator who is responsible for all local disaster preparedness, response, and recovery activities in a specific geographic area.
- (10) NC All-Hazards Incident Management Team (NCAHIMT) – The North Carolina Emergency Management program responsible for supporting local and state incident management requirements in local and state disaster response activities.
- (11) NC Resource Typing – A document defining and categorizing, by capability, the resources requested, deployed, and used in incidents. Resource typing definitions establish a common language and defines a resource's minimum capabilities for equipment, teams, and units.
- (12) North Carolina Search and Rescue System (NC SAR System) – The state search and rescue program established in Article 6 of Chapter 166A of the North Carolina General Statutes.
- (13) North Carolina Search and Rescue Technical Advisory Committee (NC SAR TAC) – An advisory committee established in Article 6 of Chapter 166A of the North Carolina General Statutes to advise the Secretary of the North Carolina Department of Public Safety and the North Carolina Division of Emergency Management on the establishment of a search and rescue system.
- (14) North Carolina Emergency Management (NCEM) - A division of the North Carolina Department of Public Safety with the responsibility to coordinate the mitigation,

- planning, preparedness, response, and recovery to a disaster or emergency that has or could occur in the State.
- (15) North Carolina Emergency Management Operations Chief (NCEM OSC) – The Assistant Director of Operations for the North Carolina Division of Emergency Management.
- (16) North Carolina Emergency Management Director (NCEM Director) – The Director of the North Carolina Division of Emergency Management.
- (17) National Incident Management System (NIMS) - A set of principles that provides a systematic, proactive approach guiding government agencies at all levels, nongovernmental organizations, and the private sector to work to prevent, protect against, respond to, recover from, and mitigate the effects of incidents, regardless of cause, size, location, or complexity, to reduce the loss of life or property and harm to the environment.
- (18) On-duty – When a person is functioning, paid or unpaid, as an agent of their sponsoring or participating agency or the NC Division of Emergency Management as part of the NC Search and Rescue Program.
- (19) Participating Agency (PA) – An entity that assists a sponsoring agency with the formation of a search and rescue team by providing personnel or equipment.
- (20) Responsible Party (RP) – The entity whose actions or inactions caused an event requiring search and rescue system resources.
- (21) Sensitive Information – Any information, to include but not limited to audio recordings, images, and video recordings gained during a search and rescue operation that has not been released to the public by the authority having jurisdiction.
- (22) Specialty Rescue Team – A group of response personnel who provided specialized, technical search and rescue capability.
- (23) Sponsoring Agency (SA) – A local or tribal unit of government or other entity with an active response agreement with a local unit of government that organizes and coordinates a search and rescue team in the North Carolina Search and Rescue System.
- (24) State Coordinated Mutual Aid – Assistance between North Carolina Search and Rescue System resources and local units of government facilitated and coordinated by North Carolina Emergency Management.
- (25) State Emergency Operations Plan (SEOP) – A document under the authority of G.S. 166A-19.12(2) that details how the State of North Carolina will respond to a disaster or emergency requiring state assistance utilizing

- an established comprehensive, all-hazards approach.
- (26) State Mission Assignment (State Mission) – A NCEM approved request for assistance to deploy state search and rescue system resources at the request of a local unit of government.
- (27) System Personnel – Personnel from a contract or specialty rescue team with an active response agreement with the Division of Emergency Management for search and rescue response or any personnel employed on a full-time or part-time basis by the Division of Emergency Management with a responsibility for search and rescue response.
- (28) System Resource – Personnel or equipment from a contract or specialty rescue team with an active response agreement with the Division of Emergency Management for search and rescue response.

Authority G.S. 166A-65; 166A-66.

**14B NCAC 03 .0403 DISPATCH OF A CONTRACT RESPONSE TEAM TO A SEARCH AND RESCUE TEAM OR SPECIALTY RESCUE TEAM MISSION**

- (a) NC SAR System Resources shall employ the all-hazards response model. System resources are not limited to responses to only missing person incidents. System resources may support any incident where system resources may relieve human suffering or protect life, property, or the environment for an actual or potential threat.
- (b) NC Emergency Management shall maintain direction and control of any deployed NC SAR System resources that have been deployed through action of NCEM.
- (c) Any resource of the NC SAR System remains a local resource first and may deploy under their local authorities or agreements notwithstanding any action by the State. Participation in the NC SAR System shall not limit or supersede their local authorities, responsibilities, or agreements when deploying under those authorities or agreements.
- (d) NC SAR System resources shall be deployed by the State using one of the following methods:
  - (1) State Coordinated Mutual Aid – The primary goal of State Coordinated Mutual Aid is to facilitate mutual aid through polling NC SAR System resources, either in part or in whole, at the discretion of NCEM officials to seek available qualified resources in the NC SAR System to fill a local request for support. There is no requirement for NCEM to poll all resources, nor any requirement for the local AHJ to take all or some portion of teams who are available. Final resource selection remains with the local AHJ. NCEM officials shall use incident type and urgency, incident and resource location, resource type, resource availability and timeliness to affecting incident outcome, and resource cost as factors in

determining what resources to poll when activating system resources.

- (2) State Mission Assignment - State Mission's primary goal is to deploy NC SAR System resources when there is a threat to life, property, or the environment and some barrier(s) to prevent the mission being filled through local or state coordinated mutual aid. In cases of a State of Emergency as defined in G.S. 166A-19.20 or G.S. 166A-19.22, NCEM shall deploy NC SAR System resources through a State Mission Assignment to minimize any delay in initiating or augmenting lifesaving operations.

(e) The County Local Emergency Management Coordinator (LEMC) or their designee shall have the authority to request system resources. Local law enforcement agencies, fire departments, rescue squads, and any other local authority having jurisdiction shall route requests for activation of NC SAR System Resources to their LEMC who will make the request for support to NCEM.

*Authority G.S. 166A-66.*

**14B NCAC 03 .0404 ON-SITE OPERATIONS OF A CONTRACT RESPONSE TEAM**

All search and rescue system resources shall operate in accordance with the following standards of response:

- (1) FEMA ICS and NIMS standards which are adopted and are incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6;
- (2) following all direction from NCEM personnel;
- (3) when responding in support of law enforcement operations, resources shall coordinate activities with the law enforcement authorities to ensure their actions support any potential criminal investigation.
- (4) resources shall not release any sensitive information to the public or media during operations without the consent of the local, state, or federal authority having jurisdiction consistent with the Chapter 132 of the North Carolina General Statutes which is adopted and incorporated by references with subsequent changes or amendments pursuant to G.S. 150B-21.6; and
- (5) state and federal law.

*Authority G.S. 166A-66, National Incident Management System, 3<sup>rd</sup> Edition.*

**14B NCAC 03 .0405 STANDARDS FOR ADMINISTRATION OF A CONTRACT RESPONSE TEAM, INCLUDING PROCEDURES FOR REIMBURSEMENT OF RESPONSE COSTS**

(a) System resources shall maintain all personnel records to include:

- (1) Responder medical history;
- (2) Emergency contact information;

- (3) Current pay and benefit rates, including overtime rates; and
- (4) Policies for overtime pay if deploying paid persons.

(b) System personnel shall be in an on-duty status as an emergency management worker as defined in G.S. 166A-19.60(e) which is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6 during all training and response activities.

(c) System resources shall maintain a current team roster.  
(d) System resources shall maintain all team training, certification, and credentials.

(e) System resources shall maintain all inventory and maintenance records for deployable equipment.

(f) Resource records must be available for review by NCEM officials to ensure compliance.

(g) Within 90 days of demobilization from a state mission, system resources shall submit documentation of actual costs to NCEM for reimbursement consistent with FEMA Public Assistance Program and Policy Guide which is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6. NCEM may grant extensions beyond the 90-day period at their discretion due to extenuating circumstances such as extended equipment repairs.

*Authority G.S. 166A-19.60; 166A-66; 42 U.S.C.5121 et seq; 44 CFR Part 206.*

**14B NCAC 03 .0406 RECOVERING THE COSTS OF A SEARCH AND RESCUE TEAM OR SPECIALTY RESCUE TEAM MISSION**

NCEM shall seek reimbursement by the responsible party for system response costs in cases of negligence or manmade disaster.

- (1) Responsible parties shall be billed reasonable costs to include personnel and equipment costs consistent with current protocols established for the recovery of cost of activation of a response team for a hazardous materials emergency response set out in G.S. 166-27 which is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6 of eligible costs.
- (2) Responsible parties shall remit payment within 30 days of receipt of invoice via certified mail.

*Authority G.S. 166A-27; 166A-66.*

**14B NCAC 03 .0407 PROCEDURES FOR BIDDING AND CONTRACTING FOR SEARCH AND RESCUE TEAM AND SPECIALTY RESCUE TEAM MISSIONS**

(a) Eligibility for participation as a contract or specialty rescue team:

- (1) Sponsoring agencies must:
  - (A) Be a local unit of government, state recognized tribal government, or maintain an active response agreement with a local or tribal unit of government;

- (B) Maintain participation in the statewide mutual aid agreement; and
- (C) Ensure all members possess the qualifications as outlined in Rule .0409 of this Section which is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6.

(2) Participating agencies shall ensure all members possess the qualifications as outlined in Rule .0409 of this Section which is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6.

(b) Eligibility for participation on an incident support team.

- (1) Personnel shall be a participating member of the NC SAR System, NCEM All-Hazards Incident Management Team Program, or an employee of NC Emergency Management. If not an employee of NCEM, each member's sponsoring agency must have an active memorandum of agreement that outlines the conditions of their participation on an incident support team.
- (2) Ensure all members possess the qualifications as outlined in Rule .0409 of this Section which is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6.

(c) Contract Response Teams – Within 18 months of a new contract period, NCEM shall electronically distribute a bid announcement via electronic mail to all system resources and local emergency management coordinators for interested parties to return a letter of interest by a specified date. NCEM shall distribute an electronic bid package to all interested parties that must be returned to NCEM by a date specified in the bid package.

- (1) Contract response teams shall be limited to seven regionally based all hazard response taskforces. Each taskforce will be assigned a primary response region in the state.
- (2) Bid packages shall be submitted for a specific response region.
- (3) The bidding agency and any participating agencies shall be located in that specified response region.
- (4) A review committee shall be established by the NCEM Director or designee. This committee will open all completed sealed bid packages and evaluate them based on an agreed upon criteria at a date to be set by the NCEM Director.
- (5) The committee shall develop a bid package review summary that includes their recommendations for selections that will be sent to the NCEM Operations Chief for concurrence before being reviewed and approved by the NCEM Director.
- (6) Agencies who are successful in the bid process will be notified, system agreements shall be

drafted, and executed by all parties for the agreed upon period.

(7) NCEM shall draft, execute, and maintain two agreements with the sponsoring agency for the resource to maintain participation in the program.

(A) NCEM shall execute and maintain a cooperative agreement with the sponsoring agency that outlines the conditions and activities that the resource must follow to enable reimbursement of eligible training, equipment, and personnel costs associated with maintaining a contract response team. The cooperative agreement shall be limited to the contract period.

(B) Funds reimbursed through this agreement shall go directly to cover program costs and be utilized by the sponsoring and/or participating agencies.

(C) The sponsoring agency shall maintain all records of any program spending and shall not comingle funds or use program funding for any other purpose other than maintaining or building search and rescue capability.

(D) Each sponsoring agency is responsible to draft, execute, and maintain agreements with any participating agency that is supporting their bid for a contract response team with personnel, equipment, or funding. NCEM may provide a template agreement for use between sponsoring and participating agencies. The sponsoring agency may include any participating agency resources in their bid as long as they have an active agreement.

(E) Resources shall maintain a response agreement that outlines response activities and the reimbursement for costs of state missions.

(d) Specialty Rescue Teams - NC Emergency Management shall enter into response agreements with additional specialty rescue teams to ensure statewide response capability in certain established program areas.

- (1) These program areas shall include:
  - (A) Swiftwater Search and Rescue;
  - (B) Wilderness / Land Search and Rescue;
  - (C) Mountain Search and Rescue; and
  - (D) Helicopter Search and Rescue

(2) NC Emergency Management shall provide program support in establishing program standards, supporting specialized training, and providing specialized equipment within the confines of available funding. Participation as a

- specialty rescue team is considered at will and can be terminated with or without cause by either party with 30-day notice.
- (3) Each qualified resource shall enter into a response agreement specific to each established program area with NCEM. The resource will then enter into a memorandum of understanding with NCEM that shall be referred to as a specialty rescue team response agreement.
- (4) Specialty rescue teams must demonstrate their ability to respond as a self-supported resource outside their jurisdiction to be eligible to participate in the NC SAR System.
- (5) Each specialty rescue team is responsible to draft, execute, and maintain agreements with any participating agency that is supporting the sponsoring agency for a specialty response team with personnel, equipment, or funding. NCEM may provide a template agreement for use between sponsoring and participating agencies.

- (2) ability to maintain required number of trained personnel to ensure response readiness without negative impacts to local response obligations;
- (3) ability to maintain and care for any system provided equipment;
- (4) availability of local equipment to support response activities; and
- (5) availability to maintain dedicated administrative staff to ensure management of administrative duties, training, and logistical requirements.

Authority G.S. 166A-66; 166A-67.

**14B NCAC 03 .0409 PERSONNEL, TRAINING, AND EQUIPMENT STANDARDS FOR CONTRACT RESPONSE TEAMS AND SPECIALTY RESCUE TEAMS**

(a) Requirements for all system personnel:

- (1) personnel shall be no less than 18 years of age;
- (2) personnel shall be an agent of a sponsoring agency, participating agency, or an employee of the North Carolina Division of Emergency Management. By participating in this program, they remain agents of their employer and at no time become an agent of the State unless they are an employee of the State;
- (3) personnel shall maintain no less than 24 hours of search and rescue training annually;
- (4) personnel shall be considered emergency management workers while participating in any program activity as defined in G.S. 166A-19.60 which is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6; and
- (5) personnel shall possess the qualifications of character and general fitness requisite for a public servant and be of good moral character and entitled to the high regard and confidence of the public as evidenced by:
  - (A) not having been convicted of a felony;
  - (B) not having been convicted of a misdemeanor as defined in 12 NCAC 09B .0111(1) which is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6. for five years or the completion of any corrections supervision imposed by the courts, whichever is later;
  - (C) not having been convicted of an offense that would prohibit the possession of a firearm or ammunition, under 18 U.S.C. 922, which is hereby incorporated by reference with subsequent amendments and editions pursuant to G.S. 150B-21.6 can be found at no cost <https://www.govinfo.gov/content/pkg>

Authority G.S. 166A-65; 166A-66; 166A-67.

**14B NCAC 03 .0408 CRITERIA FOR EVALUATING BIDS FOR CONTRACT RESPONSE TEAM**

(a) Bidding entities must:

- (1) be submitted by an authorized representative of a local unit of government, state recognized tribal government, or maintain an active response agreement with a local or tribal unit of government;
- (2) provide a plan for bidding entity to deploy the required number of personnel for a period of up to 14 days when not being impacted locally. This may be as a single entity or as a collaboration of multiple agencies in the specified response region. If a collaboration of multiple agencies, the sponsoring or bidding agency must maintain cooperative agreements with all supporting agencies. For the purposes of the bid submission, the bidding entity shall provide a letter of support from all supporting agencies;
- (3) provide a plan for bidding entity to maintain required number of personnel trained per Rule .0409 of this Section which is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6; and
- (4) ensure all participating members possess the qualifications as outlined in Rule .0409 of this Section.

(b) Bids shall be evaluated using the below criteria and consistent with 2 CFR Part 200 which is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6:

- (1) geographic location of team base;

- /USCODE-2018-title18/pdf/USCODE-2018-title18-partI-chap44.pdf;
- (D) being truthful in providing information to the appointing agency for the purpose of participating in the search and rescue system;
- (E) not having pending or outstanding felony charges that, if convicted would exclude eligibility under this rule; and
- (F) not having engaged in any conduct that brings into question the truthfulness or credibility of the individual, or involves "moral turpitude."
- (6) make the following notifications:
  - (A) within seven days of the qualifying event notify the Sponsoring Agency in writing of all criminal offenses for which the individual is charged or arrested. This shall include traffic offenses identified in the Class B Misdemeanor Manual which is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6 and offenses of driving under the influence (DUI) or driving while impaired (DWI);
  - (B) within seven days of the qualifying event notify the Sponsoring Agency in writing of all criminal offenses for which the individual pleads no contest, pleads guilty, or of which the individual is found guilty. This shall include traffic offenses identified in the Class B Misdemeanor Manual which is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6 and offenses of driving under the influence (DUI) or driving while impaired (DWI);
  - (C) within seven days of service, shall notify the Sponsoring Agency that they have been served by a judicial official against the individual;
  - (D) within seven days of the date the case was disposed of in court, the sponsoring agency, provided they have knowledge of the person's arrests or criminal charges and final dispositions, shall also notify the Division of Emergency Management of arrests or criminal charges and final disposition; and
  - (E) within seven days of the issuance of all Domestic Violence Protective Orders (G.S. 50B) and Civil No Contact

Orders (G.S. 50C), the sponsoring agency, provided they have knowledge of the order, shall also notify the Division of Emergency Management of these orders.

- (b) Requirements for all system equipment:
  - (1) equipment shall be made available for inspections and inventory;
  - (2) system resources shall count any state-owned issued equipment to the specified equipment requirements;
  - (3) system resources shall maintain any state-owned equipment per manufactures recommendations and immediately notify NCEM of any damage to state property; and
  - (4) upon separation all system resources shall return all state property in no more than 30 days.
- (c) Urban Search and Rescue Team Personnel and Training Requirements
  - (1) A Type I or Type II Urban Search and Rescue Team shall maintain a roster of 116 personnel who have successfully completed the NC USAR Structural Collapse Rescue Technician Course or the Federal Emergency Management Agency Equivalent Course.
  - (2) A Type III Urban Search and Rescue Team shall maintain a roster of 58 personnel who have successfully completed the NC USAR Structural Collapse Rescue Technician Course or the Federal Emergency Management Agency Equivalent Course.
  - (3) North Carolina Division of Emergency Management shall be responsible for providing qualified structures specialist, medical team managers, and canine search specialists for any typed urban search and rescue team if required for a response.
- (d) Urban Search and Rescue Team Equipment Requirements
  - (1) Urban Search and Rescue Teams shall maintain a functionally equivalent cache of equipment based on the appropriate team type with the Emergency Management Accreditation Program Urban Search and Rescue Cache List which is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6, as outlined in the latest published standard by the Emergency Management Accreditation Program.
  - (2) Equipment shall be maintained in a state of readiness and with a means to transport all required equipment.
- (e) Swiftwater Rescue Team Personnel and Training Requirements
  - (1) Any Type I Swiftwater Rescue Team shall maintain a roster of 32 personnel who have successfully completed Swiftwater Rescue Technician level training that meets or exceeds training requirements of Chapters 5, 11, and 12

of NFPA 1006 which is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6. From the complete roster, the team shall additionally maintain the following number of personnel trained in position specific roles:

- (A) eight personnel who have completed the North Carolina Swiftwater Flood Rescue Boat Operator Course;
- (B) two personnel who have completed either the North Carolina Swiftwater / Flood Rescue Team Leader Course or North Carolina Urban Search and Rescue Task Force Leader Course; and
- (C) two personnel who have completed either the North Carolina Swiftwater / Flood Rescue Team Communications Specialist Course or North Carolina Urban Search and Rescue Communications Specialist Course.

(2) Any Type II Swiftwater Rescue Team shall maintain a roster of 24 personnel who have successfully completed Swiftwater Rescue Technician level training that meets or exceeds training requirements of Chapters 5, 11, and 12 of NFPA 1006 which is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6. From the complete roster, the team shall additionally maintain the following number of personnel trained in position specific roles:

- (A) four personnel who have completed the North Carolina Swiftwater Flood Rescue Boat Operator Course;
- (B) two personnel who have completed either the North Carolina Swiftwater Flood Rescue Team Leader Course or North Carolina Urban Search and Rescue Task Force Leader Course; and
- (C) two personnel who have completed either the North Carolina Swiftwater Flood Rescue Team Communications Specialist Course or North Carolina Urban Search and Rescue Communications Specialist Course.

(3) Any Type III Swiftwater Rescue Team shall maintain a roster of 16 personnel who have successfully completed Swiftwater Rescue Technician level training that meets or exceeds training requirements from Chapters 5, 11, and 12 of NFPA 1006 which is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6. From the complete roster, the team shall additionally maintain the following number of personnel trained in position specific roles:

- (A) two personnel who have completed the North Carolina Swiftwater Flood Rescue Boat Operator Course;
- (B) two personnel who have completed either the North Carolina Swiftwater Flood Rescue Team Leader Course or North Carolina Urban Search and Rescue Task Force Leader Course; and
- (C) two personnel who have completed either the North Carolina Swiftwater Flood Rescue Team Communications Specialist Course or North Carolina Urban Search and Rescue Communications Specialist Course.

(f) Swiftwater Rescue Team Equipment Requirements

- (1) Any Type I Swiftwater Rescue Team shall maintain an equipment cache of no less than:
  - (A) six 800 MHz portable radios programed with the NC VIPER Radio System template;
  - (B) 16 portable radios capable for internal team communications;
  - (C) portable computer with a minimum of cellular internet access;
  - (D) 16 each of dry suits with a suitable liner, personal floatation devices with not less than 22lbs of floatation, helmet with headlamp, rescue knife, pealess whistle, boat motor key, water rescue throw bag, and pair of water rescue boots;
  - (E) four each thermal imaging cameras and handheld spotlight;
  - (F) two hardcopy of NC road map;
  - (G) six global positioning system receivers;
  - (H) two forcible entry kits to include a Halligan, axe, sledgehammer and bolt cutters per kit;
  - (I) two chain saws;
  - (J) four inflatable ridged boats not less than 4 meters in length with not less than six outboard motors;
  - (K) one rope rescue kit to include 20 locking carabiners, four full body harness, two knot passing pulleys, 12 tandem prusiks, eight pulleys, two 200 foot life safety rope in a bag, two 300 foot life safety rope in a bag, line thrower, and six sections of each 5 foot, 12 foot, 15 foot, 20 foot nylon tubular webbing;
  - (L) two decontamination kits to include, 2.5 gallon pressure sprayer, five gallon bucket, 40 gallon work box, 110 volt submersible pump, two 25 foot sections of garden hose, garden hose wye adaptor, 110 volt submersible

- pump, soap and bleach solution, 1.5 inch to .75 inch male garden hose adapter;
  - (M) six non-venting fuel cells with fuel lines;
  - (N) two self-bailing raft;
  - (O) four boat field repair kits to include a patch and clamshell kit per kit;
  - (P) 12 paddles;
  - (Q) Shelter system for 16 personnel that can be setup in under 30 minutes time and does not require power for setup with 16 each of a sleeping kit such as a cots, pad, or sleeping bag; and
  - (R) Two each of two kilowatt or larger generators with portable lights; and
  - (S) Two electric air pumps, four manual inflation pumps, and eight compressed air cylinders with whip or fill system to inflate boats or rafts.
- (2) Any Type II Swiftwater Rescue Team shall maintain an equipment cache of no less than:
- (A) four 800 MHz portable radios programed with the NC VIPER Radio System template;
  - (B) ten portable radios capable for internal team communications;
  - (C) portable computer with a minimum of cellular internet access;
  - (D) ten each of dry suits with a suitable liner, personal floatation devices with not less than 22lbs of floatation, helmet with headlamp, rescue knife, pealess whistle, boat motor key, water rescue throw bag, and pair of water rescue boots;
  - (E) two each thermal imaging cameras and handheld spotlight;
  - (F) two hardcopy of NC road map;
  - (G) four global positioning system receivers;
  - (H) one forcible entry kits to include a Halligan, axe, sledgehammer and bolt cutters per kit;
  - (I) two chain saws;
  - (J) two inflatable ridged boats not less than 4 meters in length with not less than three outboard motors;
  - (K) one rope rescue kit to include 20 locking carabiners, four full body harness, two knot passing pulleys, 12 tandem prusiks, eight pulleys, two 200 foot life safety rope in a bag, two 300 foot life safety rope in a bag, line thrower, and six sections of each 5 foot, 12 foot, 15 foot, 20 foot nylon tubular webbing;
  - (L) one decontamination kit to include, 2.5 gallon pressure sprayer, five gallon

bucket, 40 gallon work box, 110 volt submersible pump, two 25 foot sections of garden hose, garden hose wye adaptor, 110 volt submersible pump, soap and bleach solution, 1.5 inch to .75 inch male garden hose adapter;

- (M) four non-venting fuel cells with fuel lines;
- (N) one self-bailing raft;
- (O) two boat field repair kits to include a patch and clamshell kit per kit;
- (P) six paddles;
- (Q) shelter system for ten personnel that can be setup in under 30 minutes time and does not require power for setup with ten each of a sleeping kit such as a cots, pad, or sleeping bag; and
- (R) two each of two kilowatt or larger generators with portable lights; and
- (S) two electric air pumps, two manual inflation pumps, and four compressed air cylinders with whip or fill system to inflate boats or rafts.

(3) Any Type III Swiftwater Rescue Team shall maintain an equipment cache of no less than:

- (A) six 800 MHz portable radios programed with the NC VIPER Radio System template;
- (B) six portable radios capable for internal team communications;
- (C) portable computer with a minimum of cellular internet access;
- (D) six each of dry suits with a suitable liner, personal floatation devices with not less than 22lbs of floatation, helmet with headlamp, rescue knife, pealess whistle, boat motor key, water rescue throw bag, and pair of water rescue boots;
- (E) one hardcopy of NC road map;
- (F) two global positioning system receivers;
- (G) one forcible entry kits to include a Halligan, axe, sledgehammer and bolt cutters per kit;
- (H) one chain saw;
- (I) one inflatable ridged boats not less than 4 meters in length with not less than two outboard motors;
- (J) one rope rescue kit to include 20 locking carabiners, two full body harness, two knot passing pulleys, 12 tandem prusiks, four pulleys, 200 foot life safety rope in a bag, 300 foot life safety rope in a bag, line thrower, and three sections of each 5 foot, 12 foot, 15 foot, 20 foot nylon tubular webbing;

- (K) one decontamination kit to include, 2.5 gallon pressure sprayer, five gallon bucket, 40 gallon work box, 110 volt submersible pump, two 25 foot sections of garden hose, garden hose wye adaptor, 110 volt submersible pump, soap and bleach solution, 1.5 inch to .75 inch male garden hose adapter;
- (L) two non-venting fuel cells with fuel lines;
- (M) one self-bailing raft;
- (N) one boat field repair kits to include a patch and clamshell kit per kit;
- (O) three paddles;
- (P) shelter system for six personnel that can be setup in under 30 minutes time and does not require power for setup with six each of a sleeping kit such as a cot, pad, or sleeping bag; and
- (Q) one each of two kilowatt or larger generators with portable lights; and
- (R) one electric air pumps, one manual inflation pumps, and two compressed air cylinders with whip or fill system to inflate boats or rafts.

- (2) A wilderness search and rescue team shall maintain a team equipment cache of no less than eight of the following:
  - (A) field pack able to carry required equipment;
  - (B) multi-purpose knife;
  - (C) water container(s) sufficient to hold two quarts of potable water;
  - (D) safety glasses;
  - (E) pealess whistle;
  - (F) grid reader for 1:24000 scale;
  - (G) compass;
  - (H) two light sources with spare batteries;
  - (I) set of rain gear;
  - (J) tracking stick no less than 42 inches long;
  - (K) watch;
  - (L) fire starting kit;
  - (M) measuring device capable of measure no less than 18 inches;
  - (N) paper and pen or pencil;
  - (O) ICS 214 form;
  - (P) 50 foot of cordage;
  - (Q) eight zip ties; and
  - (R) signaling mirror.

- (3) A wilderness search and rescue team shall maintain a rescue equipment cache of no less than the following:
  - (A) two global positioning system receivers;
  - (B) two first aid kits.

(g) Helicopter search and rescue technicians shall:

- (1) be a member of the Urban Search and Rescue, Swiftwater Rescue, Wilderness Search and Rescue, or Mountain Rescue Program with a letter of support from their sponsoring agency;
- (2) complete the North Carolina Division of Emergency Management Helicopter Rescue Indoctrination Course; and
- (3) attend scheduled training no less than quarterly basis to maintain their qualification as a helicopter rescue technician.

(h) Helicopter Rescue Team Equipment Requirements

- (1) Helicopter search and rescue technicians shall maintain all issued equipment in good working order and in accordance with the manufacturer recommendations.
- (2) Helicopter search and rescue technicians shall inspect their issued equipment prior to and after each use and report any damage or unusual wear to the Aviation Life Safety Equipment Officer.

(i) Wilderness Search and Rescue Team Requirements

- (1) A wilderness search and rescue team shall maintain a roster of no less than eight personnel that have completed the NC Land Search Field Team Member Course or other wilderness search course that meets the current requirements of ASTM F2209 which is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6.

(j) Mountain Rescue Team Requirements

- (1) A mountain rescue team shall maintain a roster of no less than eight personnel that have completed the NC Mountain Rescue Operations Course with no less than two personnel that have completed the NC Mountain Rescue Technician Level Course.
- (2) A mountain rescue team shall maintain a team equipment cache of no less than eight of following:
  - (A) field pack able to carry required equipment;
  - (B) multi-purpose knife;
  - (C) water container(s) sufficient to hold two quarts of potable water;
  - (D) grid reader for 1:24000 scale;
  - (E) fire starting kit;
  - (F) compass;
  - (G) two light sources with spare batteries;
  - (H) set of rain gear;
  - (I) watch;
  - (J) paper and pen or pencil; and
  - (K) ICS 214 form.
- (3) A mountain rescue team shall maintain a rescue equipment cache of no less than the following:
  - (A) two global positioning system receivers;
  - (B) ten screw gate carabiners;

- (C) four belay type friction devices;
- (D) eight pre-sewn runners;
- (E) eight sets of matching prussik pairs;
- (F) four 30 foot cord suitable for anchor and litter rigging;
- (G) eight mountaineering harnesses;
- (H) two rappel type friction devices;
- (I) two each single and double micro pulleys;
- (J) two 150 foot ropes with a rating equal to or greater than 20 kilonewtons;
- (K) two 250 foot ropes with a rating equal to or greater than 20 kilonewtons;
- (L) eight pairs of snow shoes;
- (M) eight pairs of trekking poles;
- (N) four ice screws;
- (O) eight pairs of slip-on boot traction devices;
- (P) four pairs of crampons;
- (Q) a patient litter such as a military type stokes basket or sked system; and
- (R) two 800 MHz portable radios programed with the NC VIPER Radio System temlate.

- (3) report shall be referred to the NC Search and Rescue Disciplinary Committee.
- Any finding of malicious or willful misconduct, misrepresentation, or fraud shall be automatically referred to the NC Search and Rescue Disciplinary Committee.

(c) The NC Search and Rescue Disciplinary Committee shall be appointed by the Director of the NC Division of Emergency Management. The NC Search and Rescue Disciplinary Committee shall be a workgroup of the NC Search and Rescue Technical Advisory Committee.

- (1) The committee shall consist of:
  - (A) one representative of the NCEM Emergency Services Branch who shall serve as the chair;
  - (B) one representative from each of the NCEM Regional Branch Offices; and
  - (C) one representative from each program's technical advisory group.
- (2) The committee shall conduct hearings to review reports of misconduct as well as any reported breach of program requirements. Hearings conducted by the committee shall be informal and no party shall be represented by legal counsel. The disciplinary committee shall determine:
  - (A) facts surrounding the incident in question;
  - (B) whether the facts of the incident violates the rules of the NC Search and Rescue Program; and
  - (C) the recommended sanction to be imposed up to and including dismissal of any individual or team on a temporary or permanent basis from the program.
- (3) The committee shall prepare a final report of their findings for review and concurrence by the NCEM Operations Chief and the NCEM Director. The final decision on disciplinary action shall remain with the NCEM Director.

Authority G.S. 166A-66; 166A-67; 166A-68.

**14B NCAC 03 .0410 PROCEDURES FOR AUDITING CONTRACT RESPONSE TEAMS AND SPECIALTY RESCUE TEAMS**

(a) Contract and specialty rescue teams shall be audited by the NC Division of Emergency Management no less than every three years to ensure compliance with program requirements. Contract teams shall make the following available for review:

- (1) administrative records such as internal team plans and procedures, training records, personnel records, equipment maintenance records, and any fiscal records pertaining to the contract or specialty rescue team;
- (2) equipment cache to include ensuring all required equipment is present, operational, and in a deployment ready condition; and
- (3) access to functional exercises that demonstrate the ability of the resource to muster, deploy, and function in their specific functional area.

(b) An audit report shall be completed and filed to report any findings and recommendations of the audit team within 30 days of audit with a copy being sent to the sponsoring agency.

- (1) The contract or specialty response team shall reply to any audit findings with a corrective action plan within 30 days of receipt of audit report to the NC Division of Emergency Management.
- (2) The contract or specialty response team shall address the issues of any audit findings prior to the next audit. Any audit of a contract or specialty rescue team that finds the resource did not address a finding from the most recent audit

Authority G.S. 166A-66; 166A-67.

**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 amend the rules cited as 21 NCAC 12A .0202, .0303; and 12B .0201.*

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

**Proposed Effective Date:** January 1, 2023

**Public Hearing:**

**Date:** September 21, 2022

**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 .0202** - To amend the building classification and incorporate demolition into the definition of multiple classifications.

**21 NCAC 12A .0303** - To provide transparency as to the identity of an approved CE course provider in marketing information.

**21 NCAC 12B .0201** - To include qualifiers as those required to submit criminal background checks for new license applications.

**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:** October 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

**SUBCHAPTER 12A – GENERAL PROVISIONS**

**SECTION .0200 - LICENSING REQUIREMENTS**

**21 NCAC 12A .0202 CLASSIFICATION**

(a) A general contractor shall be certified in one of the following five classifications:

- (1) Building Contractor. This classification covers all building construction and demolition activity including: commercial, industrial, institutional, and all residential building construction. It includes installation of solar

panels; parking decks; all site work, grading and paving of parking lots, driveways, sidewalks, and gutters; storm drainage, retaining or screen walls, and hardware and accessory structures; and indoor and outdoor recreational facilities including natural and artificial surface athletic fields, running tracks, bleachers, and seating. It also covers work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Marine Construction), S(Masonry Construction), S(Roofing), S(Metal Erection), S(Swimming Pools), and S(Asbestos), and S(Wind Turbine). Residential Contractor. This classification covers all construction and demolition activity pertaining to the construction of residential units that are required to conform to the residential building code adopted by the Building Code Council pursuant to G.S. 143-138; all site work, driveways, sidewalks, and water and wastewater systems ancillary to the aforementioned structures and improvements; and the work done as part of such residential units under the specialty classifications of S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), S(Swimming Pools), and S(Asbestos). This classification also covers the installation of solar panels on residential units that are required to conform to the residential building code.

(2)

(3)

Highway Contractor. This classification covers all highway construction activity including: demolition, grading, paving of all types, installation of exterior artificial athletic surfaces, relocation of public and private utility lines ancillary to a principal project, bridge construction and repair, culvert construction and repair, parking decks, sidewalks, curbs, gutters and storm drainage. It also includes installation and erection of guard rails, fencing, signage and ancillary highway hardware; covers paving and grading of airport and airfield runways, taxiways, and aprons, including the installation of fencing, signage, runway lighting and marking; and work done under the specialty classifications of S(Boring and Tunneling), S(Concrete Construction), S(Marine Construction), S(Railroad Construction), and H(Grading and Excavating).

(4)

Public Utilities Contractor. This classification includes demolition and operations that are the performance of construction work on water and wastewater systems and on the subclassifications of facilities set forth in G.S. 87-10(b)(3). The Board shall issue a license to a public utilities contractor that is limited to any of the subclassifications set forth in G.S. 87-

10(b)(3) for which the contractor qualifies. A public utilities contractor license covers work done under the specialty classifications of S(Boring and Tunneling), PU(Communications), PU(Fuel Distribution), PU(Electrical-Ahead of Point of Delivery), PU(Water Lines and Sewer Lines), PU(Water Purification and Sewage Disposal), and S(Swimming Pools).

(5) Specialty Contractor. This classification covers all construction operation and performance of contract work outlined as follows:

(A) H(Grading and Excavating). This classification covers the digging, moving, and placing of materials forming the surface of the earth, excluding air and water, in such a manner that the cut, fill, excavation, grade, trench, backfill, or any similar operation may be executed with the use of hand and power tools and machines used for these types of digging, moving, and material placing. It covers work on earthen dams and the use of explosives used in connection with all or any part of the activities described in this Subparagraph. It also includes clearing and grubbing, and erosion control activities.

(B) S(Boring and Tunneling). This classification covers the construction of underground or underwater passageways by digging or boring through and under the earth's surface, including the bracing and compacting of such passageways to make them safe for the purpose intended. It includes preparation of the ground surfaces at points of ingress and egress.

(C) PU (Communications). This classification covers the demolition and installation of the following:

- (i) all types of pole lines, and aerial and underground distribution cable for telephone systems;
- (ii) aerial and underground distribution cable for cable TV and master antenna TV systems capable of transmitting R.F. signals;
- (iii) underground conduit and communication cable including fiber optic cable; and
- (iv) microwave systems and towers, including

foundations and excavations where required, when the microwave systems are being used for the purpose of transmitting R.F. signals; and installation of PCS or cellular telephone towers and sites.

(D) S(Concrete Construction). This classification covers the construction, demolition, and installation of foundations, pre-cast silos, and other concrete tanks or receptacles, prestressed components, and gunite applications, but excludes bridges, streets, sidewalks, curbs, gutters, driveways, parking lots, and highways.

(E) PU(Electrical-Ahead of Point of Delivery). This classification covers the construction, installation, alteration, maintenance, or repair of an electrical wiring system, including sub-stations or components thereof, which is or is intended to be owned, operated, and maintained by an electric power supplier, such as a public or private utility, a utility cooperative, or any other properly franchised electric power supplier, for the purpose of furnishing electrical services to one or more customers. This classification includes the construction of solar arrays.

(F) PU(Fuel Distribution). This classification covers the construction, installation, alteration, maintenance, or repair of systems for distribution of petroleum fuels, petroleum distillates, natural gas, chemicals, and slurries through pipeline from one station to another. It includes all excavating, trenching, and backfilling in connection therewith. It covers the installation, replacement, and removal of above ground and below ground fuel storage tanks.

(G) PU(Water Lines and Sewer Lines). This classification covers demolition and construction work on water and sewer mains, water service lines, and house and building sewer lines, as defined in the North Carolina State Building Code, and covers water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations and pumping stations. It includes pavement patching, backfill, and erosion control as part of construction.

- (H) PU(Water Purification and Sewage Disposal). This classification covers the demolition and performance of construction work on water and wastewater systems; water and wastewater treatment facilities; and all site work, grading, and paving of parking lots, driveways, sidewalks, and curbs and gutters that are ancillary to such construction of water and wastewater treatment facilities. It covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), and S(Metal Erection) as part of the work on water and wastewater treatment facilities.
- (I) S(Insulation). This classification covers the installation, alteration, or repair of materials classified as insulating media used for the non-mechanical control of temperatures in the construction of residential and commercial buildings. It does not include the insulation of mechanical equipment, and ancillary lines and piping.
- (J) S(Interior Construction). This classification covers the installation and demolition of acoustical ceiling systems and panels, load bearing and non-load bearing partitions, lathing and plastering, flooring and finishing, interior recreational surfaces, window and door installation, and installation of fixtures, cabinets, and millwork. It includes the removal of asbestos and replacement with non-toxic substances.
- (K) S(Marine and Freshwater Construction). This classification covers all marine and freshwater demolition and construction and repair activities and all types of marine and freshwater construction and demolition in deep-water installations and in harbors, inlets, sounds, bays, channels, canals, rivers, lakes, ponds, or any navigable waterway; it covers dredging, construction, and installation of pilings, piers, decks, slips, docks, and bulkheads. It does not include other structures that may be constructed on docks, slips, and piers.
- (L) S(Masonry Construction). This classification covers the demolition and installation, with or without the use of mortar or adhesives, of the following:
- (i) brick, concrete block, gypsum partition tile, pumice block, or other lightweight and facsimile units and products common to the masonry industry;
  - (ii) installation of fire clay products and refractory construction; and
  - (iii) installation of rough cut and dressed stone, marble panels and slate units, and installation of structural glazed tile or block, glass brick or block, and solar screen tile or block.
- (M) S(Railroad Construction). This classification covers the demolition, building, construction, and repair of railroad lines including:
- (i) the clearing and filling of rights-of-way;
  - (ii) shaping, compacting, setting, and stabilizing of road beds;
  - (iii) setting ties, tie plates, rails, rail connectors, frogs, switch plates, switches, signal markers, retaining walls, dikes, fences, and gates; and
  - (iv) construction and repair of tool sheds and platforms.
- (N) S(Roofing). This classification covers the installation, demolition, and repair of roofs and decks on residential, commercial, industrial, and institutional structures requiring materials that form a water-tight and weather-resistant surface. The term "materials" for purposes of this Subparagraph includes cedar, cement, asbestos, clay tile and composition shingles, all types of metal coverings, wood shakes, single ply and built-up roofing, protective and reflective roof and deck coatings, sheet metal valleys, flashings, gravel stops, gutters and downspouts, and bituminous waterproofing.
- (O) S(Metal Erection). This classification covers:
- (i) the field fabrication, demolition, erection, repair, and alteration of architectural and structural shapes, plates, tubing, pipe and bars, not limited to steel or aluminum, that are or may be used as

(ii) structural members for buildings, equipment, and structure; and the layout, assembly and erection by welding, bolting, riveting, or fastening in any manner metal products as curtain walls, tanks of all types, hoppers, structural members for buildings, towers, stairs, conveyor frames, cranes and crane runways, canopies, carports, guard rails, signs, steel scaffolding as a permanent structure, rigging, flagpoles, fences, steel and aluminum siding, bleachers, fire escapes, and seating for stadiums, arenas, and auditoriums.

(P) S(Swimming Pools). This classification covers the construction, demolition, service, and repair of all swimming pools. It includes: (i) excavation and grading; (ii) construction of concrete, gunite, fiberglass, metal-walled with liner, steel-walled with liner, and plastic-type pools, pool decks, and walkways, and tiling and coping; and (iii) installation of all equipment including pumps, filters, and chemical feeders. It does not include direct connections to a sanitary sewer system or to portable water lines, nor the grounding and bonding of any metal surfaces or the making of any electrical connections.

(Q) S(Asbestos). This classification covers renovation or demolition activities involving the repair, maintenance, removal, isolation, encapsulation, or enclosure of Regulated Asbestos Containing Materials (RACM) for any commercial, industrial, or institutional building, whether public or private. It also covers all types of residential building construction involving RACM during renovation or demolition activities. This specialty is required only when the cost of asbestos activities as described herein

are equal to or exceed thirty thousand dollars (\$30,000).

(R) S(Wind Turbine). This classification covers the construction, demolition, installation, and repair of wind turbines, wind generators, and wind power units. It includes assembly of blades, generator, turbine structures, and towers. It also includes ancillary foundation work, field fabrication of metal equipment, and structural support components.

(b) An applicant may be licensed in more than one classification of general contracting provided the applicant meets the qualifications for the classifications, which includes passing the examinations for the classification requested by the applicant. The license granted to an applicant who meets the qualifications for all of the classifications set forth in the rules of this Section shall be designated "unclassified."

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

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 Subchapter;
(9) letters of reference as prescribed in Rule .0308 of this Subchapter; and
(10) the application fee as set forth in Rule .0304 of this 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. The qualifiers of all new applicants shall submit to the background check. For the purposes of the criminal background check, Additionally, 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.

(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.

**SUBCHAPTER 12B – CONTINUING EDUCATION**

**SECTION .0200 – PROVIDERS**

**21 NCAC 12B .0201 APPLICATION FOR INITIAL APPROVAL OF CONTINUING EDUCATION PROVIDER**

(a) Only continuing education providers approved by the Board shall be eligible to offer continuing education courses. If a third party advertises or hosts an approved course, all materials advertising the course shall include the approved provider's name.

(b) Prospective providers of all courses must obtain written approval from the Board to conduct such course prior to conducting the course and prior to advertising or otherwise representing that the course is or may be approved for general contractor continuing education credit in North Carolina. No retroactive approval to conduct a continuing education course will be granted.

(c) Any entity seeking initial approval to be a continuing education provider shall make application on a form available on the Board's website that requires the applicant to set forth:

- (1) the legal name of applicant and any assumed business name;
- (2) the applicant's mailing address, telephone number, and email address;
- (3) the SOS ID number issued by the NC Secretary of State, if applicable;
- (4) the legal name(s) of the provider's owner(s), member(s), manager(s), or partner(s);
- (5) the name of a continuing education coordinator who shall serve as the contact person for the provider; and
- (6) the signature of the applicant or its legal designee.

(d) The name of any course provider shall not be identical or similar so as to cause confusion to the name of any other approved continuing education course provider.

(e) Continuing education providers shall notify the Board in writing within 10 days of any change in business name, ownership

interest, continuing education coordinator, address, business telephone number, or email address.

Authority G.S. 87-10.2(c).

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**CHAPTER 17 – BOARD OF DIETETICS/NUTRITION**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Dietetics/Nutrition intends to adopt the rules cited as 21 NCAC 17 .0501-.0517, amend the rule cited as 21 NCAC 17 .0112, and repeal the rule cited as 21 NCAC 17 .0116.*

*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.ncbdn.org/proposed-rule-changes>

**Proposed Effective Date:** December 1, 2022

**Public Hearing:**

**Date:** September 7, 2022

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

**Location:**

Join Zoom Meeting

<https://us02web.zoom.us/j/7654191653?pwd=UFNzajJYR2lWmVJaThFUEJlbt2UT09>

Meeting ID: 765 419 1653

Passcode: i2dHgH

One tap mobile

+19292056099,,7654191653#,,, \*238510# US (New York)

+13017158592,,7654191653#,,, \*238510# US (Washington DC)

Dial by your location

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 646 931 3860 US

+1 346 248 7799 US (Houston)

+1 386 347 5053 US

+1 564 217 2000 US

+1 669 444 9171 US

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

Meeting ID: 765 419 1653

Passcode: 238510

**Reason for Proposed Action:** *The proposed rules are being amended, repealed, or adopted in order to align the investigation and complaint rules with current processes. Rule 21 NCAC 17 .0116, which is proposed for repeal, addressed investigations, complaints, and hearings all in one rule. It has not been updated since 2010. The aims of these adoptions are to clarify the investigative process and the procedures followed when a matter proceeds to a hearing.*

Additionally, it is noted, Rule 21 NCAC 17 .0116 provided for fees that may be recovered against licensees or person found in violation of the Act or Rules. Noting 21 NCAC 17 .0116 is proposed for repeal, 21 NCAC 17 .0516 is proposed to address these same disciplinary costs. The one addition proposed Rule 21 NCAC 17 .0516 would make is to allow for the recovery of "costs incurred by reason of legal fees charged to the Board directly attributable to the action leading to the final decision or order." It is also noted, in Rule 21 NCAC 17 .0517, the Board aims to address the situation of licensee impairment and provide authority to allow the Board to assist licensees through the development of non-disciplinary interventions, treatment, and monitoring programs.

Comments may be submitted to: Charla M. Burill, 1135 Kildaire Farm Road, Suite 200, Cary, NC 27511; phone (919) 678-7609; fax (919) 882-1776; email info@ncbdn.org

Comment period ends: October 15, 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

SECTION .0100 – LICENSURE

21 NCAC 17 .0112 SUSPENSION, REVOCATION AND DENIAL OF LICENSE

(a) The Board may refuse to issue a license, or suspend, revoke or impose probationary conditions and restrictions on the license of a person upon a finding of any of the causes provided in General Statute Chapter 90, Article 25.
(b) When the Board has probable cause to believe that a person, applicant applicant, or licensee has violated any part of G.S. 90-350 through 90-369 or the rules of the Board, this Chapter, the Board shall so advise the person in writing as referenced in Rule .0116 .0503 and .0504 of this Chapter and provide the person with the opportunity for a hearing as referenced in Rule .0116 .0504 of

this Chapter. The Board's final decision or order shall be made in writing as referenced in Rule .0116 .0514 of this Chapter.
(c) A suspended license shall be subject to expiration and may be renewed as provided in this Section, but such renewal shall not entitle the licensee to engage in the licensed activity until he/she is they are reinstated. If a license revoked on disciplinary grounds is reinstated, the licensee must reapply and pay all applicable fees.

Authority G.S. 90-356; 90-363.

21 NCAC 17 .0116 VIOLATIONS, COMPLAINTS, SUBSEQUENT BOARD ACTION, AND HEARINGS

Authority G.S. 90-356; 90-363; 90-370.

SECTION .0500 – INVESTIGATIVE PROCESS, COMPLAINTS, AND ADMINISTRATIVE HEARINGS

21 NCAC 17 .0501 DEFINITIONS

As used in this Section:

- (1) "Good cause" related to motions or requests to continue or for additional time for responding includes:
(a) death or incapacitating illness of a party, or attorney of a party;
(b) a court order requiring a continuance;
(c) lack of proper notice of the hearing;
(d) a substitution of the representative or attorney of a party if the substitution is shown to be required;
(e) a change in the parties or pleadings requiring postponement; and agreement for a continuance by all parties if either more time is necessary to complete mandatory preparation for the case, such as authorized discovery, and the parties and the Board have agreed to a new hearing date; or parties have agreed to a settlement of the case that has been or is likely to be approved by the final decision maker;
(f) where, for any other reason, either party has shown that the interests of justice require a continuance or additional time.
(2) "Good cause" related to motions or requests to continue or for additional time for responding shall not include:
(a) intentional delay;
(b) unavailability of a witness if the witness testimony can be taken by deposition; and
(c) failure of the attorney or representative to properly utilize the statutory notice period to prepare for the hearing.
(3) "Investigative Committee" means a Board committee composed of one licensed dietitian/nutritionist member of the Board, one

licensed nutritionist member of the Board, and the public member of the Board. This Committee is charged with the duty of reviewing cases and complaints involving licensees, applicants for licensure, and all other allegations involving violations of the Dietetics/Nutrition Practice Act. The Investigative Committee shall be responsible for directing investigations and making recommendations to the Board regarding unresolved cases or complaints at regularly scheduled meetings.

- (4) "Licensee" means all persons to whom the Board has issued a license under Article 25 of G.S. 90.

*Authority G.S. 90-356; 150B-38.*

**21 NCAC 17 .0502 COMPLAINTS**

(a) Anyone may complain to the Board alleging that a person, applicant, or licensee has committed an action prohibited by Article 25, Chapter 90 of the North Carolina General Statutes or the rules of the Board.

(b) Complaints may be submitted to the Board by completing the Board's complaint form online at [www.ncbdn.org/file-a-complaint](http://www.ncbdn.org/file-a-complaint) or a paper form may be requested by contacting the Board office. Paper forms may be delivered to the Board by mail or hand-delivery at 1135 Kildaire Farm Road, Suite 200, Cary, NC 27511.

(c) Each complaint submitted shall set forth specific facts and circumstances known to the complainant relating to the Dietetics/Nutrition Practice Act or the Board's rules, and the conduct or competence of each person who is the subject of the complaint.

(d) Anonymous complaints are not investigated unless, if upon preliminary review of the contents of the complaint by Board staff, it appears the allegation(s) indicate a violation of the Dietetics/Nutrition Practice Act or the Board's rules, sufficient identification information for the person who is the subject of the complaint is provided, and there is sufficient information to substantiate allegation(s).

(e) Investigations may be conducted by the Board staff or by other persons authorized by the Board.

(f) Upon receipt of a complaint, the Board shall confirm receipt of the complaint to the complainant.

(g) The Board staff, or its authorized Investigator, shall assign a complaint number to the initial complaint, review the contents of the complaint, and conduct a preliminary review of information to determine whether an individual's conduct or competence relates to the Dietetics/Nutrition Practice Act or the Board's rules.

(h) If preliminary information in the complaint does not relate to an individual's conduct or competence under the authority of the Dietetics/Nutrition Practice Act or the Board's rules, the Board staff, or its authorized Investigator, shall close the complaint and send notice to the complainant. If applicable, the Board staff may refer the complainant to the appropriate governmental agency for handling such complaints. No further action shall be taken by the Board.

(i) If the information about an individual's conduct or competence appears to be under the authority of the Dietetics/Nutrition Practice Act or the Board's rules, Board staff, or its authorized Investigator, shall open an investigative case and begin an investigation of the matters described in the complaint.

*Authority G.S. 90-356; 90-363.*

**21 NCAC 17 .0503 INVESTIGATIONS**

(a) Once an investigative case is created, the Board staff, or its authorized Investigator, shall send each person who is the subject of an investigation, using the mail or electronic mail address of record in the Board's records for each person, or the mail or electronic mail address provided on the complaint form if the person is not in the Board's records, a summary of the complaint and a request for a written response.

(b) Licensees shall submit a written response to a complaint received by the Board within 45 days from the date the Board confirms the licensee's receipt of notice of the complaint. The Board shall grant up to an additional 30 days for the response where the licensee demonstrates good cause for the extension of time. The response shall contain accurate and complete information. Where a licensee fails to respond in the time and manner provided herein, the Board may proceed with making its decision in the absence of the licensee or information from the licensee, and the licensee may be held by the Board to be interfering with an investigation by willful misrepresentation of facts under 21 NCAC 17 .0114(16) in violation of G.S. 90-363(7).

(c) A summary of the complaint and a request for a written response sent to a person who is not an applicant for licensure or a licensee of the Board shall be accompanied by the following statement:

"You are hereby notified that the opinion expressed herein is not a legal determination. An occupational licensing board does not have the authority to order you to discontinue your current practices. Only a court may determine that you have violated or are violating any law and, if appropriate, impose a remedy or penalty for the violation. Further, pursuant to G.S. 150B-4, you may have the right, prior to initiation of any court action by the Board, to request a declaratory ruling regarding whether your particular conduct is lawful. You are further notified that any right to a declaratory ruling supplements any other legal rights that you may already have to establish the legality of your conduct with respect to the goods or services you offer or provide."

(d) The Board staff, or its authorized Investigator, shall investigate a complaint and shall provide the Board's Investigation Committee with an investigation report. The Investigative Committee shall review the report and shall determine to:

- (1) request further investigation of particular aspects of the matter;
- (2) request the individual who is the subject of the complaint meet with members of the Board to be interviewed if they are willing to be interviewed; or
- (3) accept the report and make a recommendation to the Board.

(e) The Board shall authorize the Investigative Committee to make a recommendation to the Board if an investigation is complete and the complaint is unresolved.

(f) The Board shall consider the Investigative Committee's recommendation and shall determine whether to:

- (1) conduct further investigation of particular aspects of the matter;
- (2) close or dismiss the case or issue a non-disciplinary letter of caution;
- (3) issue a consent order to the subject of an investigation, specifying any disciplinary sanctions to be applied and, if the consent order is not accepted, issue a notice of hearing;
- (4) issue a notice of hearing to a subject, specifying any disciplinary sanctions; or
- (5) apply to the courts for injunctive relief, refer a matter to a district attorney for prosecution, or take other actions, including reporting the matter to appropriate state or federal agencies.

(g) A copy of a notice of hearing shall be sent to the complainant.

(h) Whenever a complaint is dismissed or a complaint file is closed, notification of the Board's final decision shall be sent to the complainant, and the accused party.

*Authority G.S. 90-356; 90-363.*

**21 NCAC 17 .0504 RIGHT TO HEARING**

(a) When the Board acts or proposes to act, other than in rule-making or declaratory ruling proceedings, in a manner which will affect the rights, duties, or privileges of a specific, identifiable licensee or applicant for a license, such person has the right to an administrative hearing. When the Board proposes to act in such a manner, it shall give any such affected person notice of the right to a hearing by mailing to the person, by certified mail at the person's last known address, a notice of the proposed action and a notice of a right to a hearing. Notice of a right to a hearing may also be given by any method of service permitted in G.S. 150B-38(c), by a signed acceptance of service from such person, or by delivery to the person's attorney of record who accepts service on behalf of the person.

*Authority G.S. 90-356; 150B-38(h).*

**21 NCAC 17 .0505 REQUEST FOR HEARING**

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

(b) The individual may submit a request to the Board's office, with the request bearing the notation: "REQUEST FOR ADMINISTRATIVE HEARING." The request shall contain the following information:

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

(c) In order to preserve a person's rights with respect to a Board action, the person shall file a request for hearing with the Board within 60 days after the person receives notice of the Board action that the person challenges.

*Authority G.S. 90-356; 150B-38.*

**21 NCAC 17 .0506 GRANTING OR DENYING HEARING REQUEST**

(a) The Board shall grant a request for a hearing if it determines that the party requesting the hearing is a "person aggrieved" within the meaning of G.S. 150B-2(6). Whenever the Board proposes to deny, suspend, or revoke a license, or issue a letter of reprimand to a licensee, the licensee shall be deemed to be a person aggrieved.

(b) If the Board determines the petitioner is not a person aggrieved, the Board shall issue a denial that shall constitute a final agency decision.

(c) Approval of a request for a hearing shall be signified by issuing a notice as required by G.S. 150B-38(b) and explained in Rule .0507 of this Section.

*Authority G.S. 90-356; 150B-38; 150B-42.*

**21 NCAC 17 .0507 NOTICE OF HEARING**

(a) The Board shall give the party or parties in a contested case a notice of hearing not less than 15 days before the hearing. Said notice shall contain the following information, in addition to the items specified in G.S. 150B-38(b):

- (1) the name, position, address, and telephone number of a person from the Board to contact for further information or discussion;
- (2) the date, time, and place for a pre-hearing conference, if any; and
- (3) any other information deemed relevant to informing the parties as to the procedure of the hearing.

(b) A party who has been served with a notice of hearing may file a written response with the Board in accordance with G.S. 150B-38(d). If the party desires to submit a written response instead of personally appearing at the hearing, the party shall state that desire in the written response, and the Board shall consider the written response in lieu of a personal appearance.

(c) If the party who has been given proper notice in accordance with Paragraph (a) of this Rule neither appears pursuant to the notice nor files and serves a written response as set out in Paragraph (b) of this Rule, the Board shall find the allegations of the notice admitted. The Board may continue the hearing or proceed with the hearing and make its decision based on the evidence presented.

(d) If the Board determines that the public health, safety or welfare requires such action, it may issue an order summarily suspending a license pursuant to G.S. 150B-3. Upon service of the order, the licensee to whom the order is directed shall immediately cease the practice of medical nutrition therapy in North Carolina. The suspension shall remain in effect pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42. However, pursuant to this Rule and Rule .0506 of this Section, a person subject to a summary suspension may request a hearing on

whether the public health, safety, or welfare permits terminating or modifying the terms of the summary suspension pending a final agency decision. Neither an order of summary suspension nor a decision on whether the summary suspension order shall be terminated or modified is a final agency decision.

*Authority G.S. 90-356; 150B-3; 150B-38; 150B-40; 150B-42.*

**21 NCAC 17 .0508 CONTESTED CASES**

All administrative hearings shall be conducted by a majority of the Board as set forth in G.S. 150B-40(b) or an administrative law judge designated to hear the case pursuant to G.S. 150B-40(e).

*Authority G.S. 90-356; 150B-38; 150B-40.*

**21 NCAC 17 .0509 INFORMAL PROCEDURES**

(a) Before issuing a notice of hearing, the Board may designate one or more of its members, but in all cases less than a majority of the currently serving members of the Board, to meet informally via one or more conferences with the party or parties and attempt to reach an informal resolution of the dispute or any other matters as may aid in the disposition of the dispute. The designated Board member or members may direct one or more of the following dispositions:

- (1) Submission to the Board with a recommendation to dismiss with no action;
- (2) Submission to the Board with a recommendation that Board staff provide informal, non-disciplinary guidance to resolve the dispute;
- (3) Submission to the Board with a recommendation to resolve the dispute or to expedite the hearing by consent order; or
- (4) Scheduling, with appropriate notice, for contested case hearing.

The majority of the Board must approve all recommendations under Subparagraph (1), (2), and (3) of this Paragraph. Each Board member who is designated to serve in this capacity with regard to a party or parties' matter, whether the Board member actually meets with the individual or not, may participate in Board discussions concerning any recommendations made but may not vote upon the recommendation. The Board member or members who participated in the informal conferences shall be disqualified from hearing any contested case when the matter designated for informal resolution is any part of the subject matter of the contested case.

(b) The Board and the party or parties may agree to simplify the hearing by stipulation, or any other method provided by G.S. 150B-41(c).

*Authority G.S. 90-356; 150B-41.*

**21 NCAC 17 .0510 INFORMAL RESOLUTION**

(a) Informal disposition may be made of a dispute, contested case, or an issue in a contested case by any method specified in G.S. 150B-41(c) during the hearing of a contested case.

(b) All recommendations of dismissal must be approved by a majority of the Board.

(c) All matters contained in a consent order, which disposes of a dispute, must be agreed to by the party or parties, and approved by a majority of the Board.

*Authority G.S. 90-356; 150B-41.*

**21 NCAC 17 .0511 DISQUALIFICATION OF BOARD MEMBERS**

(a) Self-disqualification. If for any reason a Board member determines that personal bias or other factors render that member unable to hear a contested case and perform all duties in an impartial manner, that Board member shall voluntarily decline to participate in the hearing or decision.

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

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

(d) Timeliness and Effect of Affidavit. An affidavit of disqualification shall be considered timely if filed 10 days before commencement of the hearing.

(e) A party may file and serve a motion for disqualification less than ten days before or during a hearing only when the motion is based on newly discovered evidence that by due diligence could not have been discovered in time to file a timely motion. Under these circumstances, the hearing shall continue with the challenged Board member sitting. Petitioner shall have the opportunity to present evidence supporting their petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record. The Board, before rendering its final decision, shall decide whether the evidence justifies disqualification. The decision about the disqualification of a Board member shall be made by the other Board members who are not the subject of the disqualification. The Board is not required to grant a new hearing if a Board member is disqualified during the course of a hearing.

(f) The presiding officer, in their discretion, may determine the method of resolving the motion for disqualification under G.S. 150B-40. This may include the authority to direct that the Board's Executive Director oversee an investigation of the allegations and report the findings to the Board.

(g) In the event of disqualification, the disqualified member shall not participate in further deliberation or decision of the case but may be called on to furnish information to the other members of the Board.

(h) If four or more members of the Board are disqualified pursuant to this Rule, the Board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).

*Authority G.S. 90-356; 150B-40.*

**21 NCAC 17 .0512 SUBPOENAS**

(a) A party shall file and serve a request for a subpoena, attaching a proposed subpoena. The Board may issue the subpoena in accordance with G.S. 150B-39(c). Issued subpoenas must be signed by the Presiding Officer, the Board's Executive Director, the Board's legal counsel, or a Board staff member designated by the Executive Director.

(b) Subpoenas shall be served as permitted by Rule 45 of the North Carolina Rules of Civil Procedure, as set forth in G.S. 1A-1.

(c) After service of the subpoena, the party serving the subpoena shall file and serve sworn proof of the method of service, demonstrating compliance with G.S. 150B-39(c).

(d) G.S. 150B-39(c) governs the recipients' duties in responding to subpoenas. A party to the case or person subject to the subpoena may object to a subpoena. Any objection to a subpoena shall be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board. Motions to override an objection or quash or modify a subpoena shall be filed in accordance with G.S. 150B-39(c). The Board shall hear and rule on motions to override an objection or quash or modify a subpoena as provided in G.S. 150B-39(c).

*Authority G.S. 90-356; 150B-39.*

**21 NCAC 17 .0513 WITNESSES**

All testimony at the hearing shall be under oath or affirmation and shall be recorded. The presiding officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

*Authority G.S. 90-356; 150B-42.*

**21 NCAC 17 .0514 FINAL DECISION**

In a contested case, the Board shall issue a final agency decision in compliance with G.S. 150B-42. To obtain judicial review, the person seeking review must file a petition with the court in accordance with the provisions of G.S. 150B-45.

*Authority G.S. 90-356; 150B-42; 150B-45.*

**21 NCAC 17 .0515 PROPOSALS FOR DECISION**

(a) When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), a "proposal for decision" shall be rendered. The parties may file written exceptions to this "proposal for decision" and submit their own proposed findings of fact and conclusions of law. The exceptions and alternative proposals must be filed within 10 days after the party has received the "proposal for decision" as drafted by the administrative law judge.

(b) Any exceptions to the procedure during the hearing, the handling of the hearing by the administrative law judge, rulings on evidence, or any other matter must be written and refer specifically to pages of the record or otherwise precisely identify the occurrence to which exception is taken. The exceptions and alternative proposals must be filed with the Board within 10 days of the receipt of the proposal for decision. The written exceptions shall bear the notation: "EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (name of case)."

(c) Any party may present oral argument to the Board upon request. The request must be included with the written exceptions.

(d) Upon receipt of request for further oral argument, notice shall be issued promptly to all parties designating the time and place for such oral argument.

(e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered shall be a part of the record and a copy thereof given to all parties. The decision as adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision shall be rendered by the Board within 60 days of the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision shall be rendered within 60 days of the next regularly scheduled Board meeting following receipt of the written exceptions and alternative proposals.

*Authority G.S. 90-356; 150B-40.*

**21 NCAC 17 .0516 DISCIPLINARY COSTS**

(a) The Board may recover against a licensee or license applicant, found to be in violation of the Act or rules adopted by the Board, the following costs of disciplinary actions incurred by the Board for the investigation, prosecution, hearing, or other administrative action:

- (1) witness fees and statutorily-allowed expenses for witnesses;
- (2) direct costs of the Board in taking or obtaining of depositions of witnesses;
- (3) costs incurred by reason of administrative or staff time of employees of the Board directly attributable to the action leading to the final decision or order; and
- (4) costs incurred by reason of legal fees charged to the Board directly attributable to the action leading to the final decision or order.

These costs may be assessed by the Board pursuant to final decisions or orders of the Board following an administrative hearing pursuant to Article 3A of Chapter 150B of the North Carolina General Statutes. These costs may also be assessed against a licensee or license applicant for an investigation or action in the nature of disciplinary action, pursuant to the express consent by the person in a consent order approved by the Board.

*Authority G.S. 90-356; 90-370.*

**21 NCAC 17 .0517 DRUG TESTING AND INTERVENTION**

(a) When information of suspected impairment of a licensee is received by the Board, the Board shall conduct an investigation and routine inquiries to determine the validity of the report.

(b) Licensees suspected of impairment may be required to submit to personal interviews if the investigation and inquiries indicate the report may be valid.

(c) The Board shall have authority to compel a licensee to submit to a mental or physical examination, including drug and blood alcohol testing, by physicians designated by the Board, if there is a reasonable suspicion that the licensee is consuming drugs or

alcohol to such an extent or with such frequency as to impair the licensee's ability to practice dietetics or nutrition. The cost of examination shall be borne by the licensee being examined. The failure of a dietitian/nutritionist or nutritionist to submit to such an examination when so directed constitutes an admission that the licensee is unable to deliver dietetics or nutrition services with reasonable skill and safety, upon which a default and a final order may be entered without the taking of testimony or presentation of evidence, unless the failure was due to circumstances beyond the licensee's control. A licensee affected under this Paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that the licensee can resume the competent delivery of dietetics or nutrition services with reasonable skill and safety. Neither the record of the proceedings nor any order of the Board based solely on a licensee's failure to submit to an examination shall be deemed by the Board to constitute a conclusive determination that the licensee engaged in any particular conduct.

(d) Information received by the Board related to a mental or physical examination of a licensee conducted by a licensed health professional shall remain confidential as a medical record but shall be freely exchanged with the Board or its authorized agents, for the purposes of the investigation.

(e) Information gathered shall be used to determine whether the licensee is a chronic or persistent user of intoxicants, drugs, or narcotics to the extent that the same impairs their ability to practice dietetics or nutrition.

(f) The Board may make arrangements for a licensee with impairments to participate in intervention, treatment, and a monitoring program without disciplinary action.

Authority G.S. 90-356.

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CHAPTER 34 – BOARD OF FUNERAL SERVICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Funeral Service intends to amend the rules cited as 21 NCAC 34B .0408; and 34D .0202.

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

Proposed Effective Date: January 1, 2023

Public Hearing:

Date: October 12, 2022

Time: 10:00 a.m.

Location: NC Board of Funeral Service, 1033 Wade Avenue, Suite 108, Raleigh, NC 27605

Reason for Proposed Action:

21 NCAC 34B .0408 - Update the method by which continuing education for licensure renewal may be obtained.

21 NCAC 34D .0202 - Modernize the eligibility requirements and application process for a preneed sales license.

Comments may be submitted to: Stephen Davis, NC Board of Funeral Service, 1033 Wade Avenue, Suite 108, Raleigh, NC 27605; phone (919) 715-0901; email sdavis@ncbfs.org

Comment period ends: October 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

SUBCHAPTER 34B - FUNERAL SERVICE

SECTION .0400 – CONTINUING EDUCATION

21 NCAC 34B .0408 CONTINUING EDUCATION PROGRAM

(a) For licensees required to complete continuing education ("CE") as a prerequisite to annual license renewal, the five hours of approved CE shall meet the following requirements:

- Up to two hours may be in courses required by the Board. CE courses taken at the direction of the Board as memorialized in a letter of caution, consent order, or final agency decision shall not be credited toward CE hours needed for annual licensure renewal.
(2) Licensees may take up to two hours of continuing education each year by computer-based CE approved by the Board as set forth in 21 NCAC 34B .0414.
(3) Licensees may not receive more than two hours of credit for continuing education courses in preneed each year.

~~(4)(2)~~ Licensees may not receive credit toward completed CE hours for taking the same CE course within two years.

(b) A newly admitted active licensee may ~~include as credit hours, submit to the Board for credit toward completed CE hours needed for annual licensure renewal~~ which may be carried over to the next succeeding calendar year, any approved continuing education CE hours earned after that licensee's graduation from mortuary science college.

Authority G.S. 90-210.23(a); 90-210.25(a)(5).

**SUBCHAPTER 34D - PRENEED FUNERAL CONTRACTS**

**SECTION .0200 – LICENSING**

**21 NCAC 34D .0202 PRENEED SALES LICENSE**

(a) ~~Subject to G.S. 90-210.69(e), holding a~~ Individuals who hold either an active funeral director's license, issued by the Board, or a license or an active funeral service license, issued by the Board, ~~is the qualification to be~~ license issued by the Board and who have taken three or more hours of continuing education on preneed statutes and rules taught by Board staff within the preceding three calendar years are eligible for initial licensure as a preneed sales license. license upon application by a funeral establishment holding an active preneed establishment permit, as set forth in Paragraph (d) of this Rule.

(b) ~~The preneed sales licensee may engage, under the preneed sales license, Only individuals who hold an active preneed sales license issued by the Board and resident trainees in funeral service or funeral directing registered with the Board pursuant to 21 NCAC 34B .0103(b) are permitted to engage in the following preneed funeral planning activities; activities, pursuant to the definition of "preneed funeral planning" in G.S. 90-210.60(8):~~

- (1) show and explain written materials, including price lists and photographs, descriptive of the funeral services and merchandise and the preneed funeral plan or contract being offered;
- (2) explain the various types of funeral ceremonies and services and the qualities and characteristics of various kinds of funeral merchandise;
- (3) sell, on a preneed basis, funeral services and merchandise;
- (4) record, on any form or otherwise, specific items of funeral services and merchandise selected on a preneed basis;
- (5) make funeral arrangements on a preneed basis; and
- (6) sign preneed contracts; provided, however, that the resident trainee and his or her licensed supervisor comply with 21 NCAC 34B .0103(e) when doing so. ~~contracts. No preneed funeral planning activities shall be engaged in by anyone other than a preneed sales licensee or a registered resident trainee in funeral service or funeral directing pursuant to 21 NCAC 34B .0103(b); provided, however, no preneed sales license is required solely for the sale of an~~

~~insurance policy, and in connection with such a sale, the salesperson shall not be deemed to have engaged in preneed funeral planning if, for the sole purpose of permitting a prospective purchaser to make an informed decision as to the amount of insurance desired, the salesperson shows only price lists of funeral services and merchandise.~~

(c) ~~No preneed sales license is required for the sale of an insurance policy for which no funeral establishment or its representative is listed as the beneficiary or assignee of said policy. In connection with such a sale, the salesperson shall not be deemed to have engaged in preneed funeral planning if the salesperson shows only price lists of funeral services and merchandise to permit a prospective purchaser to make an informed decision as to the amount of insurance desired.~~

(d) An applicant shall apply for, renew, or surrender a preneed sales license in accordance with the following provisions:

- (1) A funeral establishment holding an active preneed establishment permit shall apply for, or renew, a preneed sales license by submitting the following to the Board on behalf of the applicant for a preneed sales license:
  - (A) the applicant's name, address, email address, and telephone number;
  - (B) the applicant's funeral director's or funeral service license number;
  - (C) the name, address, and preneed establishment permit number of the preneed funeral establishment licensee or licensees on whose behalf the applicant will sell preneed funeral contracts;
  - (D) the applicant's employment or agency relationship with the preneed establishment licensee or licensees;
  - (E) the initial or renewal application fee required by 21 NCAC 34A .0201(c) for each preneed sales licensee;
  - (F) proof that the applicant has taken the continuing education course required by Paragraph (a) of this Rule; and
  - (G) the applicant's signature to attest that he or she has read and will comply with the statutes and rules governing the practice of preneed funeral service.
- (2) ~~Either the preneed sales licensee or the preneed funeral establishment on whose behalf the preneed sales licensee is engaged in preneed funeral planning activities may surrender a preneed sales license by submitting notification of such surrender in writing to the Board.~~

(e) If a preneed sales licensee proposes to engage in preneed funeral planning activities on behalf of multiple preneed funeral establishment licensees that are not wholly owned by or affiliated with common ownership, the preneed sales licensee shall submit the following to the Board:

- (1) the date on which the preneed sales licensee will begin engaging in preneed funeral planning

- activities for multiple preneed funeral establishment licensees;
- (2) the date on which the preneed sales licensee will stop engaging in preneed funeral planning activities for multiple preneed funeral establishment licensees, if known;
- (3) the name, license number, and signature of the preneed sales licensee;
- (4) the name and signature of the licensed manager of each preneed funeral establishment licensee for whom the preneed sales licensee will engage in preneed funeral planning activities.
- (5) an attestation from each of the individuals identified in Subparagraphs (3)-(6) of this Paragraph that:
  - (A) he or she consents to the preneed sales licensee engaging in preneed funeral planning activities on behalf of the identified preneed funeral establishment licensees; and
  - (B) the preneed sales licensee and the preneed funeral establishment licensee on whose behalf the preneed funeral planning activities are to be conducted shall comply with the statutes and rules governing preneed funeral planning activities.

~~(c) A licensed funeral director or funeral service licensee wishing to apply for a preneed sales license shall submit to the Board the applicant's name, address, telephone number, funeral director's or funeral service license number, name and address of the preneed funeral establishment licensee or licensees on whose behalf the applicant will sell preneed funeral contracts, and the applicant's employment or agency relationship with the licensee or licensees. If the applicant proposes to sell on behalf of more than one preneed funeral establishment licensee, the applicant shall disclose information to satisfy the requirement of G.S. 90-210.67(a) that the preneed funeral establishment licensees be related by ownership or contract.~~

~~(d)(f) The Board shall issue to each preneed sales licensee a pocket card as certification of the preneed sales license. The preneed sales licensee shall carry the card while engaging in preneed funeral planning. Upon making application for a license the applicant shall indicate the names of the preneed funeral establishment licensees on whose behalf the preneed sales licensee is authorized to sell preneed funeral contracts. The applicant shall pay an application fee and an annual renewal fee determined, respectively, by multiplying the application fee and renewal fee in 21 NCAC 34A .0201(e) times the number of preneed funeral establishment licensees on whose behalf the preneed sales licensee is authorized to sell. When there is any change in the list of establishments on whose behalf the preneed sales licensee is authorized to sell, the preneed sales licensee shall, within 10 days, file an amended list with the Board and shall pay the application fee for each new funeral establishment licensee named on the list, regardless of whether one or more names have been deleted. The total preneed sales license application fee and total renewal fee paid pursuant to this Paragraph shall not exceed the maximums, respectively, set by statute.~~

~~(e)(g) The preneed sales licensee shall sign and affix his or her preneed sales license number to each preneed funeral contract, which he or she sells, in the presence of the purchaser of the contract at the time of sale.~~

~~Authority G.S. 90-210.25(a)(4); 90-210.60(8); 90-210.67(a),(c); 90-210.69(a); 90-210.69(a), (c).~~

\*\*\*\*\*

**CHAPTER 56 – BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Examiners for Engineers and Surveyors intends to adopt the rule cited as 21 NCAC 56 .0608 and amend the rules cited as 21 NCAC 56 .0303, .0601, .1702-.1705, .1707 and .1713.*

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

**Proposed Effective Date:** *January 1, 2023*

**Public Hearing:**

**Date:** *September 14, 2022*

**Time:** *9:00 a.m.*

**Location:** *4601 Six Forks Road, Suite 310, Raleigh, NC 27609*

**Reason for Proposed Action:**

**21 NCAC 56:**

*.0303 - Disbursement of Funds. Revises to clarify requests for funding, consistent with G.S. 89C-10(g). Was last revised as noted: "Amended Eff. July 1,2020. Deletes referencing entities and programs that qualify, since it is covered in G.S. 89C-10-(g).*

*.0601 - Requirements for Licensing. Makes permanent the temporary rule revision that adds apprenticeship path for licensure as a Professional Land Surveyor.*

*.0608 - Surveyor Intern Certificate. Makes permanent the temporary rule for certification as a Surveyor Intern.*

*.1702 - Definitions (7) and (8) added Ethics and Standards of Practice for Land Surveying.*

*.1703 - Requirements. Adds Ethics and Standards of Practice for Land Surveying specific continuing education requirements within the existing overall annual requirement. Adds credit for educational outreach activities.*

*.1704 - Units. Adds accrediting organizations to item (7) and adds item (11) for outreach activities.*

*.1705 - Determination of Credit. In item (f) adds accrediting organizations.*

*.1707 - Exemptions. Allows administrative approval of requests for PDH military waivers and disability or extenuating circumstances exemptions to be administratively approved by the Executive Director, and reported to the Board for final approval.*

*.1703 - Sponsors. Allows flexibility for the Board to have sponsors but not require Board to have sponsors by changing the phrase from "The Board shall" to "The Board may."*

**Comments may be submitted to:** *David S. Tuttle, Board Counsel, NC Board of Examiners for Engineers and Surveyors,*

4601 Six Forks Road, Suite 310, Raleigh, NC 27609; phone (919) 791-2000, Ext. 111; email NCBELSRulesComments@ncbels.org

(e) Source and amount of assistance being given by any other person or organization.

Comment period ends: October 14, 2022

Authority G.S. 89C-10(g).

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

SECTION .0300 - INSTRUCTIONAL PROGRAMS

21 NCAC 56 .0303 DISBURSEMENT OF FUNDS

The Board shall dispense funds for educational programs in the following manner:

- (1) The Board shall dispense funds after Board Committees, as organized, study each specific committee-related request and recommend funding.
(2) The Board shall consider requests for funds only from the following entities: community colleges, public or private institutions of higher learning, State and county boards of education, or governing authorities for any industrial education center.
(3) The Board shall consider educational programs to establish instructional programs for individuals currently licensed and those seeking to become licensed.
(4)(2) Approved entities shall request funds in writing and provide the following information:
(a) The amount needed;
(b) The intended use of the funds;
(c) Subject material to be presented and qualifications of instructors to be employed;
(d) Itemized breakdown of the amount needed and the total expected costs; and

SECTION .0600 - PROFESSIONAL LAND SURVEYOR

21 NCAC 56 .0601 REQUIREMENTS FOR LICENSING

(a) Education. The terms used by the Board for the specific education requirements to be eligible to be licensed as a Professional Land Surveyor are defined as follows:

- (1) "B.S. in surveying or other equivalent curriculum." These degrees shall contain a minimum of 45 semester hours, or their quarter-hour equivalents. Of the 45 semester hours, a minimum of 12 semester hours of surveying fundamentals, 12 semester hours of applied surveying practice, and 12 semester hours of advanced or theoretical surveying courses are required. The remainder of the required surveying courses may be elective-type courses in any of the categories; and
(2) "Associate degree in surveying technology." This degree shall contain a minimum of 20 semester hours, or quarter-hour equivalents. Courses shall be in surveying fundamentals, applied surveying practice and advanced or theoretical surveying courses, including courses in surveying practices, subdivision design and planning, surface drainage, and photogrammetry which must be completed with a passing grade.
(3) "Land Surveyor Apprenticeship." The applicant shall have completed one of the following programs:
(A) Certified Survey Technician Program (CST) of the National Society of Surveyors (NSPS) levels I through IV.
(B) "Technologist" Certification Program of the American Society for Photogrammetry and Remote Sensing (ASPRS).
(C) Based upon the Surveying Education Standard of the National Council of Examiners for Engineering and Surveying (NCEES) by obtaining college semester credit hours, as modified to require the following 39 college semester hours:
(i) 12 college semester hours in mathematics beyond basic mathematics, but the credits include college algebra or higher mathematics. These courses must emphasize mathematical concepts and

principles rather than computation. Mathematics courses may include college algebra, trigonometry, analytic geometry, differential and integral calculus, linear algebra, numerical analysis, probability and statistics, and advanced calculus.

(ii) 27 college semester hours of surveying science and surveying practice. Courses shall be taught by qualified surveying faculty. Examples of surveying courses are basic surveying, route surveying, geodesy, geographic information systems, land development design and planning, global positioning systems, photogrammetry, mapping, legal principles of land surveying, boundary law, professional surveying and mapping, and remote sensing. Graduate-level surveying courses can be included to fulfill curricular requirements in this area.

(D) Apprenticeship program, approved by the Board, and administered through ApprenticeshipNC, or equivalent, including elements equivalent to Parts (A), (B), or (C) of this Subparagraph.

(b) Experience:

- (1) Definition. As used in the North Carolina Engineering and Land Surveying Act, the term "progressive practical experience" means that during the period of time in which an applicant made a practical utilization of the knowledge of the principles of geometry and trigonometry in determining the shape, boundaries, position, and extent of the earth's surface, such that continuous improvement, growth, and development in the utilization of that knowledge have been shown. In addition, the applicant shall show the continuous assumption of greater individual responsibility for the work product over that period of time.
- (2) Required Experience. In evaluating the work experience required, the Board shall consider the total experience record and the progressive nature of the record. Not less than half of the required land surveying experience shall be of a professional grade and character, and shall be performed under the responsible charge of a Professional Land Surveyor. If the work was

not under the responsible charge of a Professional Land Surveyor, the applicant shall submit a written explanation to the Board explaining why the experience should be considered. The Board shall approve the experience on a case-by-case basis if it is satisfied of the grade and character of the progressive experience. Experience gained under the technical supervision of an unlicensed individual shall be considered based upon the engineering education and experience credential of the unlicensed supervisor. Experience gained in the armed services, typically while serving in an engineering or surveying related group, shall be accepted only if substantially equivalent to that which would have been gained in civilian work.

- (3) Other Experience. The applicant shall document the nature and details of the work done in the following areas to evidence to the Board its equivalency to land surveying:
  - (A) construction layout;
  - (B) engineering surveying; or
  - (C) part-time surveying work.

(c) Exhibits, Drawings, Maps:

- (1) Required Exhibit Before Principles and Practice of Surveying Examination:
  - (A) General. The applicant shall submit, along with the application, an actual map of a boundary survey of an actual project prepared under the direct supervision and responsible charge of a Professional Land Surveyor who states that the applicant did the preparatory work of the survey; that shows, by its conformance, that the applicant is knowledgeable of the contents of the Standards of Practice for Land Surveying in North Carolina as set forth in Section .1600 of this Chapter; and that shows that the applicant is able to apply this knowledge by preparing a map in accordance with the various legal and professional requirements of land surveying.
  - (B) Physical Requirement. The map submitted shall be a clean, clear, legible print of an original map in the file of a Professional Land Surveyor.
- (2) Specific Requirements. The details that shall be evaluated are those applicable to the particular project as described in the Standards of Practice for Land Surveying in North Carolina as set forth in Section .1600 of this Chapter, and as described in G.S. 47-30. In addition, the exhibit shall contain a statement that the field work, calculation, and mapping were performed by the applicant under the supervision of a

Professional Land Surveyor, attested to by that Professional Land Surveyor.

- (3) Requirements for Comity Applicant. The map submitted by an applicant under comity may be a representative map of an actual survey of a project or work performed in the state of licensure that is modified to meet the requirements in Subparagraph (c)(2) of this Rule and shall be evaluated in accordance with the requirements applicable to the particular project as described in the Standards of Practice for Land Surveying in North Carolina as set forth in Section .1600 of this Chapter, and as described in G.S. 47-30.

Authority G.S. 47-30; 89C-10; 89C-13.

**21 NCAC 56 .0608 SURVEYOR INTERN**

(a) General. To obtain the optional certification as a Surveyor Intern, an applicant shall:

- (1) pass the fundamentals of land surveying examination and make application to the Board on a form prescribed and furnished by the Board,
- (2) be of good character and reputation,
- (3) submit three character references to the Board, one of whom is a professional land surveyor,
- (4) comply with the requirements of this rule, and
- (5) satisfy one of the following requirements related to education and experience:
  - (A) Have a bachelor of ~~sScience~~ science degree in surveying or other equivalent curricula, approved by the Board and a record satisfactory to the Board of one year of progressive practical experience under a practicing professional land surveyor.
  - (B) Have an associate degree in surveying technology approved by the Board and a record satisfactory to the Board of two years of progressive practical experience under a practicing professional land surveyor.
  - (C) Have graduated from high school or completed a high school equivalency certificate and a record satisfactory to the Board of five years of progressive practical experience, under a practicing professional land surveyor.
  - (D) Graduation from a high school or the completion of a high school equivalency certificate, completion of a Land Surveyor Apprenticeship, and a record satisfactory to the Board of three years of progressive practical experience under a practicing professional land surveyor.

(b) Request. The application form may be requested from the Board office or obtained from the website.

(c) Application Form. Surveyor Intern ~~Certification Certificate Application Form~~ form. After passing the ~~fundamentals~~ Fundamentals of ~~surveying~~ Land Surveying examination an applicant may make application to the Board to become certified as a "Surveyor Intern." This form requires the applicant to set forth personal history, educational background, surveying experience, character references and exhibit. A passport-type photographic quality portrait that is adequate for current identification purposes is ~~also~~ required.

(d) Reference Forms:

- (1) Persons applying to be certified as a Surveyor Intern shall submit to the Board names of individuals who are familiar with the applicant's work, character and reputation. The names shall be submitted by the applicant on the application form.
- (2) Persons applying for certification as a Surveyor Intern must submit three references, one of whom shall be a Professional Land Surveyor.
- (3) In addition to the applicant submitting names to the Board of such individuals, those individuals shall submit to the Board their evaluations of the applicant on reference forms supplied them by the applicant.
- (4) The reference form requires the individual evaluating the applicant to state the evaluating individual's profession, knowledge of the ~~applicant~~ applicant, and information concerning the applicant's land surveying experience, ~~character~~ character, and reputation.
- (5) The Board shall provide the reference forms to the applicant along with the application for licensure. The reference forms shall then be distributed by the applicant to the persons listed on the application as references. The applicant shall ensure that the individuals listed as references return the forms to the Board prior to the filing deadline for the examination applied for by the applicant.

~~(e) Fees. Surveyor Intern Certification Form. Once the applicant passes the examination on the fundamentals of surveying and makes application to the Board to become certified as a "Surveyor Intern" the application fee of one hundred dollars (\$100.00) is payable.~~

~~(f)~~(e) Personal Interview. During the application process, the applicant may be interviewed by Board members if the members have questions regarding the applicant's education, experience or character, based upon the information submitted in the application.

Authority G.S. 89C-10; 89C-13; 89C-14; 89C-15.

**SECTION .1700 – CONTINUING PROFESSIONAL COMPETENCY**

**21 NCAC 56 .1702 DEFINITIONS**

Terms used in this Section are defined as follows:

- (1) Professional Development Hour (PDH) - A contact hour (nominal) of instruction or

- presentation. The common denominator for other units of credit.
- (2) Continuing Education Unit (CEU) - Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 contact hours of instruction or presentation.
  - (3) College/Unit Semester/Quarter Hour - Credit for Accreditation Board for Engineering and Technology approved course or other related college course.
  - (4) Course/Activity - Any course or activity with a purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the licensee's field of practice.
  - (5) Dual Licensee - A person who is licensed as both an engineer and a land surveyor.
  - (6) Sponsor - Organization or individual that has supplied information on a form prescribed and furnished by the Board with respect to the organization or individual's ability to provide instruction in "for credit" courses. Courses offered by those designated as "Sponsor" must contain a purpose and objective, and result in the maintenance, improvement, or expansion of skills and knowledge relevant to a licensee's field of practice.
  - (7) Ethics and/or Rules of Professional Conduct - A qualifying course or activity with content areas related to:
    - (a) the awareness of ethical concerns and conflicts;
    - (b) an enhanced familiarity with the codes of conduct;
    - (c) an understanding of standards of practice or care;
    - (d) project management and risk-assessment management; or
    - (e) other similar topics aimed at maintaining, improving, or expanding the skills set and knowledge relevant to conducting the practice of the profession so as to protect the health, safety and welfare of the public.
  - (8) Standards of Practice for Land Surveying - A qualifying course or activity with content areas related to Standards of Practice for Land Surveying in Section .1600 of this Chapter.

*Authority G.S. 89C-10(a); 89C-17.*

**21 NCAC 56 .1703 REQUIREMENTS**

Every licensee shall obtain 15 PDH units during the renewal period. Effective as of the 2024 license renewal, 1 PDH of which shall be in Ethics and/or Rules of Professional Conduct, and in addition for Professional Land Surveyors 1 PDH shall be in the Standards of Practice for Land Surveying. If a licensee exceeds the annual requirement in any renewal period, a maximum of 15 PDH units may be carried forward into the subsequent renewal

period. Selection of courses and activities that meet the requirements of Rule .1702(4) of this Section is the responsibility of the licensee. Licensees may select courses other than those offered by sponsors. Post evaluation of the courses may result in non-acceptance by the Board. PDH units may be earned as follows:

- (1) Completion of college courses;
- (2) Completion of continuing education courses, seminars, or workshops;
- (3) Completion of correspondence, televised, Internet, videotaped, audiotaped, and other courses or tutorials, provided an exam is required for completion. No exam is required for attendance at a webinar presentation if attendance is documented;
- (4) Presenting or attending seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions or conferences;
- (5) Teaching or instructing in Items (1) through (4) of this Rule;
- (6) Authoring published papers, articles, or books;
- (7) Active participation in professional or technical societies as defined in Rule .1705(f) of this Section;
- (8) Patents;
- (9) Authoring exam questions accepted for use in the engineering or land surveying exams; or
- (10) Active participation on boards, commissions, committees or councils of private, local, state or federal government entities as defined in Rule .1705(g) of this ~~Section~~ Section; or
- (11) Active participation in educational outreach activities pertaining to professional licensure or the surveying/engineering professions that involve K-12 or higher education students.

*Authority G.S. 89C-10(a); 89C-17.*

**21 NCAC 56 .1704 UNITS**

The conversion of units of credit set forth in Rule .1703 of this Section to PDH units is as follows:

- (1) 1 College or unit semester hour. 45 PDH
- (2) 1 College or unit quarter hour. 30 PDH
- (3) 1 Continuing Education Unit. 10 PDH
- (4) 1 Contact hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions or conferences, and for correspondence, televised, Internet, videotaped, audiotaped, and other courses or tutorials. Contact hours equal the actual time of instruction and shall be credited to the nearest one-third of an hour. 1 PDH
- (5) For teaching in Items (1)–(4) of this Rule, PDH credits are doubled. Teaching credit is valid for teaching a course or seminar for the first time only. Teaching credit does not apply to full-

- time faculty, as defined by the institution where a licensee is teaching.
- (6) Each published paper, article or book. 10 PDH
  - (7) Active participation in professional ~~society~~ and or technical societies or in accrediting organizations. (Each society or organization) 2 PDH
  - (8) Each patent. 10 PDH
  - (9) Each question used. 2 PDH
  - (10) Active participation on boards, commissions, committees or councils of private, local, state or federal government entities. (Each entity) 2 PDH
  - (11) Active participation in educational outreach activities pertaining to professional licensure or the surveying/engineering professions that involve K-12 or higher education students. (Each hour) 1 PDH  
(not to exceed 3 PDHs)

Authority G.S. 89C-10(a); 89C-17.

**21 NCAC 56 .1705 DETERMINATION OF CREDIT**

- (a) The Board of Examiners has final authority with respect to approval of courses, sponsors, credit, PDH value for courses, and other methods of earning credit. Such determination shall meet Rule .1702(4) of this Section.
- (b) Credit for college or community college courses shall be based upon course credit established by the college.
- (c) Credit for continuing education courses, seminars and workshops shall be based on one PDH unit for each hour of attendance. Attendance at programs presented at professional and technical society meetings shall earn PDH units for the actual time of each program.
- (d) Credit for correspondence, televised, Internet, videotaped, audiotaped, and other courses or tutorials, provided an exam is required for completion, shall be based upon one PDH unit for each hour assigned to the course, provided such hours are a reasonably estimated time for an average professional to complete the course.
- (e) Credit determination for published papers, articles and books and obtaining patents is the responsibility of the licensee.
- (f) Credit for active participation in professional ~~societies~~ or accrediting organizations (limited to 2 PDH per society or organization), requires that a licensee serve as an officer or actively participate in a committee of the ~~society~~ society or for accrediting organizations serve as an officer or participate in a committee or accreditation visits. PDH credits are not earned until the end of each year of service is completed.
- (g) Credit for active participation on boards, commissions, committees or councils of private, local, state or federal government entities (limited to 2 PDH per entity) requires utilizing engineering or land surveying knowledge (as applicable) in the active participation. PDH credits are not earned until the end of each year of service is completed.

Authority G.S. 89C-10(a); 89C-17.

**21 NCAC 56 .1707 EXEMPTIONS**

A licensee is exempt from the professional development educational requirements for the following reasons:

- (1) New licensees by way of examination or comity are exempt for their first renewal period.
- (2) If currently licensed by and in good standing (license is not suspended or revoked) with the Board a licensee who is serving in the armed forces of the United States and who is eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2 is granted a waiver of the mandatory continuing education requirements for the time period disregarded pursuant to the Internal Revenue Code 26 U.S.C. 7508.

The licensee shall request the waiver as follows:

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

A request shall be administratively approved by the Executive Director, without waiting for the next regular meeting of the Board at which time the action shall be reported to the Board for final approval.

- (3) The Board shall exempt a licensee if the Board determines that the licensee is experiencing physical disability, illness, or other extenuating circumstances that prevent the licensee from obtaining professional development hours. Supporting documentation must be furnished to the Board. A request shall be administratively

approved by the Executive Director, without waiting for the next regular meeting of the Board at which time the action shall be reported to the Board for final approval.

- (4) Licensees who list their occupation as "Inactive" on the Board approved renewal form and who are no longer providing professional engineering or land surveying services are exempt from the professional development hours required. In the event such a person elects to return to active practice of professional engineering or land surveying, professional development hours must be earned in accordance with the requirements of Rule .1708 in this Section before returning to active practice for each year exempted not to exceed the annual requirement for two years.

- general content of the course and the specific knowledge or skill to be taught or addressed, as well as the credit to be earned in Professional Development Hours (PDH);
- (4) Ensure that the instructors or presenters of the course or program are qualified to teach the subject matter;
- (5) Provide persons completing the course with written documentation attesting to that person's attendance to the course, as well as the name of the course, the date and location held, the instructor's name and the number of PDHs earned;
- (6) Provide attendees an evaluation form as provided by the Board that is to be collected and retained for audit by the Board;
- (7) Have a visible, continuous and identifiable contact person who is charged with the administration of the sponsor's CPC program and who has the responsibility for assuring and demonstrating to the Board compliance with this Rule, as well as for any other organization working with the sponsor for the development, distribution or presentation of CPC courses or activities; and
- (8) Retain for a period of three years a copy of the documentation required by this Paragraph.

Authority G.S. 89C-10(a); 89C-17; 93B-15.

**21 NCAC 56 .1713 SPONSORS**

(a) The Board ~~shall~~ may approve sponsors of Continuing Professional Competency (CPC) activities. The Board ~~shall~~ may maintain a list of sponsors which have agreed to conduct programs in accordance with the standards of CPC activities set forth in 21 NCAC 56. 1700. Such sponsors shall indicate their agreement with the requirements by executing a Sponsor Agreement on a form provided by the Board. These sponsors shall be designated as "Approved Sponsors" based upon approval by the Board of the sponsor application and payment of a one hundred fifty dollar (\$150.00) application fee.

(b) By entering into an agreement with the Board to be designated as an "Approved Sponsor," the sponsor shall agree to:

- (1) Allow persons designated by this Board to attend any or all courses, without fee or charge, for the purpose of determining that said course meets the standards of the Board;
- (2) Allow persons designated by this Board to review course material for the purpose of determining that the course meets the standards of the Board;
- (3) State in every brochure, publication or announcement concerning the course, the

(c) Sponsors shall renew annually on a form provided by the Board.

(d) Failure of an approved sponsor to comply with the terms of the CPC sponsor agreement is grounds for the Board to revoke, suspend or terminate the agreement, to remove the sponsor's name from the list of approved sponsors and to notify the public of such action. A sponsor that is given notice of revocation, suspension or termination may request an administrative hearing to be conducted as provided in 21 NCAC 56 .1400 Contested Cases.

(e) Approval of a sponsor is equivalent to the language of licensing a sponsor in G.S. 89C-10(h).

Authority G.S. 89C-10; 89C-17.

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**RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission July 21, 2022 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 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**

Jeanette Doran (Chair)  
Robert A. Bryan, Jr. (2<sup>nd</sup> Vice Chair)  
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**

Brian Liebman	984-236-1948
Lawrence Duke	984-236-1938
William W. Peaslee	984-236-1939

**RULES REVIEW COMMISSION MEETING DATES**

August 18, 2022	October 20, 2022
September 15, 2022	November 17, 2022

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**RULES REVIEW COMMISSION MEETING**

**MINUTES**

**July 21, 2022**

The Rules Review Commission met on Thursday, July 21, 2022, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx.

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

Staff members Alexander Burgos; Commission Counsel Lawrence Duke, Brian Liebman, and Bill Peaslee were present in the room.

The meeting was called to order at 9:00 a.m. with Chair Doran presiding.

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

**APPROVAL OF MINUTES**

The Chair asked for any discussion, comments, or corrections concerning the minutes of the June 16, 2022, 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 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

The Chair notified the Commissioners that the following items on the agenda would be taken up out of order at the end of the agenda: Follow up matters for the Coastal Resources Commission Tab G and Permanent Rules for Sheriffs' Education and Training Standards Commission.

**FOLLOW UP MATTERS**

**Board of Agriculture**

02 NCAC 52J .0101, .0102, .0103, .0104, .0105, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0208, .0209, .0210, .0301, .0302, .0303, .0304, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0409, .0410, .0411, .0412, .0413, .0414, .0415, .0416, .0417, .0418, .0419, .0501, .0701, .0702, .0703, .0704, .0705, .0801, .0802, .0803, .0901, and .0902 - The agency is addressing the technical change requests from the June meeting. No action was required by the Commission.

**Medical Care Commission**

10A NCAC 13B .3801, .3903, .4103, .4104, .4106, .4305, .4603, .4801, .4805, .5102, .5105, .5406, .5408, and .5411 - The agency is addressing the technical change requests from the June meeting. No action was required by the Commission.

**Criminal Justice Education and Training Standards Commission**

12 NCAC 09G .0205 – This Rule remains on the agenda to allow the agency time until the conclusion of the legislative review process. No action was required by the Commission.

**Environmental Management Commission**

15A NCAC 02B .0208, .0212, .0214, .0215, .0216, and .0218 - The agency is addressing the objection from the May meeting. No action was required by the Commission.

Commissioner Hyde joined the meeting Via Webex.

**Environmental Management Commission**

15A NCAC 02H .1301, .1401, .1402, .1403, .1404, and .1405 - The agency is addressing the objection from the May meeting. No action was required by the Commission.

**Environmental Management Commission**

15A NCAC 02Q .0103, .0503, .0504, .0505, .0507, .0508, .0509, .0514, .0516, .0518, .0521, .0522, .0525, and .0526 - The agency is addressing the technical change requests from the June meeting. No action was required by the Commission.

**Coastal Resources Commission**

Upon the call of the Chair, the Commission waived Rule 26 NCAC 05 .0105 to allow the request to speak by Steve Edwards after the deadline by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

15A NCAC 07H .0104, .0208, .0304, .0305, .0306, .0308, .0309, .0310, .1205, .1801; 07J .0403, .0404, .1201, .1202, .1203, .1204, .1205, .1206, .1301, .1302, .1303; 07K .0208; 07M .0301, .0302, .0303, .0306, .0307, .0308, and .0310 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Steve Edwards, with the Town of Oak Island, addressed the Commission.

Mary Lucasse, representing the agency, addressed the Commission.

**Wildlife Resources Commission**

15A NCAC 10D .0103 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

15A NCAC 10D .0209, .0226, .0229, .0230, .0239, .0240, .0243, .0260, and .0276 – The rules were withdrawn at the request of the agency. No action was required by the Commission.

**LOG OF FILINGS (PERMANENT RULES)**

**DHHS - Division of Health Benefits**

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

**Sheriffs' Education and Training Standards Commission**

Upon the call of the Chair, the Commission objected to 12 NCAC 10B .0704 by roll-call vote, ayes 6, noes 3 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, and Barbara Jackson – 6. Voting in the negative: Randy Overton, Paul Powell, and Bob Rucho - 3.

The Commission objected to 12 NCAC 10B .0704 finding that: the Rule was not within the statutory authority delegated to the NC SETSC pursuant to G.S. 150B-21.9(a)(1), the Rule was not clear and unambiguous pursuant to G.S. 150B-21.9(a)(2), and the Rule was not adopted in accordance with the Administrative Procedures Act pursuant to G.S. 150B-21.9(a)(4).

Specifically, the RRC adopted the opinion of counsel by reference regarding the issue of the agency exceeding its authority, and clarity and ambiguousness. (See Parts 1 & 3 of the RRC Staff Opinion).

The RRC found that, notwithstanding the agency's second amendment to the Rule, the Rule did not prescribe the contents or substantive requirements of the forms identified in the Rule. Rather, the agency left the contents or substantive requirements of the forms open-ended by its employ of the word "includes".

Pursuant to G.S. 150B-2(8a)d., a form does not fall under the definition of a "Rule" if the contents and substantive requirements of the form are prescribed by rule or statute. 12 NCAC 10B .0704 does not prescribe all the contents or substantive requirements of Form F-7A or Form 7-B. A review of Subchapter 10A fails to reveal the contents or substantive requirements of these forms. 12 NCAC 10B .0704 does not reference any other subchapter or statute which prescribes the contents or substantive requirements of these forms.

Accordingly, the agency has failed to comply with the Administrative Procures Act by requiring the regulated public to use forms without adopting the forms or adopting a rule prescribing the complete contents or substantive requirements.

Sirena Jones, the rulemaking coordinator with the agency, addressed the Commission.

Robert Pickett, representing the agency, addressed the Commission.

**Alarm Systems Licensing Board**

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

**Coastal Resources Commission- 15A NCA 07H .0500, .0600, 07I, 07J**

Upon the call of the Chair, the Commission extended the period of review for 15A NCAC 07H .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0601, .0602, .0603, .0604; 07I .0204, .0302, .0305, .0306, .0401, .0402, .0406, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0601, .0602, .0701, .0702; 07J .0102, .0201, .0203, .0204, .0206, .0207, .0208, .0209, .0210, .0211, .0301, .0302, .0312, .0602, .0603, .0604, .0605, .0701, .0702, and .0703 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

**Coastal Resources Commission – 15A NCAC 07H .1300 - .2700**

Upon the call of the Chair, the Commission extended the period of review for 15A NCAC 07H .1301, .1302, .1303, .1304, .1305, .1401, .1402, .1403, .1404, .1405, .1501, .1502, .1503, .1504, .1505, .1601, .1602, .1603, .1604, .1605, .1805, .2001, .2002, .2003, .2004, .2005, .2101, .2102, .2103, .2104, .2105, .2201, .2202, .2203, .2204, .2205, .2301, .2302, .2303, .2304, .2305, .2401, .2402, .2403, .2404, .2405, .2601, .2602, .2603, .2604, .2605, .2701, .2702, .2703, .2704, and .2705 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

**Coastal Resources Commission – 15A NCAC 07L, M**

Upon the call of the Chair, 15A NCAC 07L .0503 was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Upon the call of the Chair, the Commission extended the period of review for 15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0503, .0601, .0602, .0603, .0701, .0702, .0703, .0704, .0705, .0801, .0802, .0902, .1001, .1002, .1101, .1102, .1201, and .1202 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby

Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

**Board of Physical Therapy Examiners**

Upon the call of the Chair, the Commission extended the period of review for 21 NCAC 48B .0102; 48E .0104; 48F .0101, .0103; 48G .0105, .0203, and .0504 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

**Board of Recreational Therapy Licensure**

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

**COMMISSION BUSINESS**

The Codifier of Rules, Ashley Snyder, presented the Commission with an overview of the pre-reviews conducted by staff. Additionally, the Codifier discussed the upcoming changes to the 2023 Publication Schedule.

The Chair advised the Commission that at the August and September meetings, the Commission will continue the discussion on pre-reviews.

The Chair recognized outgoing Commissioner Margaret Currin for her service to the RCC and the State of North Carolina. The letter recognizing Commissioner Currin was ratified by the RRC and entered into the official minutes by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jeanette Doran, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Commissioner Currin addressed the Commission.

The meeting adjourned at 10:50 a.m.

The next regularly scheduled meeting of the Commission is Thursday, August 18, 2022, at 9:00 a.m.

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Alexander Burgos, Paralegal

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



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**RULES REVIEW COMMISSION**

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**Rules Review Commission Meeting July 21, 2022**  
**Via WebEx**

<b>Name</b>	<b>Agency</b>
Helen Landi	DOT
Catherine Blum	MFC
Kathy Arney	PT
Christy Simmons	DEQ
Deborah Ragan	PT
Rachel Love-Adrick	DEQ
Chris Millis	NCHBA
Julie Youngman	SELNC
Ronald Williams	DOR
Kevin Martin	cucainc.org
Carrie Hollis	OSBM
Steve Edwards	oakislandnc.gov
Mike Lopazanski	CRC
Steve Edwards	oakislandnc.gov
Phillip Reynolds	DOJ
David Rittlinger	DOI
Julie Ventaloro	OSBM
Hannah Jernigan	DOT
Jim Flowers	DHHS DHB
Dennis Seavers	Barbers
Laura Rowe	Treasurer
David Kelly	Oakislandnc.gov
Daniel Johnson	DOT
Jessica Montie	DEQ
Christine Goebel	DEQ
Melissa Bowman	DOJ
Nadine Pfeiffer	DHSHR
Becky Garrett	BRTL
Hope wade	DEQ
Angela Willis	DEQ
Shazia Keller	DHHS DHB



STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS

July 21, 2022

Dear Commissioner Currin,

On behalf of the Rules Review Commission and the Office of Administrative Hearings, we wish to thank you for your service to the citizens of this State. Since being appointed to the Commission in 2011, you have reviewed many administrative rules that are vital to the interests of all North Carolinians. Additionally, as Chair of the Commission from 2014-2015, you oversaw the implementation of the first periodic review process, ensuring that program's success.

The clarity of administrative rulemaking and adherence to legislative authority promote the efficient operation of state government. In this process, you have judiciously balanced the interests of the individual against the interests of the state, according to the legislative authority granted to the Rules Review Commission.

You have, as a citizen volunteer, unselfishly contributed your time and expertise to the Rules Review Commission. This Commission cannot accomplish its mission unless citizens, like you, offer themselves in public service. Please accept our sincere thank you for your willingness to serve in this capacity.

Very truly yours,

  
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Jeanette Doran  
Chair, Rules Review Commission

  
\_\_\_\_\_  
Donald R. van der Vaart  
Chief Administrative Law Judge

1711 NEW HOPE CHURCH ROAD / TELEPHONE: (984) 236-1850 / RALEIGH, NORTH CAROLINA 27609

**LIST OF APPROVED PERMANENT RULES**

**July 21, 2022 Meeting**

**HHS - HEALTH BENEFITS, DIVISION OF**

<u>Scope</u>	10A NCAC 22Q .0101
<u>Definitions</u>	10A NCAC 22Q .0102
<u>Distributions</u>	10A NCAC 22Q .0103
<u>Certifying Hospital Distribution</u>	10A NCAC 22Q .0104
<u>Certifying Hospitals' Outpatient Costs</u>	10A NCAC 22Q .0105
<u>Certifying Hospitals' Proportionate Share</u>	10A NCAC 22Q .0106
<u>Scope</u>	10A NCAC 22R .0101
<u>Definitions</u>	10A NCAC 22R .0102
<u>Eligible Hospital</u>	10A NCAC 22R .0103
<u>Eligible Outpatient Costs</u>	10A NCAC 22R .0104
<u>Distribution of Available Funds</u>	10A NCAC 22R .0105

**ALARM SYSTEMS LICENSING BOARD**

<u>Application for License</u>	14B NCAC 17 .0201
<u>Application for Registration</u>	14B NCAC 17 .0301

**COASTAL RESOURCES COMMISSION**

<u>Application of Erosion Rate Setback Factors</u>	15A NCAC 07H .0104
<u>Use Standards</u>	15A NCAC 07H .0208
<u>AECs Within Ocean Hazard Areas</u>	15A NCAC 07H .0304
<u>Definition and Description of Landforms</u>	15A NCAC 07H .0305
<u>General Use Standards for Ocean Hazard Areas</u>	15A NCAC 07H .0306
<u>Specific Use Standards for Ocean Hazard Areas</u>	15A NCAC 07H .0308
<u>Use Standards for Ocean Hazard Areas: Exceptions</u>	15A NCAC 07H .0309
<u>Use Standards for Inlet Hazard Areas</u>	15A NCAC 07H .0310
<u>Specific Conditions</u>	15A NCAC 07H .1205
<u>Purpose</u>	15A NCAC 07H .1801
<u>Development Period/Commencement/Continuation</u>	15A NCAC 07J .0403
<u>Development Period Extension</u>	15A NCAC 07J .0404
<u>Beach Management Plan Approval</u>	15A NCAC 07J .1201
<u>Review of the Beach Management Plan Approval Request</u>	15A NCAC 07J .1202
<u>Procedure for Approving a Beach Management Plan</u>	15A NCAC 07J .1203
<u>Review of Beach Management Plans</u>	15A NCAC 07J .1204
<u>Revocation and Expiration of Beach Management Plan Approval</u>	15A NCAC 07J .1205
<u>Local Governments and Communities with Approved Beach Man...</u>	15A NCAC 07J .1206
<u>Requesting the Development Line</u>	15A NCAC 07J .1301
<u>Procedures for Approving the Development Line</u>	15A NCAC 07J .1302
<u>Local Governments and Communities with Development Lines</u>	15A NCAC 07J .1303
<u>Single Family Residences Exempted</u>	15A NCAC 07K .0208
<u>Priorities for Funding Land Use Plans and Implementation ...</u>	15A NCAC 07L .0503
<u>Declaration of General Policy</u>	15A NCAC 07M .0301
<u>Definitions</u>	15A NCAC 07M .0302
<u>Standards for Public Access</u>	15A NCAC 07M .0303

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***RULES REVIEW COMMISSION***

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<u>Local Government and State Involvement in Access</u>	15A NCAC 07M .0306
<u>Public Beach and Coastal Waterfront Access Program</u>	15A NCAC 07M .0307
<u>Public Involvement/Notice</u>	15A NCAC 07M .0308
<u>Standards for Public Access</u>	15A NCAC 07M .0310

**WILDLIFE RESOURCES COMMISSION**

<u>Hunting on Game Lands</u>	15A NCAC 10D .0103
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**RECREATIONAL THERAPY LICENSURE, BOARD OF**

<u>Minimum Level of Education and Competency for Licensed Re...</u>	21 NCAC 65 .0301
<u>Licensure Fees</u>	21 NCAC 65 .0501
<u>Reinstatement of Lapsed License</u>	21 NCAC 65 .0701