

Burgos, Alexander N

Subject: FW: 09 NCAC 03M .0202
Attachments: 09 NCAC 03M .0202.docx

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Friday, March 15, 2024 1:08 PM
To: Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: FW: 09 NCAC 03M .0202

Good afternoon,

The attached rule is the final version of the rule for the March RRC meeting. It is my intention to recommend to the RRC that it find that the agency has satisfied the Commission's objections.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Gagnon, John <john.gagnon@osbm.nc.gov>
Sent: Friday, March 15, 2024 10:51 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Ventaloro, Julie W <julie.ventaloro@osbm.nc.gov>
Subject: RE: 09 NCAC 03M .0202

Good morning,

Attached please find a revised version of 09 NCAC 03M .0202. We believe we have addressed the reasons outlined in the objection letter on items (1) and (2). Please let me know if you need anything else from our end. Thank you for all of your help throughout this process. Have a great weekend.

Respectfully,

Jack Gagnon
Senior Internal Auditor
NC Office of State Budget & Management
(984) 236-0636

john.gagnon@osbm.nc.gov



1 09 NCAC 03M .0202 is amended with changes as published in 38:08 NCR 478-483 as follows:

2

3 **09 NCAC 03M .0202 RECIPIENT AND SUBRECIPIENT RESPONSIBILITIES**

4 A recipient or subrecipient that receives ~~State financial assistance~~ grants shall ensure that those funds are utilized for
5 their intended ~~purpose~~ purpose, as outlined in the contract. and shall expend those funds in compliance with
6 requirements established by this Subchapter and their contract. Recipients and subrecipients shall:

7 ~~(1)~~ Provide the information required by the disbursing agency in order to comply with the procedures
8 for disbursement of funds.

9 ~~(2)~~⁽¹⁾ Maintain reports and accounting records that support the allowable expenditure of State funds.
10 Recipients and subrecipients shall maintain such reports and records for five years from the end of
11 the grant agreement and shall make available all reports and records for inspection by the awarding
12 agency, the Office of State Budget and Management, and the Office of the State Auditor for
13 oversight, monitoring, and evaluation purposes.

14 ~~(3)~~⁽²⁾ Ensure that subrecipients comply with all reporting requirements established by this Subchapter and
15 their contract and report to the appropriate disbursing entity.

16 ⁽³⁾ Have the option to request in writing to the Office of State Budget and Management to be removed
17 from the Suspension of Funding List if they believe they have been suspended in error. Once
18 removed from the Suspension of Funding List, the recipient is eligible for current and future grants.

19

20 *History Note: Authority G.S. 143C-6-22; 143C-6-23;*
21 *Eff. July 1, 2005;*
22 *Readopted Eff. July 1, ~~2016-2016~~;*
23 *Amended Eff. July 1, 2024.*

Burgos, Alexander N

Subject: FW: 09 NCAC 03M .0401

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Tuesday, February 27, 2024 3:59 PM

To: Gagnon, John <john.gagnon@osbm.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ventaloro, Julie W <julie.ventaloro@osbm.nc.gov>

Subject: RE: 09 NCAC 03M .0401

Thank you.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: 09 NCAC 03M .0401

From: Gagnon, John <john.gagnon@osbm.nc.gov>

Sent: Tuesday, February 27, 2024 11:22 AM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ventaloro, Julie W <julie.ventaloro@osbm.nc.gov>

Subject: RE: 09 NCAC 03M .0401

Please see responses in red. I included references to proposed NCAC where applicable. Please let me know if you have any additional questions or if I can be of further assistance.

In (a)(4) of the above captioned rule, OSBM will approve “monitoring plans.” What criteria will the agency use in deciding whether to approve the plans? What is required to be in the monitoring plan? Define “monitoring plan”. A proposed definition of "Monitoring plan" is in 09 NCAC 03M .0102(11). Monitoring plans will be evaluated on whether they address the following elements: programs covered, education and technical assistance, risk assessment framework, monitoring procedures, non-compliance procedures, and closeout of award procedures. These required elements are specified in proposed 09 NCAC 03M .0401(a)(4).

09 NCAC 03M .0102 DEFINITIONS

- . (11) “Monitoring plan” means a documented system of educating, reviewing, tracking, and reporting on the use of grant funds. Designed to assure that public funds are spent in compliance with applicable rules and statutes, and that performance expectations are being achieved.

09 NCAC 03M .0401 Agency Responsibilities

- (4) Monitoring plans will be evaluated based on plan elements including programs covered, education and technical assistance, risk assessment framework, monitoring procedures, non-compliance procedures, and closeout of award procedures.

In (a)(5) , what is the difference between “monitoring functions” and “oversight functions”, if any, that are required to be in the monitoring plan? Both terms are meant to convey the agencies' responsibilities to ensure funds are spent in compliance with regulations. "Monitoring functions" is referring to tracking implementation at the micro level, while "Oversight" is referring to implementation at the policy/program level (macro). These are both terms commonly used together in the grant management and auditing fields.

In (a)(11), is there any required procedure to be removed from the Suspension of Funding List? Proposed 9 NCAC 03M .0202 (4) outlines the procedure that a recipient or subrecipient should follow to be removed from Suspension of Funding list. Does it have to be in writing? Yes. Is there a form? No.

Agencies notify OSBM when to add/remove entities per 09 NCAC 03M .0401 (11) and (12) . We prefer email but can be reached by phone.

09 NCAC 03M .0202 Recipient and Subrecipient Responsibilities

- (4) Have the option to request in writing to the Office of State Budget and Management to be removed from the Suspension of Funding List if they believe they have been suspended in error. Once removed from the Suspension of Funding List, the recipient is eligible for current and future grants.

09 NCAC 03M .0401 Agency Responsibilities

- 11) Notify the Office of State Budget and Management when a recipient is not compliant with the requirements set forth in this Subchapter or the terms of their contract such that the recipient should be added to the Suspension of Funding List and have the disbursement of funds to the recipient suspended in accordance with G.S. 143C-6-23(f). Agencies shall not disburse grant funds to a recipient on the Suspension of Funding List until that recipient comes back into compliance and is removed from the Suspension of Funding List.
- (11)(12) Notify the Office of State Budget and Management when to remove entities from the Suspension of Funding List.

Jack Gagnon

Senior Internal Auditor

NC Office of State Budget & Management

(984) 236-0636

john.gagnon@osbm.nc.gov



Burgos, Alexander N

From: Peaslee, William W
Sent: Monday, February 26, 2024 4:03 PM
To: Gagnon, John
Cc: Burgos, Alexander N
Subject: 09 NCAC 03M .0401

John,

I have received some question concerning the above captioned rule.

In (a)(4) of the above captioned rule, OSBM will approve “monitoring plans.” What criteria will the agency use in deciding whether to approve the plans? What is required to be in the monitoring plan? Define “monitoring plan”.

In (a)(5) , what is the difference between “monitoring functions” and “oversight functions”, if any, that are required to be in the monitoring plan?

In (a)(11), is there any required procedure to be removed from the Suspension of Funding List? Does it have to be in writing? Is there a form?

Please reply by email no later than 2:00 February 27th.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: Telephone conference

From: Gagnon, John <john.gagnon@osbm.nc.gov>
Sent: Monday, February 26, 2024 11:45 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ventaloro, Julie W <julie.ventaloro@osbm.nc.gov>
Subject: RE: Telephone conference

Appreciate the follow up. The only item I would add is that you received our revised .0601 rule and it will be included for consideration on Wednesday.

Jack Gagnon

Senior Internal Auditor
NC Office of State Budget & Management
(984) 236-0636
john.gagnon@osbm.nc.gov



From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Monday, February 26, 2024 11:08 AM
To: Gagnon, John <john.gagnon@osbm.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Telephone conference

Good morning,

This email is to memorialize our telephone conversation. If you feel it is inaccurate or incomplete, please reply to this email with the particulars.

We spoke about remedies to rule 202. We discussed how the inclusion of a minimum time frame would most likely resolve item II in the staff opinion. We also discussed how an itemization of the information required would resolve the issue with item I. of the opinion.

We also discussed that the lack of an opinion recommending objection to rules 401 and 802 did not preclude an RRC objection.

Thank you for your call. For future reference, the OAH encourages email communication to provide greater transparency to the public.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

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Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: 09 NCAC 03M
Attachments: 09 NCAC 03M .0601.docx

From: Gagnon, John <john.gagnon@osbm.nc.gov>
Sent: Sunday, February 25, 2024 8:50 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ventaloro, Julie W <julie.ventaloro@osbm.nc.gov>; Grants-OSBM <Grants-OSBM@osbm.nc.gov>; Hargis, Scarlett W <Scarlett.Hargis@nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Subject: RE: 09 NCAC 03M

Good evening,

Attached please see updated version of .0601. I apologize for any confusion that was created. We are in agreement with your assessment that rule .0601 is not reasonably necessary pursuant to G.S. 150B-21.9(a)(3).

I will give you a call first thing in the morning and make sure we are all on the same page. Looking forward to speaking with you and thank you again for your assistance.

Thank you,

Jack Gagnon
Senior Internal Auditor
NC Office of State Budget & Management
(984) 236-0636
john.gagnon@osbm.nc.gov



09 NCAC 03M .0601 is amended as published with changes in 38:08 NCR 478-483 as follows:

SECTION .0600 - RESPONSIBILITIES OF THE OFFICE OF STATE BUDGET AND MANAGEMENT

09 NCAC 03M .0601 OFFICE OF STATE BUDGET AND MANAGEMENT RESPONSIBILITIES

The Office of State Budget and Management shall:

- (1) Provide guidelines to agencies for developing monitoring plans and establishing reporting processes that meet the requirements established in this Subchapter.
- (2) Maintain a Suspension of Funding list readily accessible to any interested party that identifies any recipient found in noncompliance with the requirements of this Subchapter or the terms of their contract. This list shall serve as notice to other agencies that no further State financial assistance [grant funds] shall be provided to that recipient until they are removed from the list.
- (3) Periodically audit State agencies to ensure compliance with requirements set forth in Section .0400 of this Subchapter.
- (4) Upon notification from a disbursing agency that a recipient is no longer noncompliant with the requirements set forth in Section .0200 of this Subchapter, validate that all such noncompliance has been corrected prior to the removal of that recipient from the Suspension of Funding listing. A recipient may appeal to the Office of State Budget and Management to be removed from the Suspension of Funding list if they believe they have been suspended in error. Once removed from the Suspension of Funding list, the recipient is eligible for current and future State financial assistance. [grants.]
- (5) Take appropriate administrative action when the Director of the Budget finds that the recipient has spent or encumbered State funds for an unauthorized purpose, including ensuring allegations of criminal violations are reported to the Attorney General and the State Bureau of Investigation by the disbursing agency.
- (6) If the funds are a pass-through of funds awarded by an agency of the United States, consult with the awarding agency of the United States and the State agency that is the recipient of the pass-through funds prior to taking actions authorized by this Subchapter.

*History Note: Authority G.S. 143C-6-22; 143C-6-23;
Eff. July 1, 2005;
Readopted Eff. July 1, 2016. 2016;
Amended Eff. July 1, 2024.*

Burgos, Alexander N

From: Peaslee, William W
Sent: Saturday, February 24, 2024 12:24 PM
To: Walker, Kristin L
Cc: Gagnon, John; Burgos, Alexander N
Subject: 09 NCAC 03M .0202
Attachments: 02.2024 OSBM 09 NCAC 03M .0202.doc

Good afternoon,

Attached please find the staff opinion on the above captioned rule which will be considered at the February RRC meeting.

As always, if you have any questions or concerns please feel free to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
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Burgos, Alexander N

From: Gagnon, John
Sent: Friday, February 23, 2024 3:37 PM
To: Rules, Oah; Peaslee, William W
Cc: Burgos, Alexander N; Ventaloro, Julie W; Grants-OSBM; Hargis, Scarlett W
Subject: 09 NCAC 03M
Attachments: 2024.02 - OSBM Technical Changes.docx; 09 NCAC 03M .0102.docx; 09 NCAC 03M .0201.docx; 09 NCAC 03M .0202.docx; 09 NCAC 03M .0205.docx; 09 NCAC 03M .0401.docx; 09 NCAC 03M .0703.docx; 09 NCAC 03M .0801.docx; 09 NCAC 03M .0802.docx

Follow Up Flag: Follow up
Flag Status: Completed

Good afternoon Mr. Peaslee,

Hope you are doing well. Attached please find our completed request for changes document as well as updated versions of the rewritten rules. Please note, that there is no rule .0601 attached as we agree with your assessment that the rule is not reasonably necessary pursuant to G.S. 150B-21.9(a)(3). I really appreciated you taking the time to meet with me on Monday morning and providing valuable input and insight into how we could improve these rules. Thank you for your willingness to collaborate. Please do not hesitate to reach out if you have any questions or concerns or if we can provide additional clarity or assistance to you. Have a wonderful weekend.

Thank you,

Jack Gagnon
Senior Internal Auditor
NC Office of State Budget & Management
(984) 236-0636
john.gagnon@osbm.nc.gov



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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: Generally, to all Rules

DEADLINE FOR RECEIPT: February 23, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

What happens if a distributing agency violates any of the rules and/or fails to comply after notice thereof?

Depending upon which section of the administrative code is violated there could be several outcomes. For example, if a disbursing agency conducts an internal review and finds their grant agreement or contract is missing a required clause, the agency may take action to amend the contract and have both parties sign the amendment. More serious violations may result in the Office of the State Auditor conducting an investigative or performance audit. OSBM proactively works with agencies to develop monitoring plans and tries to prevent violations by providing technical assistance and training.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: February 9, 2024

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0101

DEADLINE FOR RECEIPT: February 23, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

This page intentionally blank.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: February 9, 2024

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0102

DEADLINE FOR RECEIPT: February 23, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Page 1, Line 10, item (2): Audit by whom? Can it be any audit?
Audit is most likely performed by the state agency's internal audit function or another compliance group within the organization. The audit would be prompted by concerns from grant monitors at the state agency. Would most likely be a compliance audit or operational/performance audit. In more extreme cases, an audit may be performed by the Office of State Auditor depending on the circumstances. An important delineation is that this is different from a single or program-specific audit performed by an outside CPA firm in accordance with yellow book.*

Page 1, Line 11, item (3): Strike "means" or "is". Change made.

*Page 1, Lines 14-15, item (4): Why is everything after "Treasurer" necessary?
Helpful to add context, in particular for new grantees, potentially help them avoid unnecessary audit testing due to lack of familiarity with the grant process and requirements.*

*Page 1, Line 19, item (186): I believe the agency wants a comma after "requirements".
We believe the sentence makes sense without the comma after the second "requirements."*

Page 1, Line 27, item (10): I believe the agency wants a comma after "direct appropriation". Change made.

Page 2, Line 3, item (14): If the agency is going to incorporate 2 CFR 200.93 by reference it needs to abide by G.S. 150B-21.6. Change made.

Page 2, Line 12, item (117): The use of the phrase "an individual that is a beneficiary" can be read more than one way. Accordingly, it is unclear. Deleted "an individual that is" from the definition of "Subrecipient" to avoid redundancy with the definition of "Beneficiary."

William W. Peaslee
Commission Counsel

Date submitted to agency: February 9, 2024

Page 2, Lines 15-17, item (18): Cite the rule by which a grantee gets designated “in a state of non-compliance.” Citation added.

Page 2, Lines 17-19, item (18): The second sentence is not a definition but a requirement or prohibition. Deleted the second sentence from Rule .0102 and added it to Rule .0401 (Agency Responsibilities).

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0201

DEADLINE FOR RECEIPT: February 23, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Lines 8-11: What is the difference between the first and second sentences? The first sentence is solely state funding (see definition of "grant" in .0102). The second sentence addresses scenarios where recipient/subrecipient's grant has mix of state and federal funding sources.

Line 8-11: If the agency is going to incorporate 2 CFR, Part 200 by reference it needs to abide by G.S. 150B-21.6. Change made.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: February 9, 2024

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0202

DEADLINE FOR RECEIPT: February 23, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Line 5: Where are the “intended purposes” delineated? In the contract? Reference should be made to where the purposes of the award are stated. Intended purposes are delineated in legislation such as appropriations act and technical corrections bills. Each contract references the specific session law, and scope of work further specifies how funds spent will align with the intended purposes.

Added “as outlined in the contract” after “intended purpose.”

Line 6: Explain why compliance with “their contract” is necessary in the rule. If an agency has a contract with the recipient the requirements should be enforceable through the contract. Agreed, but we feel it is important and helpful to the grantee to emphasize the importance of complying with the contract and make it clear that is the expectation. Unfortunately, people don’t always read their contracts. Experience with grantees that are confused about where to find the requirements. Helpful to grantees to underscore importance of the contract. Small nonprofit organizations may not have attorneys on staff to underscore the importance of the terms of the contract.

Lines 7-8: To whom must the recipient provide “the information”? To the disbursing agency. The disbursing agency will reach out to the grantee and request the information.

Lines 7-8: Why is item (1) necessary? Information “required by the distributing agency” can only be lawfully required one of two ways; by rule (adopted pursuant to the APA), or by terms in the contract. Either way item (1) is redundant and unnecessary. We feel it is important for the regulated community to understand the recipient is responsible for providing information prior to a contract being issued and funds being disbursed. There are documents the disbursing agency must acquire prior to issuing the contract.

William W. Peaslee
Commission Counsel

Date submitted to agency: February 9, 2024

Lines 9-12: How long must the reports and records be maintained? This is spelled out in the contract and varies; 5 years is typical.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel
Date submitted to agency: February 9, 2024

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0205

DEADLINE FOR RECEIPT: February 23, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Page 1, Lines 9-17 and Page 2, Line 3: If the agency is going to incorporate parts of the CFR by reference it needs to abide by G.S. 150B-21.6. **Changes made.***

*Page 1, Lines 20-31: Consider: Rather than requiring other agencies to adopt rules, why wouldn't OSBM simply adopt rules applicable to all recipients and subrecipients? **Change made.***

*Page 1, Line 22: To whom must the certification be presented? **Added "to the distributing agency."***

*Page 1, Lines 22-23: The noun and verb do not agree. **Change made.***

*Page 1, Line 23: Remove the comma after "or". **Change made.***

*Page 1, Lines 24-25: What does the agency mean by "an accounting"? **Financial transactional data of the grant. Typically interested in expenditures recorded on general ledger and interest earned. Is there a form or format which is required? What information must be provided? Up to the agency to spell out if there's a format required for the accounting. Plain definition of accounting suffices. Accounting is a specific term.***

*Page 1, Lines 24-25: To whom must the accounting be presented? **Added "to the distributing agency."***

*Page 1, Lines 26-28: What does the agency mean by "a report"? Is there a form or format which is required? What information must be provided? **It says "shall report," not "a report." There's no prescribed format. Up to the distributing agency as to how to report.***

*Page 1, Lines 29-13: If the agency is going to incorporate the GAGA standards by reference it needs to abide by G.S. 150B-21.6. **Change made.***

William W. Peaslee
Commission Counsel

Date submitted to agency: February 9, 2024

Page 1, Lines 34: Change “must” to “shall”. Change made.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel
Date submitted to agency: February 9, 2024

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0401

DEADLINE FOR RECEIPT: February 23, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Line 1, Lines 11-16: Formats and forms and the substantive requirements therein fall under the definition of a "rule" pursuant to G.S. 150B-2(8a). An agency cannot adopt a run which requires the regulated to abide by a standard that has not been adopted pursuant to the APA. Changes made to include detail about the format and method to be used to register a State assistance program and to report individual awards.

Page 1, Lines 22-23: What criteria will OSBM use to make the approval determination? Changed to specify the elements by which monitoring plans will be evaluated for approval (programs covered, education/technical assistance, risk assessment framework, monitoring procedures, non-compliance procedures, and closeout of award procedures).

Page 1, Line 32: Define or delete "appropriate". Deleted.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: February 9, 2024

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0601

DEADLINE FOR RECEIPT: February 23, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Generally, to the rule: Explain why this rule is reasonably necessary pursuant to G.S. 150B-21.9(a)(3). An agency cannot adopt a rule enlarging its our authority. Either OSBM already has the authority to do the items listed or it does not. If it has the authority, why is the rule necessary? If it does not already have the authority, it cannot self-grant the authority.

Agree with Mr. Peaslee's assessment that the rule is not necessary. Necessary elements of Items (2) and (4) have been moved .0202 and .0401, respectively.

Lines 7-8: Are the "guidelines" requirements or suggestions? If suggestions, item (1) is unnecessary. If requirements, the substantive requirements would meet the definition of a "rule" and would need to be adopted pursuant to the APA. See above response regarding necessity of the rule.

Line 9: Define or delete "readily". See above response regarding necessity of the rule.

Lines 9-12: Add a citation to the rule by which a recipient is added to and removed from the list. See above response regarding necessity of the rule.

Lines 17-19: Add a citation to the rule or statute establishing the appeals process. Moved the contents of Item (4) to Rules .0202 "Recipient and Subrecipient Responsibilities" and .0401 "Agency Responsibilities." In those other rules, changed "appeal" to "request," and added "in writing" to clarify procedure for requesting to be removed from the Suspension of Funding list per G.S. 143-23(d)(11).

Line 22: Define or delete "appropriate". See above response regarding necessity of the rule.

William W. Peaslee
Commission Counsel

Date submitted to agency: February 9, 2024

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel
Date submitted to agency: February 9, 2024

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0703

DEADLINE FOR RECEIPT: February 23, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Lines 6-7: This sentence is oddly placed and can be interpreted in different ways. Is the agency making this a term in the contract? No. This is not a term in the contract. The terms are listed below (1-15). Or is the agency requiring this in subrecipient contracts with the agency as well? No. The agency does not have a direct relationship with the subrecipient. Is the agency requiring subrecipients to execute the contract with the recipient? The rule is saying that recipients must apply the same contract provisions with their subrecipients. We think the definitions of the terms "recipient" and "subrecipients" make this clear, but we have added "recipient-subrecipient relationship" to Line 7 to further clarify.

Page 1, Line 19: Isn't the inclusion of the word "binding" drawing a legal conclusion? How would an agency know if a signature binds a party until it is determined in court? Our understanding is that a signed grant agreement executed via contract is, in and of itself, binding. We don't believe the use of the word "binding" here adds any additional legal conclusion.

Page 1, Line 28: Add "A" before "provision". Change made.

Page 1, Lines 34-36 and Page 2, Lines 1-3 seem conceptually incomplete. We believe it makes sense when read with the introductory clause in Item (15) that the recipient or subrecipient's contracts must state that they are not relieved of duties and responsibilities upon assigning or subcontracting. Please advise, open to any and all suggestions to improve clarity.

Page 1, Lines 34-36: Can recipients freely assign contracts? Yes. A recipient can subcontract unless their specific contract or legislation prohibits it. It is not entirely clear what the agency means by (a). We believe it makes sense when read with the introductory clause in Item (15) that the recipient or subrecipient's contracts must state that they are not relieved of duties and responsibilities upon assigning or subcontracting. Please advise, open to any and all suggestions to improve clarity.

William W. Peaslee
Commission Counsel

Date submitted to agency: February 9, 2024

Page 2, Lines 1-3: In what instrument is the subrecipient agreeing to abide by the Subchapter and provide information? Is this an agreement between the recipient and the subrecipient? In that case ought this not be a requirement of a term in said agreement? It is unclear what the agency is trying to do and how. The introductory paragraph in this Rule specifies this is a list of items that need to be included in a contract agreement between an agency-recipient or recipient-subrecipient. We believe it is clear as is. Please advise, open to any and all suggestions to improve clarity.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel
Date submitted to agency: February 9, 2024

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0801

DEADLINE FOR RECEIPT: February 23, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Line 8: Requiring an agency to “take measures” is ambiguous. Added “the following” to clarify that the “measures” are listed.

Line 11: How does an agency “require” a written response? Changed “requiring a response in writing” to “directing the non-State entity to respond in writing.”

Line 14: Define or delete “appropriate.” Deleted.

Line 17: “Take action” is ambiguous. Deleted “take action to.”

Line 18: Delete “possible.” Changed “possible” to “suspected.”

Line 22: Define or delete “appropriate.” Deleted.

Line 23: Define or delete “appropriate.” Deleted.

Line 29: This is an ambiguous standard. Is the OSBM imposing strict liability? This section says that disbursing agencies are responsible for managing their own grants and making sure their recipients and subrecipients are complying with any applicable administrative code. Please advise, open to any and all suggestions to improve clarity.

Line 37: Define or delete “appropriate.” Deleted.

William W. Peaslee
Commission Counsel

Date submitted to agency: February 9, 2024

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel
Date submitted to agency: February 9, 2024

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0802

DEADLINE FOR RECEIPT: February 23, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Line 4: Define or delete "appropriate". Deleted.

Line 7: Where are the purposes of the award delineated? In the contract? Reference should be made to where the purposes of the award are stated. Added "as stated in the signed grant contract."

Line 8: Add a citation to the rule which states the reporting requirements. Added "as stated in the signed grant contract."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: February 9, 2024

09 NCAC 03M .0102 is amended with changes as published in 38:08 NCR 478-483 as follows:

09 NCAC 03M .0102 DEFINITIONS

~~As used in~~ In addition to the definitions set forth in G.S. 143C-6-23 and G.S. 143C-1-1, the following definitions shall apply to this Subchapter:

(1) "Agency" means every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any county, unit, special district, or other political subdivision of state or local government.

(2) "Audit" means an examination of records or financial accounts to verify their accuracy.

~~(3)~~ "Beneficiary" means is an individual receiving the funds or assistance as the end user.

~~(3)(4)~~ "Compliance Supplement" refers to the North Carolina State Compliance Supplement, maintained by the State and Local Government Finance Division of the North Carolina Department of State Treasurer that has been developed in cooperation with agencies to assist the local auditor in identifying program compliance requirements and audit procedures for testing those requirements.

~~(4)(5)~~ "Contract" means a legal instrument including any amendments that is used to document a relationship between the ~~agency,~~ agency and a recipient or between a recipient and subrecipient.

~~(5)(6)~~ "Contractor" means an entity subject to the contractor requirements, as well as any entity that would be subject to the contractor requirements but for a specific statute or rule exempting that entity from the contractor requirements.

~~(6)(7)~~ "Contractor requirements" means Article 3, 3C, 3D, 3E, 3G, or 8 of Chapter 143 of the General Statutes and related rules.

~~(7)(8)~~ "Fiscal Year" means the annual operating year of the non-State entity.

~~(8)(9)~~ "Financial Statement" means a report providing financial data relative to a given part of an organization's operations or status.

~~(12)(10)~~ ~~"State financial assistance"~~ "Grants" or "Grant funds" means State funds disbursed as a grant, cooperative agreement, non-cash contribution, food commodities, or direct appropriation ~~appropriation~~ to a recipient or subrecipient as defined in ~~Item (10) and (14)~~ of this Rule.

~~(11)~~ "Monitoring plan" means a documented system of educating, reviewing, tracking, and reporting on the use of grant funds. Designed to assure that public funds are spent in compliance with applicable rules and statutes, and that performance expectations are being achieved.

~~(9)(12)~~ "Non-State Entity" has the meaning in G.S. 143C-1-1(d)(18).

~~(13)~~ "Program-specific audit" means an audit that includes an examination of financial statements, internal controls, and compliance with the requirements and contract clauses for an individual State award.

~~(10)(14)~~ "Recipient" means a non-State entity that receives ~~State financial assistance~~ grants directly from a State agency to carry out part of a State program, but does not include any non-State entity subject

1 to the audit and other reporting requirements of the Local Government Commission. For purposes
2 of this Subchapter, "recipient" also includes a non-State entity that would be considered a
3 "subrecipient" pursuant to 2 CFR 200.93 for Federal funds subawarded by a recipient State agency,
4 but does not include a subrecipient as defined in Item ~~(14)~~(17) of this Rule. 2 CFR 200.93 is herein
5 incorporated by reference, including subsequent amendments and editions, and is available in
6 electronic form free of charge at <https://www.ecfr.gov>.

7 ~~(14)~~(15) "Single Audit" means an audit that includes an examination of an organization's financial
8 statements, internal controls, and compliance with the requirements of Federal or State awards.

9 ~~(13)~~(16) "State Funds" means any funds appropriated by the North Carolina General Assembly or collected
10 by the State of North Carolina. State funds include federal financial assistance received by the State
11 and transferred or disbursed to non-State entities. Both Federal and State funds maintain their
12 identity as they are disbursed as financial assistance to other organizations.

13 ~~(14)~~(17) "Subrecipient" means a non-State entity that receives ~~State financial assistance~~ grants from a
14 recipient to carry out part of a State program; but does not include an individual that is a beneficiary
15 of such program. This definition of "subrecipient" applies throughout these Rules, except as used in
16 Item ~~(10)~~(14) of this Rule.

17 ~~(18)~~ "Suspension of Funding list" means a database maintained and distributed by Office of State Budget
18 and Management in consultation with State agencies designating grantees or subgrantees in a state
19 of non-compliance with grant agreement ~~[requirements.]~~ requirements in accordance with 09 NCAC
20 03M .0801. [State Agencies are prohibited to disburse grant funds to entities on the Suspension of
21 Funding List until that entity comes back into compliance and is removed from the list.]

22
23 *History Note: Authority G.S. 143C-6-22; 143C-6-23;*
24 *Eff. July 1, 2005;*
25 *Amended Eff. October 1, 2007;*
26 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25,*
27 *2015;*
28 *Amended Eff. July 1, 2024; July 1, 2016.*
29

1 09 NCAC 03M .0201 is amended with changes as published in 38:08 NCR 478-483 as follows:

2

3 09 NCAC 03M .0201 is proposed for amendment as follows:

4

5 **SECTION .0200 - RESPONSIBILITIES OF RECIPIENTS AND SUBRECIPIENTS**

6

7 **09 NCAC 03M .0201 ALLOWABLE USES OF ~~STATE FINANCIAL ASSISTANCE GRANTS~~**

8 Expenditures of ~~State financial assistance grants~~ by any recipient or subrecipient shall be in accordance with the cost

9 principles outlined in the Code of Federal Regulations, 2 CFR, Part 200. If the ~~State financial assistance grants~~ ~~includes~~

10 ~~include~~ federal sources, the recipient or subrecipient shall ensure adherence to the cost principles established in the

11 Code of Federal Regulations, 2 CFR, Part 200. 2 CFR, Part 200 is herein incorporated by reference, including

12 subsequent amendments and editions, and is available in electronic form free of charge at <https://www.ecfr.gov>.

13

14 *History Note: Authority G.S. 143C-6-22; 143C-6-23;*

15 *Eff. July 1, 2005;*

16 *Readopted Eff. July 1, ~~2016-2016~~;*

17 *Amended July 1, 2024.*

1 09 NCAC 03M .0202 is amended with changes as published in 38:08 NCR 478-483 as follows:

2
3 **09 NCAC 03M .0202 RECIPIENT AND SUBRECIPIENT RESPONSIBILITIES**

4 A recipient or subrecipient that receives ~~State financial assistance~~ grants shall ensure that those funds are utilized for
5 their intended ~~purpose~~ purpose, as outlined in the contract. and shall expend those funds in compliance with
6 requirements established by this Subchapter and their contract. Recipients and subrecipients shall:

- 7 (1) Provide the information required by the disbursing agency in order to comply with the procedures
8 for disbursement of funds.
- 9 (2) Maintain reports and accounting records that support the allowable expenditure of State funds.
10 Recipients and subrecipients shall make available all reports and records for inspection by the
11 awarding agency, the Office of State Budget and Management, and the Office of the State Auditor
12 for oversight, monitoring, and evaluation purposes.
- 13 (3) Ensure that subrecipients comply with all reporting requirements established by this Subchapter and
14 their contract and report to the appropriate disbursing entity.
- 15 (4) Have the option to request in writing to the Office of State Budget and Management to be removed
16 from the Suspension of Funding List if they believe they have been suspended in error. Once
17 removed from the Suspension of Funding List, the recipient is eligible for current and future grants.

18
19 *History Note: Authority G.S. 143C-6-22; 143C-6-23;*
20 *Eff. July 1, 2005;*
21 *Readopted Eff. July 1, ~~2016-2016~~;*
22 *Amended Eff. July 1, 2024.*

09 NCAC 03M .0205 is amended with changes as published in 38:08 NCR 478-483 as follows:

09 NCAC 03M .0205 MINIMUM REPORTING REQUIREMENTS FOR RECIPIENTS AND SUBRECIPIENTS

(a) For the purposes of this Subchapter, there are ~~three~~ two reporting levels established for recipients and subrecipients receiving ~~State financial assistance grants~~. Reporting levels are based on the ~~level of State financial assistance allocated funds~~ from all ~~funding sources~~. grants disbursed through the State of North Carolina. The reporting levels are:

- (1) Level I – A recipient or subrecipient that receives, holds, uses, or expends ~~State financial assistance grants~~ in an amount less than ~~twenty thousand dollars (\$25,000)~~ the dollar amount requiring audit as listed in the Code of Federal Regulations 2 CFR 200.501(a) within its fiscal year. The dollar amount requiring audit listed in 2 CFR 200.501(a) is herein incorporated by reference, including subsequent amendments and editions, and can be accessed free of charge at <https://www.ecfr.gov/>.
- (2) Level II - A recipient or subrecipient that receives, holds, uses, or expends ~~State financial assistance grants~~ in an amount ~~of at least twenty five thousand (\$25,000) or greater, but less than five hundred thousand dollars (\$500,000)~~ equal to or greater than the dollar amount requiring audit as listed in 2 CFR 200.501(a) within its fiscal year. The dollar amount requiring audit listed in 2 CFR 200.501(a) is herein incorporated by reference, including subsequent amendments and editions, and can be accessed free of charge at <https://www.ecfr.gov/>.
- ~~(3) Level III – A recipient or subrecipient that receives, holds, uses, or expends State financial assistance in an amount equal to or greater than five hundred thousand dollars (\$500,000) within its fiscal year.~~

(b) Agencies shall establish reporting requirements for require recipients ~~that~~ to meet the following reporting standards on an annual basis:

- (1) All recipients and subrecipients shall provide to the distributing agency a certification that ~~State financial assistance grants~~ received ~~or, or~~ held ~~was~~ were used for the purposes for which ~~it was the grants were~~ awarded.
- (2) All recipients and subrecipients shall provide an accounting to the distributing agency of all ~~State financial assistance grants~~ received, held, used, or expended.
- (3) ~~Level II and III~~ All recipients and subrecipients shall report on activities and accomplishments undertaken by the recipient, including reporting on any performance measures established in the contract.
- (4) ~~Level III~~ II recipients and subrecipients shall have a single or program-specific audit prepared and completed in accordance with Generally Accepted Government Auditing Standards, also known as the Yellow ~~Book~~. Book, which is herein incorporated by reference, including subsequent amendments and editions, and can be accessed free of charge at <https://www.gao.gov/yellowbook>.

(c) All reports shall be filed with the disbursing agency in the format and method specified by the agency no later than three months after the end of the recipient's fiscal year, unless the same information is already required through

1 more frequent reporting. Audits ~~must shall~~ be provided to the funding agency no later than nine months after the end
2 of the recipient's fiscal year.

3 (d) Agency-established reporting requirements to meet the standards set forth in Paragraph (b) of this Rule shall be
4 specified in each recipient's contract.

5 (e) Unless prohibited by law, the costs of audits made in accordance with the provisions of this Rule shall be allowable
6 charges to State and Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as
7 determined in accordance with cost principles outlined in the Code of Federal Regulations, 2 CFR Part ~~200.~~ 200,
8 which is herein incorporated by reference, including subsequent amendments and editions, and can be accessed free
9 of charge at <https://www.ecfr.gov>. The cost of any audit not conducted in accordance with this Subchapter shall not
10 be charged to State awards.

11 (f) Notwithstanding the provisions of this Subchapter, a recipient may satisfy the reporting requirements of
12 Subparagraph (b)(4) of this Rule by submitting a copy of the report required under federal law with respect to the
13 same funds.

14

15 *History Note: Authority G.S. 143C-6-22; 143C-6-23;*

16 *Eff. July 1, 2005;*

17 *Readopted Eff. July 1, ~~2016.~~ 2016;*

18 *Amended Eff. July 1, 2024.*

09 NCAC 03M .0401 is amended with changes as published in 38:08 NCR 478-483 as follows:

SECTION .0400 - RESPONSIBILITIES OF AGENCIES

09 NCAC 03M .0401 AGENCY RESPONSIBILITIES

(a) An agency that receives State funds and disburses those funds as ~~State financial assistance~~ grant funds to a recipient shall:

- (1) Notify each recipient, at the time the ~~State financial assistance~~ grant award is made, of the purpose of the award and the reporting requirements established in this Subchapter.
- (2) Prior to disbursing any ~~State financial assistance~~ grant funds:
 - (A) Register each State assistance program with the Office of State Budget and Management in the format and method specified by the Office of State Budget and Management, using the NC Grants Management System which can be accessed at <https://www.osbm.nc.gov>. Information required to register includes program ID and description, program name, and funding year.
 - (B) Execute a contract with the recipient that complies with the requirements of this Subchapter.
 - (C) Report each individual award to the Office of State Budget and Management in the format and method specified by the Office of State Budget and Management, using the NC Grants Management System which can be accessed at <https://www.osbm.nc.gov>. Information required to report includes CRIS program ID, award date, completion date, award amount, and program name.
 - (D) Follow the procedures for disbursement of ~~State financial assistance~~ grant funds.
- (3) Develop compliance supplement reports that describe standards of compliance and audit procedures to give direction to independent auditors. This report shall be provided to the State and Local Government Finance Division in the North Carolina Department of State Treasurer for inclusion in the North Carolina State Compliance Supplement.
- (4) Develop a monitoring plan for each State assistance program the agency oversees and ~~submit gain approval of the plan to~~ submit gain approval of the plan to ~~by the Office of State Budget and Management for approval.~~ Management. Monitoring plans will be evaluated based on plan elements including programs covered, education and technical assistance, risk assessment framework, monitoring procedures, non-compliance procedures, and closeout of award procedures.
- (5) Perform monitoring and oversight functions as specified in agency monitoring plans to ensure that ~~State financial assistance~~ grant funds are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts, and that performance goals are achieved.
- (6) Ensure that ~~State financial assistance~~ grant funds are spent consistent with the purposes for which it was awarded.

- 1 (7) Determine that reporting requirements have been met by the recipient and that all reports have been
2 completed and submitted in accordance with the recipient's contract.
- 3 (8) Monitor compliance by recipients with all terms of a contract. Upon determination of
4 noncompliance the agency shall take **appropriate** action as specified in Section .0800 of this
5 Subchapter.
- 6 (9) Require agency internal auditors to conduct periodic audits of agency compliance with requirements
7 of this Subchapter.
- 8 (10) Provide all requested documentation when subject to an audit of compliance with the requirements
9 of this Subchapter. Audits may be conducted by the Office of State Budget and Management, the
10 Office of the State Auditor, or the agency's internal auditor.

11 **(11) Notify the Office of State Budget and Management when a recipient is not compliant with the**
12 **requirements set forth in this Subchapter or the terms of their contract such that the recipient should**
13 **be added to the Suspension of Funding List and have the disbursement of funds to the recipient**
14 **suspended in accordance with G.S. 143C-6-23(f). Agencies shall not disburse grant funds to a**
15 **recipient on the Suspension of Funding List until that recipient comes back into compliance and is**
16 **removed from the Suspension of Funding List.**

17 **(11)(12) Notify the Office of State Budget and Management when to remove entities from the Suspension of**
18 **Funding List.**

19 (b) Each recipient shall ensure that subrecipients have complied with the applicable provisions of this Subchapter.
20 Failure to comply with such provisions shall be the basis for an audit exception.

21
22 *History Note: Authority G.S. 143C-6-22; 143C-6-23;*
23 *Eff. July 1, 2005;*
24 *Readopted Eff. July 1, ~~2016~~. 2016;*
25 *Amended Eff. July 1, 2024.*

09 NCAC 03M .0703 is amended with changes as published in 38:08 NCR 478-483 as follows:

09 NCAC 03M .0703 REQUIRED CONTRACT PROVISIONS

Prior to receiving ~~State financial assistance, grant funds,~~ the recipient shall sign a contract with the agency that shall contain the obligations of both parties. Prior to disbursing any ~~State financial assistance, grant funds,~~ each agency shall sign a contract with the recipient requiring compliance with the rules in this Subchapter. The requirements of this Rule shall also be applicable to all ~~subrecipient recipient-subrecipient~~ relationships. Each contract agreement shall contain:

- (1) A specification of the purpose of the award, services to be provided, objectives to be achieved, and expected results;
- (2) The source of funds (such as federal or state) must be identified, including the CFDA number and percentages of each source where applicable.
- (3) Account coding information sufficient to provide for tracking of the disbursement through the disbursing agency's accounting system.
- (4) Agreement to maintain all pertinent records for a period of five years or until all audit exceptions have been resolved, whichever is longer.
- (5) Names of all parties to the terms of the contract. For the recipient or subrecipient, each contract shall contain the employer/tax identification number, address, contact information, and the recipient's or subrecipient's fiscal year end date.
- (6) Signatures binding all parties to the terms of the contract.
- (7) Duration of the contract, including the effective and termination dates.
- (8) Amount of the contract and schedule of payment(s).
- (9) Particular duties of the recipient.
- (10) Required reports and reporting deadlines.
- (11) Provisions for termination by mutual consent with 60 days written notice to the other party, or as otherwise provided by law.
- (12) A provision that the awarding of ~~State financial assistance grant funds~~ is subject to allocation and appropriation of funds to the agency for the purposes set forth in the contract.
- (13) ~~Provision~~ **A provision** that requires reversion of unexpended ~~State financial assistance grant funds~~ to the agency upon termination of the contract.
- (14) A provision that requires compliance with the requirements set forth in this Subchapter, including audit oversight by the Office of the State Auditor, access to the accounting records by both the funding entity and the Office of the State Auditor, and availability of audit work papers in the possession of any auditor of any recipient of State funding.
- (15) A clause addressing assignability and subcontracting, including the following:
 - (a) The recipient or subrecipient is not relieved of any of the duties and responsibilities of the original contract.

1 (b) The subrecipient agrees to abide by the standards contained in this Subchapter and to
2 provide information in its possession that is needed by the recipient to comply with these
3 standards.

4

5 *History Note: Authority G.S. 143C-6-22; 143C-6-23;*

6 *Eff. July 1, 2005;*

7 *Readopted Eff. July 1, ~~2016~~ 2016;*

8 *Amended Eff. July 1, 2024.*

09 NCAC 03M .0801 is amended with changes as published in 38:08 NCR 478-483 as follows:

SECTION .0800 - SANCTIONS

09 NCAC 03M .0801 NONCOMPLIANCE WITH RULES

(a) An agency shall not disburse any ~~State financial assistance~~ grant funds to an entity that is on the Suspension of Funding list.

(b) When a non-State entity does not comply with the requirements of this Subchapter, the agency shall take the following measures to ensure that the requirements are met, including:

(1) Communicating the requirements in writing to the non-State ~~entity.~~ entity within 30 business days.

(2) Requiring a response Directing the non-State entity to respond in writing from the non-State entity upon a determination of noncompliance.

(3) Suspending payments to the non-State entity until the non-State entity is in compliance.

(c) When an agency discovers evidence of management deficiencies or criminal activity leading to the misuse of funds, the agency shall notify the Office of State Budget and Management and take the appropriate action or actions, such as:

(1) Suspend payments until the matter has been fully investigated and corrective action has been taken.

(2) Terminate the contract and take action to retrieve unexpended funds or unauthorized expenditures.

(3) Report possible suspected violations of criminal statutes involving misuse of State property to the State Bureau of Investigation, in accordance with G.S. 143B-920.

(d) Upon determination of noncompliance with requirements of the contract that are not indicative of management deficiencies or criminal activity, the agency shall give the recipient or subrecipient 60 days written notice to take corrective action. If the recipient or subrecipient has not taken the appropriate corrective action after the 60-day period, the disbursing agency shall notify the Office of State Budget and Management and take the appropriate action or actions, such as:

(1) Suspend payments pending negotiation of a plan of corrective action.

(2) Terminate the contract and take action to retrieve unexpended funds or unauthorized expenditures.

(3) Offset future payments with any amounts ~~improperly spent.~~ spent for purposes other than those described in the signed grant contract.

(e) Each disbursing agency shall ensure that recipients and subrecipients have complied with the applicable provisions of this Subchapter.

(f) Agencies are subject to audit for compliance with the requirements of this Subchapter by the Office of State Budget and Management, the Office of the State Auditor, and agency internal auditors. Any finding of noncompliance by an agency shall be reported to the Office of State Budget and Management to take appropriate action, as set forth in this Rule.

(g) The Office of State Budget and Management shall notify the agency of the finding and provide 60 days to take corrective action. After the 60-day period, the Office of State Budget and Management shall conduct a follow-up audit

1 to determine if appropriate corrective action has been taken. If an awarding agency fails to take appropriate corrective
2 action or is repeatedly found to be out of compliance with the requirements of this Subchapter, the Office of State
3 Budget and Management shall notify the head of the agency and the State Auditor of the finding.

4

5 *History Note: Authority G.S. 143C-6-22; 143C-6-23;*

6 *Eff. July 1, 2005;*

7 *Readopted Eff. July 1, ~~2016~~ 2016;*

8 *Amended Eff. July 1, 2024.*

1 09 NCAC 03M .0802 is amended with changes as published in 38:08 NCAC 478-483 as follows:

2

3 **09 NCAC 03M .0802 RECOVERY OF STATE FUNDS**

4 (a) The disbursing agency shall take appropriate administrative action to recover ~~State financial assistance~~ grant funds
5 in the event a recipient or subrecipient:

6 (1) Is unable to fulfill the obligations of the contractual ~~agreement.~~ agreement;

7 (2) Is unable to accomplish the purposes of the ~~award.~~ [award;] award as stated in the signed grant
8 contract;

9 (3) Is noncompliant with the reporting ~~requirements.~~ [requirements;] requirements as stated in the
10 signed grant contract; or

11 (4) Has ~~inappropriately~~ used ~~State financial assistance.~~ grant funds for purposes other than those
12 described in the signed grant contract.

13 (b) The disbursing agency shall seek the assistance of the Attorney General in the recovery and return of ~~State financial~~
14 ~~assistance~~ grant funds if legal action is required.

15 (c) Any apparent violations of a criminal law or malfeasance, misfeasance, or nonfeasance in connection with the use
16 of ~~State financial assistance~~ grant funds shall be reported by the agency to the Office of State Budget and Management,
17 the Attorney General, and the State Bureau of Investigation.

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19 *History Note:* Authority *G.S. 143C-6-22; 143C-6-23;*
20 *Eff. July 1, 2005;*
21 *Readopted Eff. July 1, ~~2016.~~ 2016;*
22 *Amended Eff. July 1, 2024.*