

NORTH CAROLINA REGISTER

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February 15, 2023

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PUBLISHED BY

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

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NORTH CAROLINA REGISTER
Publication Schedule for January 2023 – December 2023

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
37:13	01/03/23	12/07/22	01/18/23	03/06/23	03/20/23	04/20/2023	05/01/23	09/30/23
37:14	01/17/23	12/20/22	02/01/23	03/20/23	04/20/23	05/18/2023	06/01/23	10/14/23
37:15	02/01/23	01/10/23	02/16/23	04/03/23	04/20/23	05/18/2023	06/01/23	10/29/23
37:16	02/15/23	01/25/23	03/02/23	04/17/23	04/20/23	05/18/2023	06/01/23	11/12/23
37:17	03/01/23	02/08/23	03/16/23	05/01/23	05/20/23	06/15/2023	07/01/23	11/26/23
37:18	03/15/23	02/22/23	03/30/23	05/15/23	05/20/23	06/15/2023	07/01/23	12/10/23
37:19	04/03/23	03/13/23	04/18/23	06/02/23	06/20/23	07/20/2023	08/01/23	12/29/23
37:20	04/17/23	03/24/23	05/02/23	06/16/23	06/20/23	07/20/2023	08/01/23	01/12/24
37:21	05/01/23	04/10/23	05/16/23	06/30/23	07/20/23	08/17/2023	09/01/23	01/26/24
37:22	05/15/23	04/24/23	05/30/23	07/14/23	07/20/23	08/17/2023	09/01/23	02/09/24
37:23	06/01/23	05/10/23	06/16/23	07/31/23	08/20/23	09/21/2023	10/01/23	02/26/24
37:24	06/15/23	05/24/23	06/30/23	08/14/23	08/20/23	09/21/2023	10/01/23	03/11/24
38:01	07/03/23	06/12/23	07/18/23	09/01/23	09/20/23	10/19/2023	11/01/23	03/29/24
38:02	07/17/23	06/23/23	08/01/23	09/15/23	09/20/23	10/19/2023	11/01/23	04/12/24
38:03	08/01/23	07/11/23	08/16/23	10/02/23	10/20/23	11/16/2023	12/01/23	04/27/24
38:04	08/15/23	07/25/23	08/30/23	10/16/23	10/20/23	11/16/2023	12/01/23	05/11/24
38:05	09/01/23	08/11/23	09/16/23	10/31/23	11/20/23	12/21/2023	01/01/24	05/28/24
38:06	09/15/23	08/24/23	09/30/23	11/14/23	11/20/23	12/21/2023	01/01/24	06/11/24
38:07	10/02/23	09/11/23	10/17/23	12/01/23	12/20/23	01/18/2024	02/01/24	06/28/24
38:08	10/16/23	09/25/23	10/31/23	12/15/23	12/20/23	01/18/2024	02/01/24	07/12/24
38:09	11/01/23	10/11/23	11/16/23	01/02/24	01/20/24	02/15/2024	03/01/24	07/28/24
38:10	11/15/23	10/24/23	11/30/23	01/16/24	01/20/24	02/15/2024	03/01/24	08/11/24
38:11	12/01/23	11/07/23	12/16/23	01/30/24	02/20/24	03/21/2024	04/01/24	08/27/24
38:12	12/15/23	11/22/23	12/30/23	02/13/24	02/20/24	03/21/2024	04/01/24	09/10/24

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

January 12, 2023

EXECUTIVE ORDER NO. 276

**PROHIBITING THE USE OF CERTAIN APPLICATIONS OR
WEBSITES ON STATE INFORMATION TECHNOLOGY**

WHEREAS, North Carolina's state information technology infrastructure is essential to serving North Carolina's residents and includes a wide range of sensitive information about government operations and state residents; and

WHEREAS, federal and state officials have identified a significant cybersecurity threat presented by certain technologies and products developed, controlled, or owned by entities in countries that sponsor or support cyber-attacks against the United States; and

WHEREAS, the video sharing platform TikTok is owned by a Chinese company, ByteDance Ltd. ("ByteDance"); and

WHEREAS, the communication platform WeChat is owned by a Chinese company, Tencent Holdings Ltd. ("Tencent"); and

WHEREAS, TikTok and WeChat's software and data collection policies combined with Chinese national security law create a significant risk that the Chinese government will obtain information collected by ByteDance and Tencent or enable malicious activity that threatens North Carolina's cybersecurity; and

WHEREAS, other applications, products, and technology, including communications and social media applications, may present similar threats to North Carolina's cybersecurity; and

WHEREAS, the United States federal government recently enacted Public Law No. 117-328 (Dec. 29, 2022), which required the federal government to "develop standards and guidelines for executive agencies requiring the removal" of TikTok from federal information technology; and

WHEREAS, several government entities in the United States, including multiple branches of the United States Military, the Transportation Security Administration, and other states, have banned TikTok, WeChat, and other applications on federal and state government information technology; and

WHEREAS, protecting North Carolina from cyber threats is vital to ensuring the safety, security, and success of our state; and

WHEREAS, pursuant to N.C. Gen. Stat. § 143B-1321(a), the North Carolina Department of Information Technology ("DIT") is responsible for adopting, establishing and enforcing information technology security standards for state agencies, as well as establishing the strategic direction of information technology for the state; and

WHEREAS, pursuant to N.C. Gen. Stat. § 143B-1376(a), the state's Chief Information Officer ("CIO") is responsible for managing information technology security as well as adopting and establishing a statewide standard for information technology security and privacy to maximize the functionality, security, and interoperability of the state's distributed information technology assets, including, but not limited to, data classification and management, communications, and encryption technologies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 143B-1376(b), the state CIO shall establish standards for the management and safeguarding of all state data held by state agencies and shall develop and implement a process to monitor and ensure adherence to the established standards; and

WHEREAS, pursuant to Article III of the North Carolina Constitution and N.C. Gen. Stat. §§ 143A-4 and 143B-4, the Governor is the chief executive officer of the state and is responsible for formulating and administering the policies of the executive branch of state government; and

WHEREAS, pursuant to N.C. Gen. Stat. § 147-12, the Governor has the authority and the duty to supervise the official conduct of all executive and ministerial officers.

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. Directive

To protect the safety, security, and privacy of North Carolinians, I hereby direct the state CIO and DIT to develop a policy standard within fourteen (14) days that prohibits the use of TikTok and WeChat on state agency information technology systems in a manner that presents an unacceptable cybersecurity risk (the "Policy"). The Policy shall contain the following minimum requirements:

- a. State agency employees may not install or otherwise utilize the TikTok or WeChat applications on state-issued devices and must remove any existing instances of the TikTok and WeChat applications from state-issued devices within the time period specified in the policy.
- b. State agency employees may not access any TikTok or WeChat website on a state-issued device.
- c. State agencies and their employees may obtain an exception from the prohibition on the installation and use of TikTok or WeChat for law enforcement or other legitimate purposes under conditions specified by DIT.

DIT may add additional restrictions, conditions, or prohibitions to the Policy regarding access to and use of TikTok and WeChat in consultation with the Governor's Office.

Section 2. Amendment of Policy

Upon determining that additional applications, products, or technologies present an unacceptable cybersecurity risk to state information technology that is of a type similar to TikTok and WeChat, and in consultation with the Governor's Office, DIT may add applications, products, or technologies to the Policy.

Upon determining that applications, products, or technologies covered by the Policy no longer present an unacceptable cybersecurity risk to state information technology, and in consultation with the Governor's Office, DIT may remove applications, products or technologies from the Policy.

The Policy may be amended in the future, in consultation with the Governor's Office, based on the evolving cybersecurity landscape, or changes to federal or state law. Any changes to the Policy may be made without amendment to this Executive Order.

Section 3. No Private Right of Action

This Executive Order is not intended to create, and does not create, any individual right, privilege or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereat, or any other person.

Section 4. Effect and Duration


This Executive Order is effective immediately and shall remain in effect unless rescinded or replaced with a superseding 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 12th day of January in the year of our Lord two thousand and twenty-three.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State





State of North Carolina

ROY COOPER
GOVERNOR

January 18, 2023

EXECUTIVE ORDER NO. 277

**AMENDING THE NORTH CAROLINA
STATEWIDE INDEPENDENT LIVING COUNCIL**

WHEREAS, the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014 (hereinafter the "Rehabilitation Act"), recognized the importance of empowering individuals with disabilities to maximize their leadership, independence, and productivity, as well as their integration and full inclusion into the mainstream of American society; and

WHEREAS, Title VII, Section 704 of the Rehabilitation Act requires each state to formally establish a Statewide Independent Living Council on behalf of the state to be eligible for federal funding through the Rehabilitation Act; and

WHEREAS, the North Carolina Statewide Independent Living Council (the "Council") was originally established under federal mandate in 1992, with the Council operating as an independent 501(c)(3) nonprofit corporation since 2006; and

WHEREAS, the Council was further established by Executive Order No. 14, 34 N.C. Reg. 222-225 (September 1, 2017) and re-established by Executive Order No. 168, 35 N.C. Reg. 896-899 (November 2, 2020); and

WHEREAS, the Rehabilitation Act made clear the necessity of providing financial assistance to states for service providers as they assist individuals in the pursuit of independent living, and for developing and supporting statewide networks of centers for independent living; and

WHEREAS, the purpose of independent living services and centers for independent living is to promote a philosophy of independent living, including a philosophy of consumer control, peer support, self-help, self-determination, equal access, individual advocacy, and systems advocacy; and

WHEREAS, it is imperative that North Carolinians with disabilities have the opportunity to achieve the goals outlined in the Rehabilitation Act; and

WHEREAS, the Council is a vital component of North Carolina's longstanding commitment to individuals in the state who live with disabilities; and

WHEREAS, the Council continues to advance opportunities for independent living with equity and dignity for all individuals in the state who are living with disabilities; and

WHEREAS, the undersigned has determined that the Executive Order establishing the Council should be amended and extended.

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

Section 1. Extension

- a. The North Carolina Statewide Independent Living Council is hereby extended. The Council shall serve the people of North Carolina in fulfillment of the requirements of the Rehabilitation Act. The Council shall advise on state efforts to improve and expand the provision of independent living services, and foster the development and growth of a statewide network of centers for independent living.
- b. The Council shall exist as an entity independent of any state agency or political subdivision. The Council may operate as a 501(c)(3) nonprofit entity organized under Chapter 55A of the North Carolina General Statutes.

Section 2. Membership

- a. The Governor shall appoint all members of the Council and all members shall serve at the pleasure of the Governor. The Governor shall select members after soliciting recommendations from the Council and from a broad range of individuals with disabilities and organizations interested in ensuring equal access and independence for individuals with disabilities.
- b. The Council shall consist of no more than twenty (20) voting members.
- c. The Council's membership should reflect North Carolina's demographic diversity with respect to race, gender, type of disability and age, and should provide statewide geographic representation by individuals with disabilities from diverse backgrounds who are knowledgeable about centers for independent living.
- d. The majority (a minimum of 51%) of all appointed Council members, including both voting and ex-officio members, shall be individuals with disabilities, as defined by the Rehabilitation Act, and individuals not employed by any state agency or center for independent living. Additionally, sixty percent (60%) of the Council's voting members shall also be individuals with disabilities, as defined in the Rehabilitation Act, and individuals not employed by any state agency or center for independent living.
- e. The Council's voting membership shall include the following:
 1. One (1) director of a center for independent living, chosen by the directors of centers for independent living within the state.
 2. One (1) director of an American Indian Vocational Rehabilitation Services project that is administered under Section 121 of the Rehabilitation Act.
 3. At least one (1) military veteran.
 4. At least one (1) person between the ages of eighteen (18) and twenty-six (26).
- f. The Council may also include the following voting members, if such appointments are consistent with the requirements provided in Section 2.d:
 1. Representatives from centers for independent living.
 2. Individuals with disabilities, who shall comprise sixty percent (60%) of voting members.
 3. Parents and/or legal guardians of individuals with disabilities.
 4. Advocates of and for individuals with disabilities.
 5. Representatives of the private business sector.
 6. Representatives of a community college, four-year college, or university who are familiar with centers for independent living and services for individuals with disabilities.
 7. Representatives from nonprofit organizations that provide services to or advocate for individuals with disabilities.

8. A representative from the NCWorks Commission.
- g. The Council shall include the following ex-officio members:
1. A representative of the designated state agency (the Division of Vocational Rehabilitation Services).
 2. A minimum of two (2) representatives from statewide agencies or organizations that provide services for individuals with disabilities, provide independent living services, and/or support the goals and objectives of the State Plan for Independent Living ("SPIL") required by the Rehabilitation Act in conjunction with centers for independent living.
 3. A representative of the Division of Services for the Blind.
 4. A representative of the Division of Services for the Deaf and Hard of Hearing.
 5. A representative of the North Carolina Council on Developmental Disabilities.
 6. A representative of the North Carolina Client Assistance Program.
 7. A representative from Disability Rights North Carolina, the state's federally mandated protection and advocacy entity.
- h. Council members shall serve terms of three (3) years. The initial appointment terms shall be staggered by one (1), two (2), or three (3) years such that approximately one-third (1/3) of the Council's terms shall expire annually on August 15. Vacancies on the Council shall be filled by the Governor. In the event of a vacancy caused by a reason other than the expiration of a term, the Governor shall appoint a person to serve for the remainder of the unexpired term. A vacancy shall not affect the power of the remaining members to execute the duties of the Council.
- i. No member of the Council may serve for more than two (2) full consecutive terms. Individuals serving an unexpired or partial term are not considered to have served a full term and are eligible to serve two (2) full terms in addition to the unexpired or partial term they are fulfilling.

Section 3. Meetings and Operations of the Council

- a. The voting members of the Council shall select a Chair from the Council's voting membership. The Council may select other officers from the Council's voting membership as needed.
- b. The Council shall adopt procedures and bylaws consistent with state and federal laws, and this Executive Order, which governs the Council's organization and operations.
- c. The Council shall meet at least quarterly and may also convene at the call of the Chair, the Governor, or as otherwise provided in procedures adopted by the Council. The Council may hold any hearings or forums that are necessary to fulfill the Council's duties.
- d. The Council shall conduct all business at public meetings in compliance with the North Carolina Open Meetings Law. Public notice of the meeting's time, date, and place shall be provided in the manner required by the Open Meetings Law.
- e. For transacting the business of the Council, a quorum shall consist of a simple majority of voting members who have a disability and do not work for either the state or a Center for Independent Living. Any vacancy occurring in the membership of the Council shall be filled in the same manner as the original appointment.

Section 4. Ethics and Other Standards

Members of the Council shall be subject to the requirements of the State Government Ethics Act, North Carolina General Statute Chapter 138A.

Section 5. Duties

The Council shall exercise the functions, duties and authorities as specified in the Rehabilitation Act and other federal law. In summary:

- a. Jointly develop and sign the SPIL;
- b. Monitor, review, and evaluate the implementation of the SPIL;
- c. Meet regularly, and ensure that such meetings of the Council are open to the public and that sufficient advance notice of such meetings is provided;
- d. Coordinate activities, as appropriate, with other entities in the state that provide services similar to or complementary to independent living services, such as entities that facilitate the provision of or provide long term community-based services and support;
- e. Submit all periodic reports to the Administrator of Community Living within a reasonable time frame at the request of the Administrator; and maintain records and afford the Administrator of Community Living Program access when necessary for the Administrator to verify the periodic reports. Upon request, copies of any submitted reports shall be provided to the Office of the Governor;
- f. Work with centers for independent living to coordinate services with public and private entities to improve services provided to individuals with disabilities throughout the state;
- g. Conduct resource development activities to support the activities described in the approved SPIL and/or support the provision of independent living services by centers for independent living;
- h. Prepare a resource plan for the provision of Council resources, including staff and personnel, which are necessary and sufficient to carry out the functions of the Council and authorized under Title VII, Part B of the Rehabilitation Act. The SPIL shall include proper utilization of innovation and expansion funds under Section 101(a)18 of the Rehabilitation Act or from other public and private sources which may be necessary to carry out the Council's duties. Collaborate with the designated state entity to ensure the availability of these funds. The Council must include a description of the Council's resource plan in the approved SPIL. The Council is responsible for the proper utilization of any funds or materials it receives under the resource plan. The Council shall ensure that it meets any additional federal requirements regarding the resource plan;
- i. Hire, supervise and evaluate staff and personnel as necessary to execute the Council's functions under this Executive Order and the Rehabilitation Act consistent with applicable state and federal laws; and
- j. The Council shall not provide independent living services directly to individuals with disabilities or manage such services.

Section 6. Administration and Expenses

The designated state entity, as specified in the SPIL, may provide necessary administrative and staff support services to the Council as requested by either the Council or the Governor. The designated state entity may not assign such staff duties that would create a conflict of interest. The Council may use available resources to reimburse members of the Council for reasonable and necessary expenses of attending Council meetings and performing Council duties (such as personal assistance services), and to pay reasonable compensation to a member of the Council if such member is not employed or must forfeit wages from other employment, for each day the member is engaged in performing Council duties. All monetary compensation and reimbursements shall be derived from the funds provided under the Council's resource plan and must be in accordance with Section 705 of the Rehabilitation Act. The Council may only use federal funds to perform the duties promulgated by Section 705 of the Rehabilitation Act.

Section 7. Effect and Duration

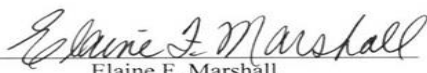
This Executive Order is effective immediately. It supersedes and replaces all other executive orders on this subject. This Executive Order shall remain in effect until December 31, 2024, pursuant to N.C. Gen. Stat. § 147-16.2, or until rescinded.

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



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State



North Carolina License and Theft Bureau

PUBLIC NOTICE

This serves as a notice pursuant to G.S. § 20-288 of a license application submission by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative that has not been previously issued a license by the Division.

Applicant's Name: JT Kustoms LLC

Applicant's Address: 4738 Pleasant Garden Rd. Pleasant Garden, NC 27313

Application Date: 12/13/2022

Names and titles of any individual listed on the application as an owner, partner, member or officer of the applicant:

James Thompson President

Tonya Thompson Vice President

**North Carolina Department of Labor
Occupational Safety and Health Division**

Public Notice

This serves as notice to the public of an increase in the civil penalties issued by the Occupational Safety and Health Division of the North Carolina Department of Labor (“NCDOL”).

NCDOL administers the Occupational Safety and Health Act of North Carolina (“OSH Act”) and is a federally approved state plan program. State plan programs are required to adopt maximum penalty levels, which must be at least as effective as the federal Occupational Safety and Health Act program, for violations of the OSH Act.

On January 13, 2023, the United States Department of Labor (“USDOL”) published a notice in the Federal Register of changes to federal Occupational Safety and Health Administration (OSHA) civil penalty amounts based on cost-of-living adjustments for 2023. See: <https://www.federalregister.gov/documents/2023/01/13/2023-00271/federal-civil-penalties-inflation-adjustment-act-annual-adjustments-for-2023>

Penalties for violations of the OSH Act of North Carolina are established pursuant to N.C. Gen. Stat. 95-138 of Article 16. The statutory change to N.C. Gen. Stat. 95-138 may be found here: <https://www.ncleg.gov/Sessions/2021/Bills/House/PDF/H103v5.pdf>. The statute was amended effective October 1, 2022, to mirror the federal language regarding minimum and maximum civil penalties in accordance with the requirements set forth in the U.S. Consumer Price Index for All Urban Consumers published by the USDOL. The N.C. Commissioner of Labor is required to publish civil penalties in the North Carolina Register within 60 calendar days from the date a final rule is published in the Federal Register.

This serves as public notice pursuant to N.C. Gen. Stat. 95-138 and 13 NCAC 07A .0301 or any related or subsequent regulations setting penalty standards in compliance with Part 1903 of Title 29 of the Code of Federal Regulations of an increase in Occupational Safety and Health civil penalties pursuant to a change in the U.S. Consumer Price Index for All Urban Consumers that was published on January 13, 2023. As provided by the Inflation Adjustment Act, **the increased penalty levels apply to any penalties assessed by NCDOL pursuant to the OSH Act on or after July 1, 2023.**

Both Federal OSHA’s and the NCDOL Occupational Safety and Health Division’s maximum penalties for serious and other-than-serious violations will increase from \$14,502 per violation to \$15,625 per violation. The maximum penalty for willful or repeated violations will increase from \$145,027 per violation to \$156,259 per violation.

1/17/2023
NCDOL

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, Building, Fire,*
9 *Existing Building and Energy Conservation 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, March 14, 2023, 9:00AM, Albemarle Building, 325 North Salisbury Street,*
18 *Raleigh, NC 27603, 2nd Floor Training Room 240. Comments on both the proposed rules and any fiscal*
19 *impacts 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 April 17, 2023.*

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 from the NC Building Code Council Administrative Code and Policies Standing**
32 **Committee to adopt the 2024 edition of the North Carolina Administrative Code and Policies as**
33 **presented by the committee as follows:**

34
35 The proposed amendments to the 2018 NC Administrative Code and Policies to establish the 2024 NC
36 Administrative Code and Policies can be found at the following link on the NCDOI website:
37 <https://www.ncosfm.gov/news/events/building-code-council-meeting-december-13-2022>

1
2 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is
3 January 1, 2025, unless the BCC assigns a delayed effective date.

4 **Reason Given** – This amendment is proposed to protect the public by establishing standard administrative
5 policies and procedures.

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

9
10 **2. Request from the NC Building Code Council Administrative Code and Policies Standing**
11 **Committee to revise the 2024 NC Administrative Code and Policies, Section 107 as presented by the**
12 **committee as follows:**

13
14 The proposed amendment and fiscal note can be found at the following link on the NCDOJ website:
15 <https://www.ncosfm.gov/news/events/building-code-council-meeting-december-13-2022>

16
17 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is
18 January 1, 2025, unless the BCC assigns a delayed effective date.

19 **Reason Given** – This amendment is proposed to protect the public by requiring sheathing inspections
20 where the sheathing is a major structural component for the lateral force resisting system.

21 **Fiscal Statement** – This rule is anticipated to increase overall construction cost and the cost of a dwelling
22 by \$80 or more. This rule is not expected to either have a substantial economic impact or increase local
23 and state funds. A fiscal note has been prepared and can be found at the link noted above.

24
25 **3. Request from the NC Building Code Council Building Standing Committee to adopt the 2024**
26 **edition of the North Carolina Building Code as presented by the committee as follows:**

27
28 The proposed amendments to the 2021 International Building Code to establish the 2024 NC Building
29 Code can be found at the following link on the NCDOJ website:

30 <https://www.ncosfm.gov/news/events/building-code-council-meeting-december-13-2022>

31
32 The 2021 International Building Code can be found at the following link on the ICC website:

33 <https://codes.iccsafe.org/content/IBC2021P2>

34
35 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is
36 January 1, 2025, unless the BCC assigns a delayed effective date.

1 **Reason Given** – This amendment is proposed to protect the public by updating the code to current
2 standards of practice.

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 **4. Request from the NC Building Code Council Fire Standing Committee to adopt the 2024 edition**
8 **of the North Carolina Fire Code as presented by the committee as follows:**

9
10 The proposed amendments to the 2021 International Fire Code to establish the 2024 NC Fire Code can be
11 found at the following link on the NCDOT website: [https://www.ncosfm.gov/news/events/building-code-](https://www.ncosfm.gov/news/events/building-code-council-meeting-december-13-2022)
12 [council-meeting-december-13-2022](https://www.ncosfm.gov/news/events/building-code-council-meeting-december-13-2022)

13
14 The 2021 International Fire Code can be found at the following link on the ICC website:
15 <https://codes.iccsafe.org/content/IFC2021P2>

16
17 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is
18 January 1, 2025, unless the BCC assigns a delayed effective date.

19 **Reason Given** – This amendment is proposed to protect the public by updating the code to current
20 standards of practice.

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 **5. Request from the NC Building Code Council Existing Building Standing Committee to adopt the**
26 **2024 edition of the North Carolina Existing Building Code as presented by the committee as follows:**

27
28 The proposed amendments to the 2021 International Existing Building Code to establish the 2024 NC
29 Existing Building Code can be found at the following link on the NCDOT website:
30 <https://www.ncosfm.gov/news/events/building-code-council-meeting-december-13-2022>

31
32 The 2021 International Existing Building Code can be found at the following link on the ICC website:
33 <https://codes.iccsafe.org/content/IEBC2021P2>

34
35 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is
36 January 1, 2025, unless the BCC assigns a delayed effective date.

1 **Reason Given** – This amendment is proposed to protect the public by updating the code to current
2 standards of practice.

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 **6. Request from the NC Building Code Council Energy Standing Committee to adopt the 2024**
8 **edition of the North Carolina Energy Conservation Code as presented by the committee as follows:**
9

10 The proposed amendments to the 2021 International Energy Conservation Code to establish the 2024 NC
11 Energy Conservation Code can be found at the following link on the NCDOT website:

12 <https://www.ncosfm.gov/news/events/building-code-council-meeting-december-13-2022>
13

14 The 2021 International Energy Conservation Code can be found at the following link on the ICC website:

15 <https://codes.iccsafe.org/content/IECC2021P2>
16

17 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is
18 January 1, 2025, unless the BCC assigns a delayed effective date.

19 **Reason Given** – This amendment is proposed to protect the public by updating the code to current
20 standards of practice.

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 **NOTICE:**

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

28 <https://www.ncosfm.gov/interpretations>
29

30 **NOTICE:**

31 *Amendments of the North Carolina State Building Codes are published online at the following link.*

32 <https://www.ncosfm.gov/codes/codes-current-and-past>
33

34 **NOTICE:**

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

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

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 11 – DEPARTMENT OF INSURANCE

CHAPTER 05 - OFFICE OF STATE FIRE MARSHAL

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to amend the rules cited as 11 NCAC 05A .0910 and .0911.

SUBCHAPTER 05A - FIRE AND RESCUE

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncdoi.gov/insurance-industry/rules-rules-review-and-legislative-reports>

**SECTION .0900 – PUBLIC PROTECTION
CLASSIFICATIONS FOR FIRE DISTRICTS**

Proposed Effective Date: June 1, 2023

Public Hearing:

Date: March 22, 2023

Time: 10:00 a.m.

Location: North Carolina Department of Insurance, Albermarle Building, 325 N. Salisbury St., Raleigh, NC 27603

Reason for Proposed Action: The rules are being submitted pursuant to S.L. 2021-180, Section 8.

Comments may be submitted to: Loretta Peace-Bunch, 325 N. Salisbury Street, Raleigh, NC 27603; phone (919) 807-6004; email loretta.peace-bunch@ncdoi.gov

Comment period ends: April 17, 2023

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

11 NCAC 05A .0910 INCIDENT REPORTING

(a) In addition to the requirements of this Rule regarding the storage and deployment of Aqueous Film Forming Foam (AFFF), ~~When~~ when a fire department responds to a fire, the fire chief shall ensure that a fire incident report is completed ~~on~~ using software the complies with the current version of the National Fire Incident Reporting System (NFIRS).

(b) A fire department shall keep records on dates, times, and locations of all fires ~~on~~ using software the complies with the current version of the NFIRS.

(c) All reports shall be submitted to OSFM within 120 days of incident occurrence.

(d) When a fire department responds to a fire involving fatalities, an initial report shall be filed by the fire chief or fire marshal of the authority having jurisdiction within 48 hours of the incident to the Office of State Fire Marshal.

(e) In accordance with G.S. 58-82B-10, an online reporting portal for the storage and deployment of AFFF has been created at the following website: <https://www.ncosfm.gov/fire-rescue/ratings-and-inspections/afff-foam>. This online reporting portal consists of an online database and an online reporting tool to capture the storage and deployment of AFFF.

(f) The fire chief for every fire department or unit of local government shall ensure that the following information regarding AFFF inventory for their fire department is entered into the online database:

- (1) The number of trucks at each department that carry AFFF, and the fire station or other location, including street address, where each truck is located.
- (2) The volume and, where possible, trade name and Chemical Abstract Service (CAS) number of the AFFF on each truck.
- (3) An inventory, including the volume and, where possible, trade name and CAS number of AFFF stored by each fire department at a fire station or other location, including the street address where the AFFF is stored.
- (4) The volume and, where possible, trade name and CAS number of AFFF products that are no longer utilized and could be removed from inventory for disposal, including the street address where the AFFF is stored.
- (5) A photograph of the label and the container of the AFFF. For the purpose of this Subparagraph

a photograph includes an electronic image produced by the camera of an electronic device. The information entered in the online database shall be updated annually in accordance with G.S. 58-82B-5.

(g) When a fire department responds to a fire or conducts training involving AFFF foam in any quantity, the fire chief shall ensure an initial report is entered in the online reporting tool within 15 days of the incident or the training event, including the following:

- (1) The date, time, and location, including street address and GPS coordinates, where AFFF was used, and, where possible, the trade name and CAS number of the AFFF used.
- (2) The total volume of AFFF used, including gallons of foam and gallons of water and total concentration of foam.
- (3) The reason for the deployment of AFFF, such as firefighting, fire prevention, other emergency response actions intended to protect property or public safety, training, or an accidental spill.

(h) The fire chief for every fire department or unit of local government shall ensure that an annual report is available in the online reporting tool by July 1st of each year that includes the information required by Paragraph (g) of this Rule.

Authority G.S. 58-2-40; 58-36-10; 58-40-25; 58-79-1; 58-79-45; 58-82-5; 58-82-10.

11 NCAC 05A .0911 RECORDS

A fire department shall maintain the following records for 36 months:

- (1) Apparatus maintenance logs for in service engines and tankers, in accordance with 11 NCAC 05A .0905.
- (2) Apparatus equipment inventory checks for all in service engines and tankers, in accordance with 11 NCAC 05A .0905.
- (3) Fire pump performance tests, in accordance with 11 NCAC 05A .0905.
- (4) Training records for all eligible firefighters, in accordance with 11 NCAC 05A .0907.
- (5) The AFFF inventory and usage reports created in accordance with 11 NCAC 05A .0910.

Authority G.S. 58-2-40; 58-36-10; 58-40-25; 58-82-5; 58-82-10.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Dental Examiners intends to adopt the rule cited as 21 NCAC 16B .0502 and amend the rules cited as 21 NCAC 16B .0101, .0501; 16C .0501; and 16R .0204.

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

Proposed Effective Date: July 1, 2023

Public Hearing:

Date: April 13, 2023

Time: 6:30 p.m.

Location: 2000 Perimeter Park Drive, #160, Morrisville, NC 27560

Reason for Proposed Action:

21 NCAC 16B .0101 is proposed for amendment to incorporate a new exception for instructors applying for dental licenses and clarify the existing exceptions to the general examination requirement.

21 NCAC 16B .0501 is proposed for amendment to clarify requirements related to educational credentials and examinations, add provisions consistent with legislative changes, and allow for electronic transmission of documentation.

21 NCAC 16B .0502 is proposed for adoption to govern dental licenses for applicants holding an instructor's license.

21 NCAC 16C .0501 is proposed for amendment to allow for secure electronic transmission of documents and clarify requirements related to educational credentials and examinations.

21 NCAC 16R .0204 is proposed for amendment to clarify continuing education requirements and exemptions, and eliminate unnecessary provisions.

Comments may be submitted to: Bobby White, 2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560

Comment period ends: April 17, 2023

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

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

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

SUBCHAPTER 16B - LICENSURE DENTISTS

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 16B .0101 EXAMINATION REQUIRED; EXEMPTIONS

(a) ~~All persons desiring~~ Persons seeking a license to practice dentistry in North Carolina shall pass Board approved written and clinical examinations, as set forth in Rule .0303 of this Subchapter ~~Subchapter~~, before receiving a license.

(b) The examination requirement ~~in Paragraph (a) of this Rule shall not apply to persons who do not hold a North Carolina dental license and who are: are seeking volunteer licenses pursuant to G.S. 90-21.107, licensure by endorsement pursuant to Rules .1001 and .1002 of this Subchapter, or licensure by credentials pursuant to Rule .0501 of this Subchapter.~~

- (1) volunteers pursuant to G.S. 90-21.107;
- (2) persons holding an unexpired instructor's license issued by the Board and seeking a dental license pursuant to Rule .0502 of this Subchapter; or
- (3) persons seeking a dental license pursuant to a Board rule setting forth a different examination requirement, such as:
 - (A) by military endorsement pursuant to Rules .1001 and .1002 of this Subchapter; or
 - (B) by credentials pursuant to Rule .0501 of this Subchapter.

(c) All persons practicing dentistry in North Carolina shall maintain an unexpired CPR certification at all times.

Authority G.S. 90-21.107; 90-28; 90-30; 90-36; 90-48.

SECTION .0500 – LICENSURE BY CREDENTIALS

21 NCAC 16B .0501 DENTAL LICENSURE BY CREDENTIALS

(a) ~~An~~ Except for instructors applying under Rule .0502 of this Section, an applicant for a dental license by credentials shall submit to the Board:

- (1) a notarized application form provided by the Board at www.ncdentalboard.org that includes the information and materials required by Rule .0301(a) of this Subchapter;
- (2) the non-refundable licensure by credentials fee set forth in 21 NCAC 16M .0101;
- (3) an affidavit from the applicant stating for the five year period set out in G.S. 90-36(c)(1):
 - (A) the dates that and locations where the applicant has practiced dentistry;
 - (B) that the applicant has provided at least 5,000 hours of clinical care to patients, not including ~~post-graduate~~ postgraduate training, residency ~~programs~~ programs, or an internship; and
 - (C) that the applicant has held an active, unrestricted dental license issued by another U.S. state or U.S. territory, without any period of interruption; and

(4) a statement disclosing and explaining any investigations, malpractice claims, or state or federal agency complaints, judgments, or settlements that are related to licensure and are not disclosed elsewhere in the application.

(b) In addition to the requirements of Paragraph (a) of this Rule, an applicant for a dental license by credentials shall request the applicable entity to send the following required information or ~~documents~~ documents, in a sealed envelope or via secure electronic transmission, directly from the entity to the Board office: office, with each document in an unopened envelope sealed by the entity involved:

- (1) the applicant's official transcripts from a dental school or college accredited by the Commission on Dental Accreditation of the American Dental Association; Association ("CODA") showing the applicant graduated with a DDS or DMD degree;
- (2) a certificate of the applicant's licensure status from the dental regulatory authority or other occupational or professional regulatory authority and a disclosure of any disciplinary action taken or investigation pending, from all licensing jurisdictions where the applicant holds or has ever held a dental license or other occupational or professional license;
- (3) ~~examination scores from: required by Rule .0303(b) of this Subchapter;~~
 - (A) the National Board Dental Examination administered by the Joint Commission on National Dental Examinations; and
 - (B) a clinical examination accepted by the Board based on the criteria set out in Rule .0303(d) of this Subchapter;
- (4) a report of any pending or final malpractice actions against the applicant verified by ~~the any~~ any malpractice insurance carrier covering the applicant; and
- (5) a letter of coverage history from all current and all previous malpractice insurance carriers covering the applicant.

(c) ~~The Board shall receive~~ An application shall be complete when the Board receives all information and documentation set forth in Paragraphs (a) and (b) of this Rule and the applicant's passing scores on all examinations required by this Rule. Rule .0303 of this Subchapter for the application to be complete. Applications Partial applications that are not completed within one year of the date the first document is being submitted to the Board shall be disregarded as expired without a refund of the application fee.

(d) An applicant for dental licensure by credentials shall pass the Board's written examinations in sterilization and jurisprudence as set out in Rule .0303(a) of this Subchapter. Individuals who do not pass ~~the either~~ either written examination after three attempts within one year in accordance with Rule .0317(b) of this Subchapter shall not be eligible for reexamination under Rule .0317(c) of this Subchapter and may not reapply for licensure by credentials.

(e) If an applicant graduated with a certificate or a degree from a CODA-accredited advanced dental education program, the applicant shall be subject to all the requirements of this Rule, except:

- (1) the applicant is not required to hold a dental license issued by any U.S. state or territory; and
- (2) the applicant shall satisfy the educational credentials requirement set out in Subparagraph (b)(1) of this Rule by requesting the applicable entity to send directly to the Board office, in a sealed envelope or via secure electronic transmission:
 - (A) official transcripts from any school or college showing the applicant graduated with a general dental degree; and
 - (B) official transcripts from a school or college showing the applicant graduated with a certificate or a degree from a CODA-accredited advanced dental education program in the school.

~~(e)(f)~~ Any applicant who changes his or her address shall notify the Board office in writing within 10 business days.

~~(f)(g)~~ Any license obtained through fraud or by any false representation shall be revoked.

Authority G.S. 90-28; 90-36; 90-41.

21 NCAC 16B .0502 DENTAL LICENSURE VIA INSTRUCTOR'S LICENSE

(a) An applicant for license by credentials who holds an unexpired instructor's license issued by the Board shall submit to the Board:

- (1) a notarized application form provided by the Board at www.ncdentalboard.org that includes information and materials required by Rule .0301(a) of this Subchapter;
- (2) a letter of recommendation from the applicant's employing dental school or academic medical center; and
- (3) the non-refundable licensure by credentials fee set forth in 21 NCAC 16M .0101.

(b) An application shall be complete when the Board receives all information and documentation required by this Rule. Partial applications that are not completed within one year of the date the first document is submitted to the Board shall be disregarded as expired without a refund of the application fee.

(c) Any applicant who changes his or her address shall notify the Board office in writing within 10 business days.

(d) Any license obtained through fraud or by any false representation shall be revoked.

Authority G.S. 90-28; 90-36; 90-41.

SUBCHAPTER 16C - LICENSURE DENTAL HYGIENISTS SECTION .0500 – LICENSURE BY CREDENTIALS

21 NCAC 16C .0501 DENTAL HYGIENE LICENSURE BY CREDENTIALS

(a) An applicant for a dental hygiene license by credentials shall submit to the Board:

- (1) a notarized application form provided by the Board at www.ncdentalboard.org that includes the information and materials required by Rule .0301(a) of this Subchapter;
- (2) the nonrefundable licensure by credentials fee set forth in 21 NCAC 16M .0102;
- (3) an affidavit from the applicant stating for the two year period set out in G.S. 90-224.1(c)(1):
 - (A) the dates that and locations where the applicant has practiced dental hygiene;
 - (B) that the applicant has provided at least 2,000 hours of clinical care to patients; and
 - (C) that the applicant holds an active, unrestricted dental hygiene license issued by another U.S. state or any U.S. territory, and has done so without any period of interruption; and
- (4) a statement disclosing and explaining any investigations, malpractice claims, or state or federal agency complaints, judgments, or settlements that are related to licensure and are not disclosed elsewhere in the application.

(b) In addition to the requirements of Paragraph (a) of this Rule, an applicant for a dental hygiene license by credentials shall request the applicable entity to send the following required information or ~~documents~~ documents, in a sealed envelope or via secure electronic transmission, directly from the entity to the Board office: ~~office, with each document in an unopened envelope sealed by the entity involved:~~

- (1) the applicant's official transcripts from a dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association;
- (2) a certificate of the applicant's licensure status from the regulatory authority or other occupational or professional regulatory authority and a disclosure of all disciplinary actions taken or investigations pending, from all licensing jurisdictions where the applicant holds or has ever held a dental hygiene license or other occupational or professional license;
- (3) ~~examination scores from: required by Rule .0303(b) of this Subchapter;~~
 - (A) the National Board Dental Hygiene Examination administered by the Joint Commission on National Dental Examinations; and
 - (B) a clinical examination accepted by the Board based on the criteria set out in Rule .0303(d) of this Subchapter;
- (4) a report of any pending or final malpractice actions against the applicant verified by ~~the~~ any malpractice insurance carrier covering the applicant; and

- (5) a letter of coverage history from all current and all previous malpractice insurance carriers covering the applicant.

(c) ~~The Board shall receive~~ An application shall be complete when the Board receives all information and documentation set forth in Paragraphs (a) and (b) of this Rule and the applicant's passing scores on all examinations required by this Rule. ~~Rule .0303 of this Subchapter for the application to be complete.~~ Applications Partial applications that are not completed within one year of the date the first document is being submitted to the Board shall be disregarded as expired without a refund of the application fee.

(d) An applicant for dental hygiene licensure by credentials shall pass the Board's written examinations in sterilization and jurisprudence as set out in Rule .0303(a) of this Subchapter. Applicants who do not pass ~~the either~~ written examination after three attempts within one year in accordance with Rule .0311(b) of this Subchapter shall not be eligible for reexamination under Rule .0311(c) of this Subchapter and may not reapply for licensure by credentials.

(e) Any applicant who changes his or her address shall notify the Board office in writing within 10 business days.

(f) Any license obtained through fraud or by any false representation shall be revoked.

Authority G.S. 90-223; 90-224.1; 90-229.

SUBCHAPTER 16R – ANNUAL RENEWAL OF LICENSE AND CONTINUING EDUCATION REQUIREMENTS: DENTIST

SECTION .0200 - CONTINUING EDUCATION

21 NCAC 16R .0204 ~~VARIANCES AND EXEMPTION~~ FROM AND CREDIT FOR CONTINUING EDUCATION

(a) Upon receipt of written evidence, the Board ~~may will~~ grant exemptions from the mandatory continuing education requirements set out in ~~Rule Rules~~ .0201 and .0206 of this Section as follows:

- (1) A dentist who practices not more than 250 clock hours in a calendar year shall be classified as a semi-retired Class I dentist, and shall: ~~exempt from all continuing education requirements. Such dentists, who shall be known as semi-retired Class I dentists, shall maintain current CPR certification.~~
 - (A) be exempt from the requirement set out in Rule .0201(a) of this Section to complete 15 clock hours of continuing education each calendar year;
 - (B) complete the course required in Rule .0201(b) of this Section if the dentist prescribes controlled substances; and
 - (C) maintain an unexpired CPR certification.
- (2) A dentist who practices not more than 1,000 clock hours in a calendar year shall be classified as a semi-retired Class II dentist, and shall: ~~exempt from one half of the continuing~~

~~education courses required of dentists who practice full time. Such dentists, who shall be known as semi-retired Class II dentists, shall maintain current CPR certification.~~

- (A) be exempt from one half of the total continuing education hours required in Rule .0201(a) of this Section;
 - (B) complete the course required in Rule .0201(b) of this Section if the dentist prescribes controlled substances;
 - (C) complete the continuing education requirement on substance abuse and mental health set out in Rule .0206 of this Section; and
 - (D) maintain an unexpired CPR certification.
- (3) A retired dentist who does not practice any dentistry shall be exempt from all continuing education and CPR certification requirements.
 - (4) ~~A dentist who is unable to practice dentistry because of a physical or mental illness may request a variance in continuing education hours during the period of the disability. The Board may grant or deny requests for variance in continuing education hours based on a disabling condition on a case-by-case basis, taking into consideration the particular disabling condition involved and its effect on the dentist's ability to complete the required hours. In considering the request, the Board may require additional documentation substantiating any specified disability.~~
 - (b) ~~In those instances where~~ If a dentist who has been exempted from continuing education requirements is waived and the exempt individual wishes to resume practice, the Board shall require continuing education courses for the calendar year in which he or she resumes practice in accordance with Paragraph (a) of this Rule and Rules .0201 and .0206 of this Section when reclassifying the licensee. ~~dentist. A dentist who has been classified as retired and wishes to resume practice shall satisfy the reinstatement requirements of 21 NCAC 16B .1101. The Board may require those licensees who have not practiced dentistry for a year or more to undergo a bench test before allowing the licensee to resume practice if there is evidence that the licensee is unable to practice dentistry competently, such as a failing score on a dental licensing examination, a written report of a licensed physician, evaluation conducted by a substance abuse treatment facility, appointment of a guardian for the dentist or adjudication of incompetence by a court.~~
 - (c) Dentists shall receive 10 hours credit per year for continuing education when engaged in any of the following:
 - (1) service on a full-time basis on the faculty of an educational institution with involvement in education, training, or research in dental or dental auxiliary hygiene programs; or
 - (2) service on a ~~full-time~~ full-time basis with a federal, ~~state,~~ State, or county government agency whose operation is related to dentistry. ~~dentistry or dental auxiliaries.~~ Verification of

credit hours shall be maintained in the manner specified in Rule .0203 of this Section.

(d) Dentists who do not work on a full-time basis but work at least 20 hours per week in an institution or entity described in Subparagraph (c)(1) or (2) of this Rule shall receive five hours credit per year for continuing education.

(e) Dentists shall receive up to two hours of continuing education credits per year for providing dental services on a volunteer basis at any ~~state~~, State, city, or county operated site. Credit will be given at ratio of 1:5, with one hour credit given for every five hours of volunteer work.

(f) Eligible licensees as defined by 21 NCAC 16B .0901 shall be granted a waiver of their mandatory continuing education requirements.

Authority G.S. 90-31.1; 90-38.

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Dental Examiners intends to adopt the rule cited as 21 NCAC 16H .0105 and amend the rule cited as 21 NCAC 16I .0201.

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

Proposed Effective Date: July 1, 2023

Public Hearing:

Date: April 13, 2023

Time: 6:30 p.m.

Location: 2000 Perimeter Park Drive, #200, Morrisville, NC 27560

Reason for Proposed Action:

21 NCAC 16H .0105 is proposed for adoption to establish dental radiography course requirements.

21 NCAC 16I .0201 is proposed for amendment to clarify continuing education requirements and exemptions, establish retirement classifications, and eliminate unnecessary provisions.

Comments may be submitted to: Bobby White, 2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560

Comment period ends: April 17, 2023

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

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

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

SUBCHAPTER 16H - DENTAL ASSISTANTS

SECTION .0100 - CLASSIFICATION AND TRAINING

21 NCAC 16H .0105 DENTAL RADIOLOGY COURSE AND EXAMINATION REQUIREMENTS

(a) The Board will recognize a dental radiology course meeting the requirements of this Rule and the course's final examination as satisfying the dental radiology training and equivalency examination requirements set out in G.S. 90-29(c)(12).

(b) For the Board to recognize a dental radiology course and its final examination:

- (1) The course shall include at least 7 hours of didactic, lecture-based instruction and at least 14 hours of laboratory instruction.
- (2) The course curriculum shall include instruction and training in clinical dental radiology, in the production and use of dental x-rays, and on digital x-ray equipment. The course shall enable the student to:
 - (A) identify in sequence the steps necessary for operating dental x-ray equipment;
 - (B) identify the requirements of a diagnostic digital image;
 - (C) differentiate the effect of variations in amperage, kilo-voltage, distance, and exposure time on the resulting digital images;
 - (D) identify the terms used to measure radiation;
 - (E) establish guidelines for maintaining radiation safety and the ALARA ("as low as reasonably achievable") principle;
 - (F) follow principles of radiologic health practices and radiation biology;
 - (G) identify radiation safety techniques and monitoring devices;
 - (H) identify the parts and identification marks on dental x-ray sensors;
 - (I) identify and compare intraoral sensors according to size and customary usage;

- (J) identify methods of sensor handling and storage;
 - (K) identify and perform in sequence the steps in processing digital images;
 - (L) differentiate between preliminary interpretation and diagnosis of the digital images;
 - (M) identify the anatomical landmarks of the face and skull;
 - (N) identify any dental radiograph according to its location in the maxilla or mandible, and position it on a digital image mount;
 - (O) identify the types of radiographic errors caused by faulty exposure techniques;
 - (P) identify the types of radiographic errors caused by incorrect digital mount positioning and angulation of the central ray;
 - (Q) identify the types of radiographic errors caused by faulty digital processing techniques;
 - (R) identify the conditions that cause digital images to be fogged;
 - (S) identify the advance preparations necessary before exposing digital images;
 - (T) carry out the task of digital image exposure to completion;
 - (U) use the paralleling technique to produce digital images of diagnostic quality addressing contrast, density, and definition;
 - (V) explain the principles of digital imaging and quality assurance;
 - (W) identify errors when using digital imaging in technique and processing;
 - (X) explain the utilization of beam aligning devices; and
 - (Y) describe the use of hand-held radiation exposure devices following guidelines from the Radiation Protection Section of the Department of Health and Human Services, Radiology Compliance Branch ("Radiation Protection Section"), which are incorporated by reference, including subsequent amendments and editions, and are available at no cost online at www.ncradiation.net/Xray/dentdose.htm.
- (3) The laboratory portion of the course shall have no more than six students per instructor, and shall include practice on dental radiography manikins. Students shall not practice on peer students unless the unit is turned off and all requirements of the Board's sterilization and
- infection control rule, 21 NCAC 16J .0103, are satisfied.
- (4) To complete the course, students shall be required to achieve a passing score of at least 80 percent on a written examination upon completion of the didactic, lecture-based portion of the course before beginning the laboratory portion, and to achieve a passing score of at least 80 percent on a final laboratory examination. The final laboratory examination shall be conducted on a manikin.
- (5) The facility used as the training location for the course shall:
- (A) assume all overhead costs involved in offering the course;
 - (B) comply with the Board's rules regarding sanitation, sterilization, and infection control set out in 21 NCAC 16J, the applicable guidelines of the Radiation Protection Section, and the OSHA guidelines and standards related to dentistry, which are incorporated by reference, including subsequent amendments and editions, and are available at no cost online at www.osha.gov/dentistry/standards;
 - (C) provide access to a room large enough to accommodate the number of participants for lecture purposes;
 - (D) have the number of x-ray machines necessary based on the course curriculum and enrollment to ensure there are no more than two students per machine; and
 - (E) have facilities for use of photostimulable phosphor plates for indirect digital radiography.
- (6) The didactic and laboratory portions of the course shall be taught by:
- (A) an instructor of dental radiography at an institution accredited by the Commission on Dental Accreditation ("CODA"), a list of which is available at no cost at www.ada.org/coda and is incorporated by reference, including subsequent amendments and editions; or
 - (B) an instructor who has taken and passed a radiology instructor's certification course taught by an instructor of dental radiography at a CODA-accredited institution, and has completed three hours of continuing education in the area of radiology every other year.
- (7) The course sponsor shall provide students with all supplies.
- (8) Course advertising shall comply with the Board's rules regarding advertisement of dental services set out in 21 NCAC 16P.

(c) A course sponsor seeking Board recognition of a dental radiology course shall submit to the Board office:

- (1) the course outline, syllabus, and handouts;
- (2) slides and other lecture materials;
- (3) examinations and grading criteria; and
- (4) the name, resume, and verification of credentials satisfying Subparagraph (b)(6) of this Rule for all course instructors.

(d) After the course sponsor submits all the information and documents required by Paragraph (c) of this Rule, the course will be reviewed by the Board for compliance with this Rule at the next scheduled Board meeting. The Board may delay reviewing a course until a later meeting if the Board's workload makes the review impracticable. If the Board delays reviewing a course, it shall notify the course sponsor. A course shall be recognized by a majority vote of the Board. A list of recognized courses is available on the Board's website at www.ncdentalboard.org.

(e) Upon receipt of evidence that a previously recognized course is not in compliance with this Rule, the Board will notify the course sponsor in writing of each item of noncompliance. Within 30 days from the date of the notice of noncompliance, the course sponsor shall provide a written response to the Board office which shall respond to each item of noncompliance. The response shall provide documentation of corrections made, and shall show each item is in compliance with this Rule. If the course sponsor fails to respond or correct noncompliance, the Board's recognition of the course shall be withdrawn. As of the date recognition is withdrawn, the course and its examination shall not satisfy the dental radiology training and equivalency examination requirements set out in G.S. 90-29(c)(12).

Authority G.S. 90-29(c)(12); 90-48.

SUBCHAPTER 16I - ANNUAL RENEWAL OF LICENSE AND CONTINUING EDUCATION REQUIREMENTS: DENTAL HYGIENIST

SECTION .0200 – CONTINUING EDUCATION

21 NCAC 16I .0201 CONTINUING EDUCATION REQUIRED

(a) As a condition of license renewal, each dental hygienist shall complete six clock hours of continuing education each calendar year. ~~Any or all the~~ The hours may be acquired through self-study self-study courses. To count toward the mandatory continuing education requirement, self-study self-study courses shall be related to clinical patient care and offered by a ~~board-approved~~ Board-approved sponsor. sponsor listed in Rule .0202 of this Section. The dental hygienist shall pass a test following the course administered by the course sponsor and obtain a certificate of completion. completion from the sponsor.

(b) ~~Current~~ An unexpired certification in CPR is required in addition to the mandatory continuing education hours.

(c) ~~A dental hygienist who can demonstrate a disabling condition may request a variance in required continuing education hours during a particular period. Written documentation of a disabling condition that interferes with the hygienist's ability to complete the required hours shall be provided to the Board. The Board may grant or deny such requests on a case by case basis, depending~~

~~upon the nature of the disabling condition, its impact on the hygienist's ability to complete continuing education, and the likely duration of the disability. Upon receipt of a written request from the dental hygienist, the Board will grant exemptions from the requirements set out in this Rule and in Rule .0206 of this Section as follows:~~

(1) A dental hygienist who practices not more than 250 clock hours in a calendar year shall be classified as a semi-retired dental hygienist, and shall:

- (A) be exempt from the requirement set out in Paragraph (a) of this Rule to complete six clock hours of continuing education each calendar year; and
- (B) maintain an unexpired CPR certification.

(2) A retired dental hygienist who does not practice any dental hygiene shall be exempt from all continuing education and CPR certification requirements.

(d) If a ~~licensee~~ dental hygienist who has been exempted from continuing education requirements wishes to resume practice, the ~~licensee shall complete~~ Board shall require an unexpired CPR certification and continuing education courses for the calendar year in which he or she resumes practice in accordance with this Rule. Rule and Rule .0206 of this Section when reclassifying the dental hygienist. A dental hygienist who has been classified as retired and wishes to resume practice shall satisfy the reinstatement requirements of 21 NCAC 16C .0601. ~~The Board may require licensees who have not practiced dental hygiene for more than a year to undergo a clinical test before allowing the licensee to resume practice if there is evidence that the licensee suffers from addiction or a mental or physical condition that impairs the licensee's ability to practice hygiene competently.~~

Authority G.S. 90-225.1; 90-229.

CHAPTER 18 – BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Examiners of Electrical Contractors intends to amend the rules cited as 21 NCAC 18B .0209 and .0404. The rules were previously noticed in the Register, Volume 37 Issue 5.

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

Proposed Effective Date: July 1, 2023

Public Hearing:

Date: March 14, 2023

Time: 9:00 a.m.

Location: 3101 Industrial Dr., Suite 206, Raleigh, NC 27609

Reason for Proposed Action:

21 NCAC 18B .0404 ANNUAL LICENSE FEES This amendment increases the license fee for all classifications of licenses and is a

response to the inflation in the general economy as experienced by the Board in the form of rising costs.
21 NCAC 18B .0209 FEES This amendment increases the exam fee for all classifications of licenses and is a response to the inflation in the general economy as experienced by the Board in the form of rising costs.

Comments may be submitted to: *Tim Norman, 3101 Industrial Dr., Suite 206, Raleigh, NC 27609; phone (919) 733-9042; email tim.norman@ncbeec.org*

Comment period ends: *April 17, 2023*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

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

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

SUBCHAPTER 18B - BOARD'S RULES FOR THE IMPLEMENTATION OF THE ELECTRICAL

SECTION .0200 - EXAMINATIONS

21 NCAC 18B .0209 FEES

- (a) The application and examination fee for qualifying examinations shall be ~~ninety dollars (\$90.00)~~ one hundred and twenty-five (\$125.00) for all classifications.
- (b) The fee for review of a failed examination is twenty-five dollars (\$25.00). All reviews are supervised by the Board or staff.
- (c) The examination fees for examinations in all classifications and the fees for examination reviews shall be in the form of cash, check, money order, Visa, or Mastercard made payable to the Board and shall accompany the respective applications when filed with the Board.
- (d) Examination fees received with applications filed for qualifying examinations shall be retained by the Board unless:
 - (1) an application is not filed as prescribed in Rule .0210 of this Section, in which case the

- (2) examination fee of sixty dollars (\$60.00) shall be returned and application shall be returned; or the applicant does not take the examination during the period for which application was made, files a written request for a refund setting out extenuating circumstance, and the Board finds extenuating circumstances.

- (e) Examination review fees are non-refundable unless the applicant does not take the review, files a written request for a refund, setting out extenuating circumstance, and the Board finds extenuating circumstances.
- (f) Any fee retained by the Board shall not be creditable toward any future examination fee or examination review.
- (g) Extenuating circumstances for the purposes of Paragraphs (d)(2) and (e) of this Rule are the applicant's illness, bodily injury or death, or death of the applicant's spouse, child, parent, or sibling, or a breakdown of the applicant's transportation to the designated site of the examination or examination review.

Authority G.S. 87-42; 87-43.3; 87-43.4; 87-44.

SECTION .0400 - LICENSING REQUIREMENTS

21 NCAC 18B .0404 ANNUAL LICENSE FEES

- (a) The fee for issuance of license, reissuance of license, or license renewal in the various license classifications shall be as follows:

LICENSE FEE SCHEDULE	
CLASSIFICATION	LICENSE FEE
Limited	\$95.00 <u>\$100.00</u>
Intermediate	\$140.00 <u>\$150.00</u>
Unlimited	\$190.00 <u>\$200.00</u>
SP-SFD	\$95.00 <u>\$100.00</u>
Special Restricted	\$95.00 <u>\$100.00</u>

- (b) License fees shall be made payable to the Board. Payment shall accompany any license or license renewal application filed with the Board.

Authority G.S. 87-42; 87-44.

CHAPTER 20 – BOARD OF REGISTRATION FOR FORESTERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Registration for Foresters intends to amend the rule cited as 21 NCAC 20 .0106.

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

Proposed Effective Date: *June 1, 2023*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): To demand a public hearing, interested parties should contact Jennifer Grantham by phone at 919-847-5441 or email at info@ncbrf.org.*

Reason for Proposed Action: *State Board of Registration is amending this rule because G.S. 89B-10 and 89B-11 establish limits on fees, therefore there is no need for reference to these fees in rules.*

Comments may be submitted to: *Jennifer Grantham, PO Box 27393, Raleigh, NC 27611; phone (919) 847-5441; email info@ncbrf.org*

Comment period ends: *April 17, 2023*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

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

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

SECTION .0100 - PURPOSE

21 NCAC 20 .0106 REGISTRATION FEES

Fees sent to the Board for any segment of the registration process shall be payable to the Secretary, Board of Registration for Foresters. ~~The application fee for registration is fifty dollars (\$50.00), which shall be submitted by the applicant at the time of application. An approved applicant shall submit an additional fee of forty dollars (\$40.00) to receive a certificate of registration. Annual renewal fee is forty dollars (\$40.00).~~ The Board shall waive renewal fees for Registered Foresters for hardship circumstances, such as military deployment, extended illness, or other similar circumstances, upon written petition by the Registered Forester or Registered Forester's agent for this exemption.

Authority G.S. 89B-6; 89B-10; 89B-11; 93B-15(b).

CHAPTER 58 - REAL ESTATE COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Real Estate Commission intends to repeal the rule cited as 21 NCAC 58A .1711.

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

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

Proposed Effective Date: *July 1, 2023*

Public Hearing:

Date: *March 15, 2023*

Time: *9:00 a.m.*

Location: *NC Real Estate Commission, 1313 Navaho Dr., Raleigh, NC*

Reason for Proposed Action:

21 NCAC 58A .1711 – CONTINUING EDUCATION REQUIRED OF NONRESIDENT BROKERS

Repeal this Rule to require nonresident brokers to comply with North Carolina continuing education requirements.

Comments may be submitted to: *Melissa Vuotto, PO Box 17100, Raleigh, NC 27619; phone (919) 875-3700; email Public.Comment@ncrec.gov*

Comment period ends: *April 17, 2023*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

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

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

SUBCHAPTER 58A – REAL ESTATE BROKERS

SECTION .1700 – MANDATORY CONTINUING EDUCATION

21 NCAC 58A .1711 CONTINUING EDUCATION REQUIRED OF NONRESIDENT BROKERS

Authority G.S. 93A-3(c); 93A-38.5.

CHAPTER 58 - REAL ESTATE COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Real Estate Commission intends to adopt the rules cited as 21 NCAC 58H .0216, .0307 and amend the rules cited as 21 NCAC 58A .0113, .0301, .0505, .1705, .1708; 58B .0202; 58H .0202 and .0302.

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

Proposed Effective Date: July 1, 2023

Public Hearing:

Date: March 15, 2023

Time: 9:00 a.m.

Location: NC Real Estate Commission, 1313 Navaho Dr, Raleigh, NC 27609

Reason for Proposed Action:

21 NCAC 58A .0113 – REPORTING CRIMINAL CONVICTIONS AND DISCIPLINARY ACTIONS

Amend this Rule to clarify that military court-martial convictions are reportable offenses.

21 NCAC 58A .0301 – FORM

Amend this Rule to require a broker to report previous or pending military convictions in the application process.

21 NCAC 58A .0505 – REINSTATEMENT OF A LICENSE

Amend this Rule to require nonresident brokers that have been expired, revoked, or surrendered for more than two years to reinstate their license by filing an original application pursuant 21 NCAC 58A .0511.

21 NCAC 58A .1705 – ATTENDANCE AND PARTICIPATION REQUIREMENTS

Amend this Rule to correct the terminology of 'course sponsor' to 'education provider.'

21 NCAC 58A .1708 – EQUIVALENT CREDIT

Amend this Rule to remove equivalent credit waivers for continuing education elective credit courses.

21 NCAC 58B .0202 – PUBLIC OFFERING STATEMENT SUMMARY

Amend this Rule to include electronic mail as a means of delivery of a timeshare cancellation notice pursuant to NCGS 93A-45(b).

21 NCAC 58H .0202 – APPLICATION FOR EDUCATION PROVIDER CERTIFICATION

Amend this Rule to prohibit an individual or entity with an ownership interest of ten percent or greater that has been limited, denied, withdrawn, or terminated from filing an application within one year of the effective date.

21 NCAC 58H .0216 – LIMITED EDUCATION PROVIDER PETITION FOR RECONSIDERATION

Adopt this Rule to clarify the petition process for a limited education provider to request a reconsideration of the Commission's determination.

21 NCAC 58H .0302 – APPLICATION AND CRITERIA FOR INSTRUCTOR APPROVAL

Amend this Rule to require instructors to attend at least 90% of the Commission's annual Update Instructor Seminar.

21 NCAC 58H .0307 – LIMITED INSTRUCTOR PETITION FOR RECONSIDERATION

Adopt this Rule to clarify the petition process for a limited instructor to request a reconsideration of the Commission's determination.

Comments may be submitted to: Melissa Vuotto, PO Box 17100, Raleigh, NC 27619-7100; email Public.Comment@ncrec.gov

Comment period ends: April 17, 2023

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

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

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

SUBCHAPTER 58A – REAL ESTATE BROKERS

SECTION .0100 - GENERAL BROKERAGE

21 NCAC 58A .0113 REPORTING CRIMINAL CONVICTIONS AND DISCIPLINARY ACTIONS

~~(a) Any broker who is convicted of any felony or misdemeanor, or who is disciplined by or enters into a conciliation agreement or consent order with any governmental agency in connection with any occupational license, or whose notarial commission is restricted, suspended, or revoked, shall file with the Commission a Criminal Conviction Disciplinary Action Reporting Form of such conviction or action within 60 days of the final judgment,~~

~~order, or disposition in the case. A broker shall file with the Commission a Criminal Conviction Disciplinary Action Reporting Form within 60 days of:~~

- ~~(1) a final judgment, order, or disposition of any felony or misdemeanor conviction;~~
- ~~(2) a disciplinary action or entering into a conciliation agreement or consent order with a governmental agency or occupational licensing agency;~~
- ~~(3) a final judgment, order, or disposition of a military court-martial conviction; or~~
- ~~(4) a notarial commission sanction pursuant to G.S. 10B-60.~~

~~(b) The Criminal Conviction Disciplinary Action Reporting Form is available on the Commission's website at www.ncrec.gov or upon request to the Commission. In the Form, the broker Commission and shall set forth the broker's:~~

- ~~(1) full legal name;~~
- ~~(2) physical and mailing address;~~
- ~~(3) real estate license number;~~
- ~~(4) telephone number;~~
- ~~(5) email address;~~
- ~~(6) social security number;~~
- ~~(7) date of birth; and~~
- ~~(8) description of the criminal conviction and disciplinary conviction, military court-martial conviction, or professional license disciplinary action, including the jurisdiction and file number.~~

Authority G.S. 93A-3(c); 93A-6(a); 93A-6(a)(10); 93A-6(b)(2).

SECTION .0300 – APPLICATION FOR LICENSE

21 NCAC 58A .0301 FORM LICENSE APPLICATION

~~An individual or business entity who wishes to file an application for a broker license shall make application on a form prescribed by the Commission and may obtain the required form upon request to the Commission. The application form for an individual calls for the applicant's name and address, the applicant's social security number, proof of the applicant's identity, places of residence, education, prior real estate licenses, and other information necessary to identify the applicant and determine the applicant's qualifications and fitness for licensure. The application form for a business entity is described in Rule .0502 of this Section.~~

(a) An individual seeking licensure as a real estate broker shall submit a license application that is available on the Commission's website and shall include the applicant's:

- (1) legal name;
- (2) mailing, physical, and email address;
- (3) telephone number;
- (4) social security number and date of birth;
- (5) qualification for license application;
- (6) real estate license history;
- (7) places of residence for the past seven years;
- (8) employment history for the past three years;
- (9) criminal offenses, military courts-martial convictions, professional license disciplinary

actions, including the jurisdiction, file number, and explanation of each offense;

(10) liens or unpaid judgments;

(11) certification the applicant has read the Real Estate Licensing in North Carolina brochure that is available on the Commission's website; and

(12) declaration and signature.

(b) In addition to Paragraph (a) of this Rule, the applicant shall submit:

(1) the license application fee pursuant to Rule .0302 of this Section; and

(2) a criminal records report from a designated criminal reporting service obtained within six months prior to application submission.

Authority G.S. 93A-3(c); ~~93A-4(a),(b),(d);~~ 93A-4.

SECTION .0500 - LICENSING

21 NCAC 58A .0505 REINSTATEMENT OF A LICENSE

(a) The fee for reinstatement of a license that has been expired, revoked, or surrendered for less than two years shall be an amount equal to two times the current renewal license fee pursuant to Rule .0503 of this Section.

(b) The reinstatement application form is available on the Commission's website and shall include the applicant's:

- (1) legal name;
- (2) mailing, physical, and email address;
- (3) telephone number;
- (4) previous license number;
- (5) Secretary of State identification number, if applicable;
- (6) social security number and date of birth, if applicable;
- (7) qualifying broker and broker-in-charge's legal name and license number, if applicable;
- (8) criminal record report from a designated criminal reporting service obtained prepared within six months of prior to application;
- (9) certification; and
- (10) signature.

(c) An individual seeking reinstatement of a license that has been expired for less than six months shall:

- (1) submit the reinstatement fee pursuant to Paragraph (a) of this Rule;
- (2) disclose any criminal ~~conviction or conviction,~~ court-martial conviction, or disciplinary action pursuant to Rule .0113 of this Section, including any conviction or disciplinary action incurred while the individual's license was expired; and
- (3) satisfy the license activation requirements of Rule .1703 of this Subchapter, if applicable.

(d) An individual seeking reinstatement of a license that has been expired for six months but no more than two years or revoked or surrendered for no more than two years shall:

- (1) submit a complete reinstatement application pursuant to Paragraph (b) of this Rule;
- (2) submit the reinstatement fee pursuant to Paragraph (a) of this Rule; and
- (3) pass:
 - (A) one Postlicensing course within six months prior to submitting ~~his or her~~ a reinstatement application;
 - (B) the "National" and "State" sections of the current license examination within 180 days after submitting ~~his or her~~ a reinstatement application; or
 - (C) the "State" section of the current license examination within 180 days after submitting ~~his or her~~ a reinstatement application if the individual possesses an active broker license in another state.

(e) An individual seeking reinstatement of a license that has been expired, revoked, or surrendered for more than two years shall submit ~~an original~~ a license application and application fee pursuant to G.S. 93A-4 and ~~Rules .0301 and .0302~~ Rules .0301, .0302, and .0511 of this Subchapter.

(f) A reinstated license ~~shall be reinstated with the same license number and status, either full or provisional, it held before expiration, revocation, or surrender if reinstated within three years from the expiration, revocation, or surrender and shall be effective as of the date of reinstatement, not the date of original initial licensure.~~ If a license is reinstated after three years from the expiration, revocation, or surrender, the license shall be on provisional broker status pursuant to G.S. 93A-4(a1).

(g) A business entity seeking reinstatement of a license shall submit:

- (1) the reinstatement fee pursuant to Paragraph (a) of this Rule if the license has been expired for less than six months;
- (2) the reinstatement fee and a complete reinstatement application pursuant to Paragraphs (a) and (b) of this Rule if the license has been expired for six months but no more than two years or revoked or surrendered for no more than two years; or
- (3) ~~an original~~ a firm license application pursuant to G.S. 93A-4 and Rules .0301, .0302, and .0502 of this Subchapter if the license has been expired, revoked, or surrendered for more than two years.

(h) A broker seeking reinstatement of a license shall satisfy to the Commission that ~~he or she~~ the broker possesses the character requisites pursuant to G.S. 93A-4(b).

Authority G.S. 93A-3(c); 93A-4; 93A-4.1.

SECTION .1700 – MANDATORY CONTINUING EDUCATION

21 NCAC 58A .1705 ATTENDANCE AND PARTICIPATION REQUIREMENTS

(a) In order to receive credit for completing an approved continuing education course, a broker shall:

- (1) attend at least 90 percent of the scheduled instructional hours for the course;
- (2) provide ~~his or her~~ the broker's legal name and license number to the ~~course sponsor;~~ education provider;
- (3) present ~~his or her~~ the broker's pocket card or photo identification card, if necessary; and
- (4) personally perform all work required to complete the course.

(b) With the instructor or the ~~sponsor's~~ education provider's permission, a 10 percent absence allowance may be permitted at any time during the course, except that it may not be used to skip the last 10 percent of the course unless the absence is:

- (1) approved by the instructor; and
- (2) for circumstances beyond the broker's control that could not have been reasonably foreseen by the broker, such as:
 - (A) an illness;
 - (B) a family emergency; or
 - (C) acts of God.

Authority G.S. 93A-3(c); 93A-4.1.

21 NCAC 58A .1708 EQUIVALENT CREDIT

(a) The Commission shall award ~~a broker~~ an approved instructor continuing education credit for teaching a Commission Update Course. ~~A broker~~ An approved instructor seeking continuing education credit for teaching a Commission Update Course shall submit a form, available on the Commission's website, that requires the ~~broker~~ approved instructor to set forth the:

- (1) ~~broker's~~ approved instructor's name, license number, instructor number, address, telephone number, and email address;
- (2) Update Course number;
- (3) education provider's name and number;
- (4) education provider's address; and
- (5) date the course was taught.

(b) The Commission shall award a broker continuing education elective ~~for teaching a Commission approved continuing education elective for the first time any given continuing education elective is taught.~~ the first time an approved continuing education elective course is taught by the broker. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website, that requires the broker to set forth the:

- (1) broker's name, license number, address, telephone number, and email address;
- (2) course title;
- (3) course number;
- (4) education provider's name and number;
- (5) education provider's address; and
- (6) date the course was taught.

(c) ~~The Commission may award continuing education elective credit for completion of an unapproved course that the Commission finds equivalent to the elective course component of the continuing education requirement set forth in 21 NCAC 58H~~

~~.0402. The broker shall submit a course completion certificate issued by the education provider, a copy of the course description or course outline, and a fifty dollar (\$50.00) fee for each course for which the broker seeks credit. A broker seeking continuing education credit for a course that is not approved by the Commission shall submit a form, available on the Commission's website, that requires the broker to set forth the:~~

- ~~(1) broker's name, license number, address, telephone number, and email address;~~
- ~~(2) course title;~~
- ~~(3) number of instructional hours;~~
- ~~(4) course instructor's name; and~~
- ~~(5) education provider's name, address, telephone number, and email address.~~

~~(d)(c)~~ The Commission may award continuing education elective credit for developing a continuing education elective course the first time that it is approved by the Commission pursuant to 21 NCAC 58H .0401. However, a broker shall only receive credit for the year in which the continuing education elective course is approved. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website, that requires the broker to set forth the broker's name, license number, address, telephone number, and email address. Along with the form, the broker shall submit the course title, the course number, the date of the course approval, and a fifty dollar (\$50.00) fee for each course for which the broker seeks credit.

~~(e)~~ The Commission may award continuing education elective credit for authoring a real estate textbook. However, a broker shall receive credit for any single textbook only once. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website, that requires the broker to set forth the broker's name, license number, address, telephone number, and email address. Along with the form, the broker shall submit the title page of the textbook, showing the title, publisher, and publication date, the table of contents, and a fifty dollar (\$50.00) fee for each textbook for which the licensee seeks credit.

~~(f)~~ The Commission may award continuing education elective credit for authoring of a scholarly article on a real estate topic published in a professional journal or periodical. A broker shall receive credit for any single article only once. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website, that requires the broker to set forth the broker's name, license number, address, telephone number, and email address. Along with the form, the broker shall submit a copy of the article, proof of publication, and a fifty dollar (\$50.00) fee for each article for which the broker seeks credit.

~~(g)(d)~~ In order for any application for equivalent credit to be considered and credits applied to the current licensing period, a complete application, the appropriate fee, and all supporting documents shall be received by the Commission no later than 5:00 p.m. on June 17.

~~(h)~~ Any equivalent continuing education credit awarded under this Rule shall be applied first to make up any continuing education deficiency for the previous license period and then to satisfy the continuing education requirement for the current license period; however, credit for an unapproved course or educational activity, other than teaching an approved elective

course, that was completed during a previous license period shall not be applied to a subsequent license period.

Authority G.S. 93A-3(c); 93A-38.5.

SUBCHAPTER 58B – TIMESHARES

SECTION .0200 - PUBLIC OFFERING STATEMENT

21 NCAC 58B .0202 PUBLIC OFFERING STATEMENT SUMMARY

In addition to the requirements in G.S. 93A-44, a public offering statement shall contain a page prescribed by the Commission and completed by the developer entitled Public Offering Statement Summary in conspicuous type. The Public Offering Statement Summary shall read as follows:

PUBLIC OFFERING STATEMENT SUMMARY

NAME OF PROJECT:

NAME AND REAL ESTATE LICENSE NUMBER OF BROKER (IF ANY):

Please study this Public Offering Statement carefully. Satisfy yourself that any questions you may have are answered before you decide to purchase. If a salesperson or other representative of the developer has made a representation which concerns you, and you cannot find that representation in writing, ask that it be pointed out to you.

NOTICE

UNDER NORTH CAROLINA LAW, YOU MAY CANCEL YOUR TIMESHARE PURCHASE WITHOUT PENALTY WITHIN FIVE DAYS AFTER SIGNING YOUR CONTRACT. TO CANCEL YOUR TIMESHARE PURCHASE, YOU MUST MAIL—OR MAIL, ELECTRONICALLY MAIL, OR HAND DELIVER WRITTEN NOTICE OF YOUR DESIRE TO CANCEL YOUR PURCHASE TO (name and address of project). IF YOU CHOOSE TO MAIL YOUR CANCELLATION NOTICE, THE NORTH CAROLINA REAL ESTATE COMMISSION RECOMMENDS THAT YOU USE REGISTERED OR CERTIFIED MAIL AND THAT YOU RETAIN YOUR POSTAL RECEIPT AS PROOF OF THE DATE YOUR NOTICE WAS MAILED. UPON CANCELLATION, ALL PAYMENTS WILL BE REFUNDED TO YOU.

Authority G.S. 93A-44; 93A-51.

SUBCHAPTER 58H - REAL ESTATE EDUCATION

SECTION .0200 - REAL ESTATE EDUCATION PROVIDERS

21 NCAC 58H .0202 APPLICATION FOR EDUCATION PROVIDER CERTIFICATION

(a) Any community college, junior college, or university located in this State and accredited by the Southern Association of Colleges and Schools seeking education provider certification shall apply to the Commission on a form available on the Commission's website and shall set forth the:

- (1) education provider's name;
- (2) education director's name and contact information;
- (3) education director's email address;
- (4) education provider's address;
- (5) education provider's telephone number;
- (6) education provider's website address;
- (7) type of public institution;
- (8) Prelicensing, Postlicensing, and Continuing Education courses to be offered by the applicant; and
- (9) a signed certification by the education director that courses shall be conducted in compliance with the rules of this Subchapter.

(b) Any other person or entity seeking education provider certification shall apply to the Commission on a form available on the Commission's website and shall set forth the following criteria in addition to the requirements in G.S. 93A-34(b1):

- (1) the website, physical and mailing address, and telephone number of the principal office of the education provider;
- (2) the education director's license number, if applicable, email and mailing address, and telephone number;
- (3) the North Carolina Secretary of State Identification Number, if applicable;
- (4) the physical address of each proposed branch location, if applicable;
- (5) the type of ownership entity;
- (6) a signed Consent to Service of Process and Pleadings form available on the Commission's website, if a foreign entity;
- (7) the Prelicensing, Postlicensing, and Continuing Education courses to be offered by the applicant; and
- (8) a signed certification by the education director that courses shall be conducted in compliance with the rules of this Subchapter.

(c) The certification application fee for an education provider applying under Paragraph (b) of this Rule shall be two hundred dollars (\$200.00) for each proposed education provider location. Provided however, education providers shall not be required to obtain a certification for every location a Continuing Education course is offered.

(d) If any education provider relocates any location or opens additional branch locations during any licensing period, the education director shall submit an original application for certification of that location pursuant to this Rule.

(e) In the event that any education provider advertises or operates in any manner using a name different from the name under which the education provider is certified, the education provider shall first file an assumed name certificate in compliance with G.S. 66-

71.4 and shall notify the Commission in writing of the use of such an assumed name. An education provider shall not advertise or operate in any manner that would mislead a consumer as to the education provider's actual identity.

(f) An individual or entity with an ownership interest of 10 percent or greater in a certified education provider that has been limited, denied, withdrawn, or terminated pursuant to Rule .0210 of this Section shall be prohibited from filing an application pursuant to this Rule for one year from the effective date of the limitation, denial, withdrawal, or termination.

Authority G.S. 93A-4; 93A-34; 93A-35.

21 NCAC 58H .0216 LIMITED EDUCATION PROVIDER PETITION FOR RECONSIDERATION

(a) An education provider may submit a written petition to reconsider the determination made pursuant to Rule .0210(c) of this Section. The petition shall be accompanied by any documentary evidence that contradicts the Commission's determination pursuant to Rule .0210(c) of this Section.

(b) The petition pursuant to Paragraph (a) of this Rule shall be submitted to the Commission within 60 days from the date of receipt of notification of the certification limitation or the Commission's determination shall be final.

Authority G.S. 93A-3(c); 93A-4(d); 93A-38.

SECTION .0300 – APPROVED INSTRUCTORS**21 NCAC 58H .0302 APPLICATION AND CRITERIA FOR INSTRUCTOR APPROVAL**

(a) An individual seeking original instructor approval shall submit an application on a form available on the Commission's website that shall require the instructor applicant to indicate the course(s) for which ~~he or she is seeking~~ approval is being sought and set forth the instructor applicant's:

- (1) legal name, address, email address, and telephone number;
- (2) real estate license number and instructor number, if any, assigned by Commission;
- (3) criminal and occupational licensing history, including any disciplinary actions;
- (4) education background, including specific real estate education;
- (5) experience in the real estate business;
- (6) real estate teaching experience, if any;
- (7) a signed Consent to Service of Process and Pleadings for nonresident applicants; and
- (8) signature.

(b) An instructor applicant shall demonstrate that ~~he or she the instructor applicant~~ possesses good reputation and character pursuant to G.S. 93A-34(c)(9) and has:

- (1) a North Carolina real estate broker license that is not on provisional status;
- (2) completed continuing education sufficient to activate a license under 21 NCAC 58A .1703;
- (3) completed 60 semester hours of college-level education at an institution accredited by any

college accrediting body recognized by the U.S. Department of Education;

- (4) completed the New Instructor Seminar within the previous six months; and
- (5) within the previous seven years has either:
 - (A) two years full-time experience in real estate brokerage with at least one year in North Carolina;
 - (B) three years of instructor experience at a secondary or post-secondary level;
 - (C) real estate Prelicensing or Postlicensing instructor approval in another jurisdiction; or
 - (D) qualifications found to be equivalent by the Commission, including a current North Carolina law license and three years' full time experience in commercial or residential real estate transactions or representation of real estate brokers or firms.

(c) In order to complete the New Instructor Seminar, a broker shall:

- (1) attend at least ninety percent of all scheduled hours; and
- (2) demonstrate the ability to teach a 15-minute block of a single Prelicensing topic in a manner consistent with the course materials.

(d) Prior to teaching any Update course, an approved instructor shall take the Commission's annual Update Instructor Seminar for the current license ~~period~~ period and attend at least 90 percent of all scheduled hours. The Update Instructor Seminar shall not be used to meet the requirement in Rule .0306(b)(4) of this Section.

Authority G.S. 93A-3(f); 93A-4; 93A-10; 93A-33; 93A-34.

21 NCAC 58H .0307 LIMITED INSTRUCTOR PETITION FOR RECONSIDERATION

(a) An instructor may submit a written petition to reconsider the determination made pursuant to Rule .0303(b) of this Section. The petition shall be accompanied by any documentary evidence that contradicts the Commission's determination pursuant to Rule .0303(b) of this Section.

(b) The petition pursuant to Paragraph (a) of this Rule shall be submitted to the Commission within 60 days from the date of receipt of notification of the approval limitation or the Commission's determination shall be final.

Authority G.S. 93A-3(c); 93A-4(d).

TITLE 25 – OFFICE OF STATE HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Human Resources Commission intends to amend the rule cited as 25 NCAC 01C .1007.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://oshr.nc.gov/about-oshr/state-hr-commission/proposed-rulemaking>

Proposed Effective Date: July 1, 2023

Public Hearing:

Date: March 2, 2023

Time: 1:00-2:00 p.m.

Location: STATEOP_MEETME_150 919-662-4657

Reason for Proposed Action: *Subdivision (a)(3) of the Rule allows separation in a situation where, following a work-related injury, an employee is unable to return to all of a position's essential duties due to a medical condition or the vagueness of a medical prognosis. The current Rule specifically mentions separation in this situation when an employee is on workers' compensation leave of absence. The revised Rule would specify that separation in this situation also applies when an employee is working with temporary or permanent work restrictions due to a work-related injury.*

The rule describes in detail when an employee may be separated when unable to perform their position's essential duties listed in the job description or designated work schedule and the employee and agency are unable to reach agreement on a return to work arrangement that meets the needs of the agency and employee's condition in either of the following situations:

- 1. Due to medical condition or vagueness of medical prognosis;*
- 2. Due to court order, loss of required credentials, loss of other required certification, or other extenuating circumstances; or*
- 3. Due to work-related injury if employee has reached maximum medical improvement and agency is unable to accommodate the employee's permanent work restrictions related to such injury or 12 months after the date of the employee's work-related injury.*

Comments may be submitted to: Blake Thomas, 116 West Jones Street, Raleigh, NC 27699-1331; phone (984) 236-0822; email Blake.Thomas@nc.gov

Comment period ends: April 17, 2023

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

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

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

- ☐ Approved by OSBM
☒ No fiscal note required

**CHAPTER 01 - OFFICE OF STATE HUMAN
RESOURCES**

SUBCHAPTER 01C – PERSONNEL ADMINISTRATION

SECTION .1000 - SEPARATION

25 NCAC 01C .1007 SEPARATION

(a) An employee may be separated when:

- (1) the employee remains unavailable for work after all applicable leave credits and leave benefits have been exhausted and agency management does not grant leave without pay, as defined in 25 NCAC 01E .1101, if the employee is unable to return to all of the position's essential duties as set forth in the employee's job description or designated work schedule due to a medical condition or the vagueness of a medical prognosis, and the employee and agency are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's condition;
- (2) notwithstanding any unexhausted applicable leave credits and leave benefits, the employee is unable to return to all of the position's essential duties as set forth in the employee's job description or designated work schedule due to a court order, due to a loss of required credentials, due to a loss of other required certification, or due to other extenuating circumstances that ~~renders render~~ the employee unable to perform the position's essential duties as set forth in the employee's job description or designated work schedule, and the employee and the agency are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's situation; or
- (3) notwithstanding any unexhausted applicable leave credits and leave benefits, when an employee is on workers' compensation leave of absence, or when an employee is working with temporary or permanent work restrictions due to a work-related injury, and the employee is unable to return to all of the position's essential duties as set forth in the employee's job description or designated work schedule due to a medical condition or the vagueness of a

medical prognosis, and the employee and the agency are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's medical condition, a separation may occur on the earliest of the following dates:

- (A) after the employee has reached maximum medical improvement for the work related injury for which the employee is on workers' compensation leave of absence and the agency is unable to accommodate the employee's permanent work restrictions related to such injury; or
- (B) 12 months after the date of the employee's work related injury.

(b) The employing agency shall send the employee written notice of the proposed separation in a ~~Pre-Separation~~ Pre-Separation Letter. The letter shall include the employing agency's planned date of separation, the efforts undertaken to avoid separation, and why the efforts were unsuccessful. This letter shall be sent to the employee at least 15 calendar days prior to the employing agency's planned date of separation. This letter shall include a deadline for the employee to respond in writing no less than five calendar days prior to the employing agency's planned date of separation.

(c) If the agency and employee are unable to agree on terms of continued employment or the employee does not respond to the ~~Pre-Separation~~ Pre-Separation letter, the employing agency shall send the employee written notice in a Letter of Separation. The letter shall be sent no earlier than 20 calendar days after the ~~Pre Separation~~ Pre-Separation letter is sent to the employee. The Letter of Separation shall state the actual date of separation, specific reasons for the ~~separation~~ separation, and set forth the employee's right of appeal. Such a separation shall not be considered a disciplinary dismissal as described in G.S. 126-34.02 or G.S. 126-35. It is an involuntary separation and may be grieved or appealed. The burden of proof on the agency in the event of a grievance is not to demonstrate just cause as that term exists in G.S. 126-34.02 or G.S. 126-35. Rather, the agency's burden shall only be to prove that the employee was unavailable, ~~unavailable~~, ~~that efforts were undertaken to avoid separation, and why the efforts were unsuccessful.~~

(d) "Applicable leave credits and benefits" is defined as the sick, vacation, bonus, incentive, and compensatory leave that the employee may earn, but does not include short-term or long-term disability.

Authority G.S. 126-4(7a); 126-34.02; 126-35.

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

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: DHHS/Director of Division of Health Service Regulation

Rule Citation: 10A NCAC 14C .1403, .2703

Effective Date: January 27, 2023

Date Approved by the Rules Review Commission: January 19, 2023

Reason for Action:

10A NCAC 14C .1403 - Several subject matters are addressed in the State Medical Facilities Plan (SMFP). The acute care bed need determination methodology was changed in the 2023 SMFP. Revisions to existing Certificate of Need rules are required to compliment or to be made consistent with the SMFP signed by the governor on December 16, 2022. The effective date of the 2023 SMFP is January 1, 2023.

10A NCAC 14C .2703 - Several subject matters are addressed in the State Medical Facilities Plan (SMFP). Changes were made to the chapter in the 2023 SMFP addressing the magnetic resonance imaging scanner need methodology. Revisions to an existing Certificate of Need rule are required to compliment or to be made consistent with the SMFP signed by the governor on December 16, 2022. The effective date of the 2023 SMFP is January 1, 2023.

CHAPTER 14 - DIRECTOR, DIVISION OF HEALTH SERVICE REGULATION

SUBCHAPTER 14C – CERTIFICATE OF NEED REGULATIONS

SECTION .1400 – CRITERIA AND STANDARDS FOR NEONATAL SERVICES

10A NCAC 14C .1403 PERFORMANCE STANDARDS

(a) ~~An~~ If an applicant is proposing a project that increases the total number of neonatal beds in a facility, the applicant shall demonstrate that the proposed project is capable of meeting the following standards:

- (1) ~~if an applicant is proposing to increase the total number of neonatal beds (i.e., the sum of Level II, Level III [III,] and Level IV beds),~~ the overall average annual occupancy of the combined number of existing Level II, Level ~~III~~ III, and Level IV beds in the facility is at least 75 percent, over the 12 months immediately preceding the submittal of the proposal;

- (2) ~~if an applicant is proposing to increase the total number of neonatal beds (i.e., the sum of Level II, Level III [III,] and Level IV beds),~~ the projected overall average annual occupancy of the combined number of Level II, Level ~~III~~ III, and Level IV beds proposed to be operated during the third year of operation of the proposed project shall be at least 75 percent; and
- (3) ~~The~~ the applicant shall document the assumptions and provide data supporting the methodology used for each projection in this ~~rule.~~ Rule.

(b) If an applicant proposes to develop a new Level III or Level IV service, the applicant shall document that an unmet need exists in the applicant's defined neonatal service ~~area, unless the State Medical Facilities Plan includes a need determination for neonatal beds in the service area.~~ area. The need for Level III and Level IV beds shall be computed for the applicant's neonatal service area by:

- (1) identifying the ~~annual~~ number of live births occurring annually at all hospitals within the proposed neonatal service area, using the latest available data compiled by the State Center for Health Statistics;
- (2) identifying the low birth weight rate (percent of live births below 2,500 grams) for the births identified in Subparagraph (1) of this Paragraph, using the latest available data compiled by the State Center for Health Statistics;
- (3) dividing the low birth weight rate identified in Subparagraph (2) of this Paragraph by .08 and subsequently multiplying the resulting quotient by four; and
- (4) determining the need for Level III and Level IV beds in the proposed neonatal service area as the product of:
 - (A) the product derived in Subparagraph (3) of this Paragraph, and
 - (B) the quotient resulting from the division of the number of live births in the initial year of the determination identified in Subparagraph (1) of this Paragraph by the number 1000.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Temporary Amendment Eff. March 15, 2002;

*Amended Eff. April 1, 2003;
Temporary Amendment Eff. February 1, 2009;
Amended Eff. November 1, 2009;
Temporary Amendment Eff. February 1, 2010;
Amended Eff. November 1, 2010;
Temporary Amendment Eff. January 27, 2023.*

**SECTION .2700 - CRITERIA AND STANDARDS FOR
MAGNETIC RESONANCE IMAGING SCANNER**

10A NCAC 14C .2703 PERFORMANCE STANDARDS

(a) An applicant proposing to acquire a fixed MRI scanner pursuant to a need determination in the annual State Medical Facilities Plan in effect as of the first day of the review period shall:

- (1) identify the existing fixed MRI scanners owned or operated by the applicant or a related entity and located in the proposed fixed MRI scanner service area;
- (2) identify the approved fixed MRI scanners owned or operated by the applicant or a related entity and located in the proposed fixed MRI scanner service area;
- (3) identify the existing mobile MRI scanners owned or operated by the applicant or a related entity that provided mobile MRI services at host sites located in the proposed fixed MRI scanner service area during the 12 months before the application deadline for the review period;
- (4) identify the approved mobile MRI scanners owned or operated by the applicant or a related entity that will provide mobile MRI services at host sites located in the proposed fixed MRI scanner service area;
- (5) provide projected utilization of the MRI scanners identified in Subparagraphs (1) through (4) of this Paragraph and the proposed fixed MRI scanner during each of the first three full fiscal years of operation following completion of the project;
- (6) provide the assumptions and methodology used to project the utilization required by Subparagraph (5) of this Paragraph;
- (7) project that the fixed MRI scanners identified in Subparagraphs (1) and (2) of this Paragraph and the proposed fixed MRI scanner shall perform during the third full fiscal year of operation following completion of the project as follows:
 - (A) ~~3,364 or more adjusted MRI procedures per fixed MRI scanner if there are four or more fixed MRI scanners in the fixed MRI scanner service area;~~
 - (B) ~~3,123 or more adjusted MRI procedures per fixed MRI scanner if there are three fixed MRI scanners in the fixed MRI scanner service area;~~

- ~~(C)(A)~~ ~~2,883~~ 3,494 or more adjusted MRI procedures per fixed MRI scanner if there are two or more fixed MRI scanners in the fixed MRI scanner service area;
- ~~(D)(B)~~ ~~2,643~~ 3,058 or more adjusted MRI procedures per fixed MRI scanner if there is one fixed MRI scanner in the fixed MRI scanner service area; or
- ~~(E)(C)~~ ~~1,201~~ 1,310 or more adjusted MRI procedures per MRI scanner if there are no existing fixed MRI scanners in the fixed MRI scanner service area; and

(8) project that the mobile MRI scanners identified in Subparagraphs (3) and (4) of this Paragraph shall perform ~~3,328~~ 3,120 or more adjusted MRI procedures per mobile MRI scanner during the third full fiscal year of ~~operation~~ operations following completion of the project.

(b) An applicant proposing to acquire a mobile MRI scanner pursuant to a need determination in the annual State Medical Facilities Plan in effect as of the first day of the review period shall:

- (1) identify the existing mobile MRI scanners owned or operated by the applicant or a related entity that provided mobile MRI services at host sites located in the proposed mobile MRI scanner service area during the 12 months before the application deadline for the review period;
- (2) identify the approved mobile MRI scanners owned or operated by the applicant or a related entity that will provide mobile MRI services at host sites located in the proposed mobile MRI scanner service area;
- (3) identify the existing fixed MRI scanners owned or operated by the applicant or a related entity that are located in the proposed mobile MRI scanner service area;
- (4) identify the approved fixed MRI scanners owned or operated by the applicant or a related entity that will be located in the proposed mobile MRI scanner service area;
- (5) identify the existing and proposed host sites for each mobile MRI scanner identified in Subparagraphs (1) and (2) of this Paragraph and the proposed mobile MRI scanner;
- (6) provide projected utilization of the MRI scanners identified in Subparagraphs (1) through (4) of this Paragraph and the proposed mobile MRI scanner during each of the first three full fiscal years of operation following completion of the project;
- (7) provide the assumptions and methodology used to project the utilization required by Subparagraph (6) of this Paragraph;
- (8) project that the mobile MRI scanners identified in Subparagraphs (1) and (2) of this Paragraph

- and the proposed mobile MRI scanner shall perform ~~3,328~~ 3,120 or more adjusted MRI procedures per MRI scanner during the third full fiscal year of ~~operation~~ operations following completion of the project; and
- (9) project that the fixed MRI scanners identified in Subparagraphs (3) and (4) of this Paragraph shall perform during the third full fiscal year of ~~operation~~ operations following completion of the project as follows:
- (A) ~~3,364 or more adjusted MRI procedures per fixed MRI scanner if there are four or more fixed MRI scanners in the fixed MRI scanner service area;~~
 - (B) ~~3,123 or more adjusted MRI procedures per fixed MRI scanner if there are three fixed MRI scanners in the fixed MRI scanner service area;~~
 - (C)(A) ~~2,883~~ 3,494 or more adjusted MRI procedures per fixed MRI scanner if there are two or more fixed MRI scanners in the fixed MRI scanner service area;
 - (D)(B) ~~2,643~~ 3,058 or more adjusted MRI procedures per fixed MRI scanner if there is one fixed MRI scanner in the fixed MRI scanner service area; or
 - (E)(C) ~~1,204~~ 1,310 or more adjusted MRI procedures per MRI scanner if there are no fixed MRI scanners in the fixed MRI scanner service area.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. February 1, 1994;

Temporary Amendment Eff. January 1, 1999;

Temporary Amendment Eff. January 1, 1999 Expired on October 12, 1999;

Temporary Amendment Eff. January 1, 2000;

Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000;

Temporary Amendment Eff. January 1, 2001;

Temporary Amendment effective January 1, 2001 amends and replaces a permanent rulemaking originally proposed to be effective April 1, 2001;

Temporary Amendment Eff. January 1, 2002;

Temporary Amendment Eff. January 1, 2002 amends and replaces the permanent rule effective, August 1, 2002;

Temporary Amendment Eff. January 1, 2003;

Amended Eff. August 1, 2004; April 1, 2003;

Temporary Amendment Eff. January 1, 2005;

Amended Eff. November 1, 2005;

Temporary Amendment Eff. February 1, 2006;

Amended Eff. November 1, 2006;

Temporary Amendment Eff. February 1, 2008;

Amended Eff. November 1, 2008;

Readopted Eff. January 1, 2022; 2022;

Temporary Amendment Eff. January 27, 2023.

This Section contains information for the meeting of the Rules Review Commission January 19, 2023 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 984-236-1850. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS**Appointed by Senate**

Jeanette Doran (Chair)
Robert A. Bryan, Jr. (2nd Vice Chair)
Jay R. Hemphill
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
Seth M. Ascher	984-236-1934

RULES REVIEW COMMISSION MEETING DATES

February 16, 2023	April 20, 2023
March 16, 2023	May 18, 2023

**RULES REVIEW COMMISSION MEETING
MINUTES
January 19, 2023**

The Rules Review Commission met on Thursday, January 19, 2023, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx.

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

Staff member Alexander Burgos, and Commission Counsel Seth Ascher, 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 December 15, 2022 meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the minutes approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, 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 Tabs I, J, and K for Coastal Resources Commission and temporary rules for DHHS - Division of Health Service Regulation.

FOLLOW UP MATTERS**Department of Administration**

01 NCAC 05A .0112 and 05E .0101 – The rules were returned at the request of the agency. No action was required by the Commission.

State Board of Elections

08 NCAC 04 .0308, and .0309 – The rules were returned at the request of the agency. 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 – These Rules remain on the agenda pending the agency's intention to seek a legislative fix to address the overarching statutory objection. No action was required by the Commission.

Medical Care Commission

10A NCAC 13F .0904 and 13G .0904, and .5411 – The Commission extended the period of review for these Rules at the December 2022 meeting. No action was required by the Commission.

Industrial Commission

11 NCAC 23G .0104 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Environmental Management Commission

15A NCAC 02B .0208, .0212, .0214, .0215, .0216, and .0218 - The Commission objected to these Rules at the May meeting. The agency has not responded to the Commission's objection since August 2022. No action was required by the Commission.

Environmental Management Commission

15A NCAC 02E .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0409 - The Commission extended the period of review for these Rules at the December 2022 meeting. No action was required by the Commission.

Environmental Management Commission

15A NCAC 02H .1301, .1401, .1402, .1403, .1404, and .1405 - The Commission objected to these Rules at the May 2022 meeting. The agency has not responded to the Commission's objection since August 2022. No action was required by the Commission.

Coastal Resources Commission

15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510; 07I .0406, .0506, .0508, .0511, .0702; 07J .0203, .0204, .0206, .0207, .0208, and .0312 - Upon the call of the Chair, the Commission voted to table these Rules and take them up at the February meeting by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Coastal Resources Commission

15A NCAC 07H .2305 - Upon the call of the Chair, the Commission voted to table this Rule and take it up at the February meeting by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Coastal Resources Commission

15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0701, .0703, .0704, .1001, .1002, .1101, and .1102 - Upon the call of the Chair, the Commission voted to table these Rules and take them up at the February meeting by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Wildlife Resources Commission

15A NCAC 10F .0201 - The Commission extended the period of review for this Rule at the December 2022 meeting. No action was required by the Commission.

TSERS and LGERS Board of Trustees

20 NCAC 02A .0101, .0102, .0103, .0104, .0201, .0202, .0301, .0302, .0303, .0401, .0503, .0504, and .0505 - The Commission extended the period of review for these Rules at the December 2022 meeting. No action was required by the Commission.

TSERS Board of Trustees

20 NCAC 02B .0101, .0202, .0210, .0211, .0213, .0301, .0302, .0303, .0304, .0305, .0307, .0308, .0401, .0402, .0404, .0405, .0501, .0502, .0503, .0504, .0510, .0701, .0706, .0801, .0802, .0803, .0804, .0805, .0806, .0807, .0810, .0901, .0902, .0903, .0904, .0905, .0906, .1003, .1004, .1005, .1006, .1007, .1101, .1102, .1104, .1204, .1205, and .1207 - The Commission extended the period of review for these Rules at the December 2022 meeting. No action was required by the Commission.

LGERS Board of Trustees

20 NCAC 02C .0101, .0201, .0204, .0205, .0301, .0302, .0303, .0304, .0306, .0307, .0402, .0403, .0404, .0405, .0501, .0502, .0503, .0504, .0704, .0901, .0902, .0904, .0906, .0907, .0908, .0909, .1001, .1002, .1003, .1004, .1006, .1007, .1201, .1301, .1302, .1501, .1503, .1504, .1505, and .1506 - The Commission extended the period of review for these Rules at the December 2022 meeting. No action was required by the Commission.

TSERS Board of Trustees

20 NCAC 02F .0101, .0104, .0107, and .0108 - The Commission extended the period of review for these Rules at the December 2022 meeting. No action was required by the Commission.

TSERS Board of Trustees

20 NCAC 02L .0101, .0103, .0202, .0302; 02M .0101, .0102, .0104, .0201, .0202, .0206, .0301, .0302, .0303, .0304, .0305, and .0307 - The Commission extended the period of review for these Rules at the December 2022 meeting. No action was required by the Commission.

LGERS Board of Trustees

20 NCAC 02N .0106, .0108, .0208, .0215, .0218, and .0219 - The Commission extended the period of review for these Rules at the December 2022 meeting. No action was required by the Commission.

Behavior Analyst Licensure Board

21 NCAC 05 .0102, .0201, .0202, .0203, .0301, .0401, .0402, .0501, .0601, .0602, and .0603 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 7. Voting in the negative: None

21 NCAC 05 .0403 was withdrawn at the request of the agency. No action was required by the Commission.

Board of Examiners for Engineers and Surveyors

21 NCAC 56 .0303, .0601, .0608, .1702, .1703, .1704, .1705, .1707, and .1713 - The Commission extended the period of review for these Rules at the December 2022 meeting. No action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)**Department of Natural and Cultural Resources**

Upon the call of the Chair, 07 NCAC 13C .0102, .0105, .0201, .0202, .0203, .0301, .0302, .0303, .0304, .0305, .0306, .0307, .0309, .0310, .0311, .0312, .0313, .0314, .0315, .0406, .0407, and .0408 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

State Board of Elections

Upon the call of the Chair, 08 NCAC 21 .0201, .0206, and .0207 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Department of Public Safety

Upon the call of the Chair, the Commission extended the period of review for 14B NCAC 03 .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0409, and .0410 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Department of Environmental Quality

Upon the call of the Chair, the Commission extended the period of review for 15A NCAC 01E .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0114, and .0115 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Wildlife Resources Commission

Upon the call of the Chair, 15A NCAC 10F .0301, .0326, .0327, .0336, .0361; 10I .0103, .0104, and .0105 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Upon the call of the Chair, 15A NCAC 10F .0314 was approved subject to technical changes in this Rule changing “marker” to “channel marker” or “no-wake marker” where referenced throughout this Rule. The technical changes were made following the conclusion of the meeting and the rule was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Upon the call of the Chair, 15A NCAC 10B .0201, excepting paragraph (h), was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Pursuant to S.L. 2021-176 Rule 15A NCAC 10B .0201(h) is not subject to RRC review.

Board of Dental Examiners

Upon the call of the Chair 21 NCAC 16Q .0103, .0104, .0202, .0302, .0405, and .0703 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

In accordance with G.S. 150B-21.3(b2), the Commission received over ten letters of objection requesting legislative review and a delayed effective date for 21 NCAC 16Q .0103, .0104, .0202, .0302, .0405, and .0703.

Interpreter and Transliterator Licensing Board

Upon the call of the Chair, 21 NCAC 25 .0205 was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Board of Licensed Clinical Mental Health Counselors

Upon the call of the Chair, 21 NCAC 53 .0206 and .0701 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

LOG OF FILINGS (TEMPORARY RULES)**DHHS - Division of Health Service Regulation**

Upon the call of the Chair, 10A NCAC 14C .1403 and .2703 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Derek Hunter with the Department of Justice and representing the agency, addressed the Commission.

Review of the 2023 State Medical Facilities Plan

Upon the call of the Chair, the 2023 State Medical Facilities Plan was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

COMMISSION BUSINESS

The Chair reminded the Commission that the deadline to update their Statement of Economic Interest is April 17, 2023.

The meeting adjourned at 9:52 a.m.

The next regularly scheduled meeting of the Commission is Thursday, February 16, 2023, at 9:00 a.m.

Alexander Burgos, Paralegal

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

DRAFT

January 19, 2023

Rules Review Commission
Meeting
Please **Print** Legibly

Name	Agency
Jennifer Everett	DEQ
Nadine Pfeiffer	DHHS - DHSR
Derek Hunter	DHHS/DOJ
Jonathan Avery	DNCR
Kathy Capps	DNCR
Doreen Bartley	Dental Board
Ann Wall	SOS
Gina Cammarano	NCIC
RAT PREMAKUMAR	DHHS
ROBERT EL-ITAMARI	Craftill Summer LLP
Lindsay Valdey	NCSBE
Matthew Wall	NC DOT

Rules Review Commission Meeting January 19, 2022
Via WebEx

Name	Agency
Chris Millis	NCHBA
Shazia Keller	DHHS
Janice Peterson	ncoptometry.org
Shelby Taylor	DHHS
Jill Cramer	Labor
Misty Piekaar	DHHS
Anna Hayworth	Agriculture
Rachel A Love-Adrick	CRC
Shelby Taylor	DHHS
Dennis Seavers	Barbers
Mark Payne	DHHS
Anne Coan	NCFB
Hannah Jernigan	DOT
Virginia Niehaus	DHHS
Angela Willis	CRC
Alex Ward	DOJ
Caroline Olds	
Doug Miskew	publicsectorgroup.com
Micheala Mitchell	DHHS
Bethany Burgon	DOJ
Donya Strong	DOA
Robin Colburn	cce-global.org
Emily Jones	DOT
Betsy Haywood	WRC
Laura Lansford	DOR
Julie Youngman	selcnc.org
Carol Williams	
Elizabeth Brown	DHHS
Melonie Davis	ncblcmhc.org
Brandice Bell	ncblcmhc.org
Patrice Alexander	DOR
Kim Meymandi	ascendent.com
Sidney Thomas	
Madison Mackenzie	DHHS
Caitlin Schwab-Falzone	NCITLB
Ellen Roeber	ncptboard.org
Laura Rowe	Treasurer
Jessica Montie	DEQ
Ross Smith	myncma.org
Christine Goebel	DEQ

RULES REVIEW COMMISSION

Alesia Balshakova	DOJ
Sandra Guenther	aaoms.org
Andrea Emanuel	DHHS
Leo John	sosnc.gov
Carrie Ruhlman	WRC
Marlika Hairston	NCCOB
Will Polk	DPS
Mark Schwarze	appstate.edu
Juliane Bradshaw	DOJ

LIST OF APPROVED PERMANENT RULES
January 19, 2023 Meeting

NATURAL AND CULTURAL RESOURCES, DEPARTMENT OF

<u>Definitions</u>	07 NCAC 13C .0102
<u>Permits</u>	07 NCAC 13C .0105
<u>Commercial Enterprises and Activities</u>	07 NCAC 13C .0201
<u>Scientific or Educational Research and Noncommercial Acti...</u>	07 NCAC 13C .0202
<u>Commercial Activities in or Upon State Lakes</u>	07 NCAC 13C .0203
<u>State Lake Permits</u>	07 NCAC 13C .0301
<u>Structures Prohibited on Certain State Lakes</u>	07 NCAC 13C .0302
<u>Permissible Structural Dimensions</u>	07 NCAC 13C .0303
<u>Limits on Elevated Structures</u>	07 NCAC 13C .0304
<u>Permits for Structures Existing as of February 1, 1974</u>	07 NCAC 13C .0305
<u>Fees</u>	07 NCAC 13C .0306
<u>Condition of Structures</u>	07 NCAC 13C .0307
<u>Eligibility for Permits</u>	07 NCAC 13C .0309
<u>Revocation of Permits</u>	07 NCAC 13C .0310
<u>Application for Structural Permits</u>	07 NCAC 13C .0311
<u>Permits for Structures Existing on February 1, 1974</u>	07 NCAC 13C .0312
<u>Liability</u>	07 NCAC 13C .0313
<u>Right of Entry Reserved</u>	07 NCAC 13C .0314
<u>Application Denial and Permit Revocation Procedures</u>	07 NCAC 13C .0315
<u>Water Level; Discharge</u>	07 NCAC 13C .0406
<u>Mooring Buoys</u>	07 NCAC 13C .0407
<u>State Park Regulations</u>	07 NCAC 13C .0408

ELECTIONS, STATE BOARD OF

<u>Committee Accounts</u>	08 NCAC 21 .0201
<u>Requesting a Waiver of a Civil Late Penalty</u>	08 NCAC 21 .0206
<u>Procedures for Committees with Missing Reports</u>	08 NCAC 21 .0207

INDUSTRIAL COMMISSION

<u>Duties of Parties, Representatives, and Attorneys</u>	11 NCAC 23G .0104
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WILDLIFE RESOURCES COMMISSION

<u>Prohibited Taking and Manner of Take</u>	15A NCAC 10B .0201
<u>General Provisions</u>	15A NCAC 10F .0301
<u>New Hanover County</u>	15A NCAC 10F .0314
<u>Pamlico County</u>	15A NCAC 10F .0326
<u>Montgomery County</u>	15A NCAC 10F .0327
<u>Northampton and Warren Counties</u>	15A NCAC 10F .0336
<u>Wilkes County</u>	15A NCAC 10F .0361
<u>Endangered Species Listed</u>	15A NCAC 10I .0103
<u>Threatened Species Listed</u>	15A NCAC 10I .0104
<u>Special Concern Species Listed</u>	15A NCAC 10I .0105

BEHAVIOR ANALYST LICENSURE BOARD

<u>Board Address and Website</u>	21 NCAC 05 .0102
<u>Application for Licensure of Licensed Behavior Analyst an...</u>	21 NCAC 05 .0201
<u>References</u>	21 NCAC 05 .0202
<u>Certification</u>	21 NCAC 05 .0203
<u>Fees</u>	21 NCAC 05 .0301
<u>Supervision of Assistant Behavior Analyst</u>	21 NCAC 05 .0401
<u>Supervision of Behavior Technicians</u>	21 NCAC 05 .0402
<u>Ethics</u>	21 NCAC 05 .0501
<u>Complain Procedures</u>	21 NCAC 05 .0601
<u>Investigation of Complaint</u>	21 NCAC 05 .0602
<u>Method of Discipline</u>	21 NCAC 05 .0603

DENTAL EXAMINERS, BOARD OF

<u>Equipment, Personnel, and Clinical Requirements to Admini...</u>	21 NCAC 16Q .0103
<u>Requirements for Inspections and Evaluations</u>	21 NCAC 16Q .0104
<u>General Anesthesia Equipment and Clinical Requirements</u>	21 NCAC 16Q .0202
<u>Moderate Parenteral and Enteral Conscious Sedation Clinic...</u>	21 NCAC 16Q .0302
<u>Moderate Pediatric Conscious Sedation Clinical Requiremen...</u>	21 NCAC 16Q .0405
<u>Reports of Adverse Occurrences</u>	21 NCAC 16Q .0703

INTERPRETER AND TRANSLITERATOR LICENSING BOARD

<u>Renewal of a Provisional License</u>	21 NCAC 25 .0205
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CLINICAL MENTAL HEALTH COUNSELORS, BOARD OF LICENSED

<u>Graduate Counseling Experience</u>	21 NCAC 53 .0206
<u>Licensed Clinical Mental Health Counselor Associate</u>	21 NCAC 53 .0701

LIST OF APPROVED TEMPORARY RULES

January 19, 2023 Meeting

HHS - HEALTH SERVICE REGULATION, DIVISION OF

<u>Performance Standards</u>	10A NCAC 14C .1403
<u>Performance Standards</u>	10A NCAC 14C .2703