NORTH CAROLINA REGISTER

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The Office of Administrative Hearings
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Raleigh, NC 27609
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Julie B. Eddins, Register Drafter

Contact List for Rulemaking Questions or Concerns

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

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

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Rules Division
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Rule Review and Legal Issues

Rules Review Commission
1711 New Hope Church Road — 984-236-1850
Raleigh, North Carolina 27609 — 984-236-1947 FAX

contact:	Brian Liebman, Commission Counsel	brian.liebman@oah.nc.gov	984-236-1948
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	Julie B. Eddins, Administrative Assistant	julie.eddins@oah.nc.gov	984-236-1935

Fiscal Notes & Economic Analysis

Office of State Budget and Management
116 West Jones Street
Raleigh, North Carolina 27603-8005
Contact: Julie Ventaloro, Economic Analyst — osbmruleanalysis@osbm.nc.gov — 984-236-0694

NC Association of County Commissioners — 919-715-2893
215 North Dawson Street
Raleigh, North Carolina 27603
contact: Amy Bason — amy.bason@ncacc.org

NC League of Municipalities — 919-715-2925
424 Fayetteville Street, Suite 1900
Raleigh, North Carolina 27601
contact: Monica Jackson — mjackson@nclm.org

Legislative Process Concerning Rulemaking

545 Legislative Office Building
300 North Salisbury Street — 919-733-2578
Raleigh, North Carolina 27611 — 919-715-5460 FAX

Jason Moran-Bates, Staff Attorney
Chris Saunders, Staff Attorney
Aaron McGlothlin, Staff Attorney

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	270th 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	12/14/2023	01/01/24	05/28/24
38:06	09/15/23	08/24/23	09/30/23	11/14/23	11/20/23	12/14/2023	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

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.

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: Kia America Inc

Applicant's Address: 111 Peters Canyon Rd, Irvine CA 92606

Application Date: 09/18/2023

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

SeungKyu Yoon- President/CEO

ShinJae Roh- CFO

Jaejun Chang- Corporate Secretary

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: Mullen Automotive Inc

Applicant's Address: 1405 Pioneer St, Brea CA. 92821

Application Date: 8/2/2023

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

John Schwegman CCO

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: VinFast USA Distribution LLC

Applicant's Address: 12777 W. Jefferson Blvd. Ste A-101 Los Angeles, CA 900066

Application Date: August 31, 2023

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

Vingroup USA, LLC; Member

Anh Thi Van nguyen; Manger

Justin Walker: Manager

NORTH CAROLINA
STATE BOARD OF ELECTIONS

Mailing Address:
P.O. Box 27255,
Raleigh, NC 27611
(919) 814-0700 or
(866) 522-4723
Fax: (919) 715-0135

Representative Julie von Haefen
1311 Legislative Building
16 W. Jones Street
Raleigh, NC 27601-1096

June 22, 2023

Re: Request for an advisory opinion under N.C.G.S. § 163-278.23 regarding dependent care expenses

Dear Representative von Haefen,

Thank you for contacting our office. The following written opinion is provided in accordance with N.C.G.S. § 163-278.23.

In your March 14, 2023 letter, you asked the extent to which campaign funds may be used for caregiving expenses, which you define as "direct care, protection, and supervision of a child or other person with a disability or a medical condition for which a candidate has direct caregiving responsibility." You also sought clarity on whether the candidate may be physically present in the home while these services are being provided.

A candidate or candidate campaign committee may use contributions only for the purposes specifically listed in N.C.G.S. § 163-278.16B. This includes "expenditures resulting from the campaign for public office" and "expenditures resulting from holding public office." N.C.G.S. §§ 163-278.16B(a)(1) & (a)(2).

In a written opinion issued April 20, 2020, I determined that a candidate "may use committee funds to hire a babysitter or to obtain the services of a licensed childcare facility ("childcare expenditures") when childcare expenditures directly result from your absence at times when you would have personally cared for your children because you are attending campaign meetings or events." Written Opinion 2020-04-20. The opinion was specific to childcare expenses. However, many candidates and officeholders today are responsible for a much broader scope of dependent care. Research indicates that more than one in ten parents in the United States are also caring for an adult. Gretchen Livingston, *More than one-in-ten U.S. parents are also caring for an adult*, Pew Research Center (Nov. 29, 2018), https://www.pewresearch.org/short-reads/2018/11/29/more-than-one-

in-ten-u-s-parents-are-also-caring-for-an-adult/. The analysis and conclusion in the April 20, 2020 written opinion are not unique to the care of dependents under age 18. Therefore, it is my conclusion that committee funds may also be used to care for, protect, and supervise a person with a disability or medical condition for whom a candidate has direct caregiving responsibility.

In Written Opinion 2020-04-20, I highlighted the agency's history of concluding that personal expenditures caused by the necessity of being away from home and traveling were authorized under N.C.G.S. § 163-278.16B. Consistent with that line of opinions, I concluded that when childcare is a direct result of the candidate's absence from the home due to campaign activities, childcare expenses are permitted under N.C.G.S. § 163-278.16B(a).

During the pandemic, how and where we work evolved. Virtual meetings are now a regular practice in both the public and private sectors. Home offices and telework are common. While public bodies have largely returned to in-person meetings, our homes continue to be a place where public business is conducted. N.C.G.S. § 163-278.16B requires that the caregiving expense be the direct result of a candidate's campaign or the holding of public office. The relevant question in this analysis is not whether the campaign or public office is requiring the candidate to be away from the home to provide care; instead, the key question is whether those campaign or office-holding activities are keeping the candidate from personally providing the supervision or care for which they are otherwise responsible, regardless of whether the candidate is physically present in the home.

In conclusion, under N.C.G.S. § 163-278.16B, a candidate or office holder may use committee funds for caregiving expenses, such as the cost of a nanny to look after a child or a nurse or other caregiver to look after an elderly parent, if the need for such services results from the candidate or office holder carrying out work or activities for the campaign or office holding. For such expenses to "result[] from" the campaign or public office holding, N.C.G.S. § 163-278.16B(a)(1)–(2), the candidate or office holder would need to otherwise be responsible for personally providing the supervision or care, and the demands of the campaign or office holding must be keeping the candidate or office holder from providing that supervision or care.

It is up to you to obtain documentation and to appropriately account for the caregiving expenses that result from your campaign versus the caregiving expenditures that result from non-campaign activities.

The opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and North Carolina Administrative Code.

Sincerely,

Karen Brinson Bell
Executive Director
State Board of Elections

Cc: Ashley B. Snyder, Codifier of Rules

North Carolina General Assembly
House Of Representatives

REPRESENTATIVE JULIE VON HAEFEN
36TH DISTRICT, WAKE COUNTY

OFFICE: 1311 LEGISLATIVE BUILDING
16 W. JONES STREET
RALEIGH, NC 27601-1096
PHONE: (919) 715-0795
EMAIL: JULIE.VONHAEFEN@NCLEG.NET

March 14, 2023

Executive Director Karen Brinson Bell
North Carolina State Board of Elections
6400 Mail Service Center
Raleigh, NC 27603

Re: Advisory Opinion Request

To Whom It May Concern:

My name is Julie von Haefen, North Carolina State Representative for House District 36. I am writing to request an ethics ruling on the use of campaign funds to pay for dependent care expenses directly related to both campaign activity and legislative duties.

Question Presented
Are caregiving expenses – defined as direct care, protection, and supervision of a child or other person with a disability or a medical condition for which a candidate has direct caregiving responsibility – incurred as a direct result of campaign activity and holding public office deemed a permissible campaign expenditure in the state of North Carolina, regardless of if the candidate is absent from the home.

Analysis
Under federal guidelines, as cited in AO 2018-06, candidates for Federal office are allowed to use private campaign funds to pay for childcare expenses, "to the extent such expenses are incurred as a direct result of campaign activity." Childcare costs are considered a permissible expense at the federal level if the care expenditures would not otherwise exist if not for the campaign.

Under current North Carolina state law, it is unclear if dependent care costs incurred as a direct result of candidacy is considered a necessary and permissible expenditure. According to N.C.G.S. § 163-278.16B(a)(1), candidates for public office must abide by the following guidelines:

"(a) A candidate or candidate campaign committee may use contributions only for the following purposes:

1. Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.
2. Expenditures resulting from holding public office.
3. Donations to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.
4. Contributions to a national, State, or district or county committee of a political party or a caucus of the political party or an affiliated party committee.
5. Contributions to another candidate or candidate's campaign committee.
6. To return all or a portion of a contribution to the contributor.
7. Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.
8. Payment to the Escheat Fund established by Chapter 116B of the General Statutes.
9. Legal expense donation not in excess of four thousand dollars ($4,000) per calendar year to a legal expense fund established pursuant to Article 22M of this Chapter."

In addition, according to WO-2020-04-20, state and local candidates in North Carolina can also use their campaign funds on childcare expenses that are a direct result of the candidate's absence from the home due to campaign activity. My concern is that many candidates, myself included, engage in campaign activity at home - such as calltime from the kitchen table - which requires full attention, creating a need for dependent care support, even at home.

I am requesting that the North Carolina State Board of Elections determine whether dependent care expenses incurred in connection with running for office or holding public office in North Carolina are considered personal use under the law or are considered a permissible campaign expenditure.

If you have any questions or need additional information in connection with this Advisory Opinion Request, please contact me at Julie.vonHaefen@ncleg.gov.

Sincerely,

Representative Julie von Haefen
North Carolina, District 36

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 09 – OFFICES OF THE GOVERNOR AND LT. GOVERNOR

Notice *is hereby given in accordance with G.S. 150B-21.2 that the Office of State Budget and Management intends to amend the rules cited as 09 NCAC 03M .0101, .0102, .0201, .0202, .0205, .0401, .0601, .0703, .0801, and .0802.*

Link to agency website pursuant to G.S. 150B-19.1(c): *https://www.osbm.nc.gov/news/events/public-comment-and-hearing-proposed-amendments-state-grant-rules*

Proposed Effective Date: *July 1, 2024*

Public Hearing:
Date: *November 9, 2023*
Time: *2:00 p.m.*
Location: *Hearing will be held both in person and via webinar. Department of Administration Building, 5th Floor - Blue Ridge Training Room #5068, 116 W. Jones St., Raleigh, NC 27603*
Pre-registration is required to attend the webinar: https://ncgov.webex.com/weblink/register/r7054a5f44e1edeb17ac66e86258b878e

Reason for Proposed Action: *These rules govern administration of State awards to non-state entities. The rule changes improve clarity for grantees, streamline reporting requirements for agencies, and reduce time burden on OSBM and agency staff. The changes should result in improved compliance with reporting requirements and more effective stewardship of State funds.*

Comments may be submitted to: *Jessica Robinson, NC Office of State Budget and Management, MSC 20320, Raleigh, NC 27699-0320; phone (984) 236-0616; email grants-osbm@osbm.nc.gov*

Comment period ends: *December 15, 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 a written objection to the Rules Review Commission. 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 letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.
☒ **State funds affected**
☐ **Local funds affected**
☐ **Substantial economic impact (>= $1,000,000)**
☒ **Approved by OSBM**
☐ **No fiscal note required**

CHAPTER 03 - STATE BUDGET AND MANAGEMENT

SUBCHAPTER 03M – UNIFORM ADMINISTRATION OF STATE AWARDS OF ~~FINANCIAL ASSISTANCE~~ GRANTS

SECTION .0100 - ORGANIZATION AND FUNCTION

09 NCAC 03M .0101 PURPOSE
Pursuant to G.S. 143C-6-23, the rules in this Subchapter establish reporting requirements for non-State entities that receive, hold, use, or expend ~~State financial assistance~~ grants and ensure the uniform administration of ~~State financial assistance~~ grant funds by all State agencies, recipients, and subrecipients. The requirements of this subchapter shall not apply to:

(1) ~~State financial assistance~~ Grants to non-State entities subject to the audit and other reporting requirements of the Local Government Commission.
(2) Tuition assistance to students.
(3) Public assistance payments from Federal entitlement programs to or on behalf of enrolled individuals.
(4) State funds disbursed to a contractor as defined in this Subchapter.

Authority G.S. 143C-6-22; 143C-6-23.

09 NCAC 03M .0102 DEFINITIONS
~~As used in~~ In addition to the definitions set forth in G.S. 143C-6-23 and G.S. 143C-1-1, the following definitions shall apply to this Subchapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(10)~~(14) "Recipient" means a non-State entity that receives ~~State financial assistance~~ grants directly from a State agency to carry out part of a State program, but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission. For purposes of this Subchapter, "recipient" also includes a non-State entity that would be considered a "subrecipient" pursuant to 2 CFR 200.93 for Federal funds subawarded by a recipient State agency, but does not include a subrecipient as defined in Item ~~(14)~~(17) of this Rule.

~~(11)~~(15) "Single Audit" means an audit that includes an examination of an organization's financial statements, internal controls, and compliance with the requirements of Federal or State awards.

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

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

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

Authority G.S. 143C-6-22; 143C-6-23.

SECTION .0200 - RESPONSIBILITIES OF RECIPIENTS AND SUBRECIPIENTS

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

Expenditures of ~~State financial assistance~~ grants by any recipient or subrecipient shall be in accordance with the cost principles outlined in the Code of Federal Regulations, 2 CFR, Part 200. If the ~~State financial assistance~~ grants ~~includes~~ include federal sources, the recipient or subrecipient shall ensure adherence to the cost principles established in the Code of Federal Regulations, 2 CFR, Part 200.

Authority G.S. 143C-6-22; 143C-6-23.

09 NCAC 03M .0202 RECIPIENT AND SUBRECIPIENT RESPONSIBILITIES

A recipient or subrecipient that receives ~~State financial assistance~~ grants shall ensure that those funds are utilized for their intended purpose and shall expend those funds in compliance with

requirements established by this Subchapter and their contract. Recipients and subrecipients shall:

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

(2) Maintain reports and accounting records that support the allowable expenditure of State funds. Recipients and subrecipients shall make available all reports and records for inspection by the awarding agency, the Office of State Budget and Management, and the Office of the State Auditor for oversight, monitoring, and evaluation purposes.

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

Authority G.S. 143C-6-22; 143C-6-23.

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

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

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

(2) Level II - A recipient or subrecipient that receives, holds, uses, or expends ~~State financial assistance~~ grants in an amount ~~of at least twenty-five thousand ($25,000) or greater, but less than five hundred thousand dollars ($500,000)~~ equal to or greater than the dollar amount requiring audit as listed in 2 CFR 200.501(a) within its fiscal year.

~~(3) Level III – A recipient or subrecipient that receives, holds, uses, or expends State financial assistance in an amount equal to or greater than five hundred thousand dollars ($500,000) within its fiscal year.~~

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

(1) All recipients and subrecipients shall provide a certification that ~~State financial assistance~~ grants received or, held was used for the purposes for which it was awarded.

(2) All recipients and subrecipients shall provide an accounting of all ~~State financial assistance~~ grants received, held, used, or expended.

(3) ~~Level II and III~~ All recipients and subrecipients shall report on activities and accomplishments undertaken by the recipient, including reporting on any performance measures established in the contract.

(4) Level ~~III~~ II recipients and subrecipients shall have a single or program-specific audit prepared and completed in accordance with Generally Accepted Government Auditing Standards, also known as the Yellow Book.

(c) All reports shall be filed with the disbursing agency in the format and method specified by the agency no later than three months after the end of the recipient's fiscal year, unless the same information is already required through more frequent reporting. Audits must be provided to the funding agency no later than nine months after the end of the recipient's fiscal year.

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

(e) Unless prohibited by law, the costs of audits made in accordance with the provisions of this Rule shall be allowable charges to State and Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with cost principles outlined in the Code of Federal Regulations, 2 CFR Part 200. The cost of any audit not conducted in accordance with this Subchapter shall not be charged to State awards.

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

Authority G.S. 143C-6-22; 143C-6-23.

SECTION .0400 - RESPONSIBILITIES OF AGENCIES

09 NCAC 03M .0401 AGENCY RESPONSIBILITIES

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

(1) Notify each recipient, at the time the ~~State financial assistance~~ grant award is made, of the purpose of the award and the reporting requirements established in this Subchapter.

(2) Prior to disbursing any ~~State financial assistance:~~ grant funds:

(A) Register each State assistance program with the Office of State Budget and Management in the format and method specified by the Office of State Budget and Management.

(B) Execute a contract with the recipient that complies with the requirements of this Subchapter.

(C) Report each individual award to the Office of State Budget and Management in the format and method

specified by the Office of State Budget and Management.

(D) Follow the procedures for disbursement of ~~State financial assistance.~~ grant funds.

(3) Develop compliance supplement reports that describe standards of compliance and audit procedures to give direction to independent auditors. This report shall be provided to the State and Local Government Finance Division in the North Carolina Department of State Treasurer for inclusion in the North Carolina State Compliance Supplement.

(4) Develop a monitoring plan for each State assistance program the agency oversees and ~~submit~~ gain approval of the plan ~~to~~ by the Office of State Budget and ~~Management for approval.~~ Management.

(5) Perform monitoring and oversight functions as specified in agency monitoring plans to ensure that ~~State financial assistance is~~ grant funds are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts, and that performance goals are achieved.

(6) Ensure that ~~State financial assistance is~~ grant funds are spent consistent with the purposes for which it was awarded.

(7) Determine that reporting requirements have been met by the recipient and that all reports have been completed and submitted in accordance with the recipient's contract.

(8) Monitor compliance by recipients with all terms of a contract. Upon determination of noncompliance the agency shall take appropriate action as specified in Section .0800 of this Subchapter.

(9) Require agency internal auditors to conduct periodic audits of agency compliance with requirements of this Subchapter.

(10) Provide all requested documentation when subject to an audit of compliance with the requirements of this Subchapter. Audits may be conducted by the Office of State Budget and Management, the Office of the State Auditor, or the agency's internal auditor.

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

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

Authority G.S. 143C-6-22; 143C-6-23.

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

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

The Office of State Budget and Management shall:

(1) Provide guidelines to agencies for developing monitoring plans and establishing reporting processes that meet the requirements established in this Subchapter.

(2) Maintain a Suspension of Funding list readily accessible to any interested party that identifies any recipient found in noncompliance with the requirements of this Subchapter or the terms of their contract. This list shall serve as notice to other agencies that no further ~~State financial assistance~~ grant funds shall be provided to that recipient until they are removed from the list.

(3) Periodically audit State agencies to ensure compliance with requirements set forth in Section .0400 of this Subchapter.

(4) Upon notification from a disbursing agency that a recipient is no longer noncompliant with the requirements set forth in Section .0200 of this Subchapter, validate that all such noncompliance has been corrected prior to the removal of that recipient from the Suspension of Funding listing. A recipient may appeal to the Office of State Budget and Management to be removed from the Suspension of Funding list if they believe they have been suspended in error. Once removed from the Suspension of Funding list, the recipient is eligible for current and future ~~State financial assistance.~~ grants.

(5) Take appropriate administrative action when the Director of the Budget finds that the recipient has spent or encumbered State funds for an unauthorized purpose, including ensuring allegations of criminal violations are reported to the Attorney General and the State Bureau of Investigation by the disbursing agency.

(6) If the funds are a pass-through of funds awarded by an agency of the United States, consult with the awarding agency of the United States and the State agency that is the recipient of the pass-through funds prior to taking actions authorized by this Subchapter.

Authority G.S. 143C-6-22; 143C-6-23.

SECTION .0700 - CONTRACTING, MONITORING, AND OVERSIGHT

09 NCAC 03M .0703 REQUIRED CONTRACT PROVISIONS

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

to all subrecipient relationships. Each contract agreement shall contain:

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

Authority G.S. 143C-6-22; 143C-6-23.

SECTION .0800 - SANCTIONS

09 NCAC 03M .0801 NONCOMPLIANCE WITH RULES

(a) An agency shall not disburse any ~~State financial assistance~~ grant funds to an entity that is on the Suspension of Funding list.
(b) When a non-State entity does not comply with the requirements of this Subchapter, the agency shall take measures to ensure that the requirements are met, including:
(1) Communicating the requirements in writing to the non-State ~~entity.~~ entity within 30 business days.
(2) Requiring a response in writing from the non-State entity upon a determination of noncompliance.
(3) Suspending payments to the non-State entity until the non-State entity is in compliance.
(c) When an agency discovers evidence of management deficiencies or criminal activity leading to the misuse of funds, the agency shall notify the Office of State Budget and Management and take the appropriate action or actions, such as:
(1) Suspend payments until the matter has been fully investigated and corrective action has been taken.
(2) Terminate the contract and take action to retrieve unexpended funds or unauthorized expenditures.
(3) Report possible violations of criminal statutes involving misuse of State property to the State Bureau of Investigation, in accordance with G.S. 143B-920.
(d) Upon determination of noncompliance with requirements of the contract that are not indicative of management deficiencies or criminal activity, the agency shall give the recipient or subrecipient 60 days written notice to take corrective action. If the recipient or subrecipient has not taken the appropriate corrective action after the 60-day period, the disbursing agency shall notify the Office of State Budget and Management and take the appropriate action or actions, such as:
(1) Suspend payments pending negotiation of a plan of corrective action.
(2) Terminate the contract and take action to retrieve unexpended funds or unauthorized expenditures.
(3) Offset future payments with any amounts ~~improperly spent.~~ spent for purposes other than those described in the signed grant contract.
(e) Each disbursing agency shall ensure that recipients and subrecipients have complied with the applicable provisions of this Subchapter.
(f) Agencies are subject to audit for compliance with the requirements of this Subchapter by the Office of State Budget and Management, the Office of the State Auditor, and agency internal auditors. Any finding of noncompliance by an agency shall be

reported to the Office of State Budget and Management to take appropriate action, as set forth in this Rule.
(g) The Office of State Budget and Management shall notify the agency of the finding and provide 60 days to take corrective action. After the 60-day period, the Office of State Budget and Management shall conduct a follow-up audit to determine if appropriate corrective action has been taken. If an awarding agency fails to take appropriate corrective action or is repeatedly found to be out of compliance with the requirements of this Subchapter, the Office of State Budget and Management shall notify the head of the agency and the State Auditor of the finding.

Authority G.S. 143C-6-22; 143C-6-23.

09 NCAC 03M .0802 RECOVERY OF STATE FUNDS
(a) The disbursing agency shall take appropriate administrative action to recover ~~State financial assistance~~ grant funds in the event a recipient or subrecipient:
(1) Is unable to fulfill the obligations of the contractual agreement.
(2) Is unable to accomplish the purposes of the award.
(3) Is noncompliant with the reporting requirements.
(4) Has ~~inappropriately~~ used ~~State financial assistance.~~ grant funds for purposes other than those described in the signed grant contract.
(b) The disbursing agency shall seek the assistance of the Attorney General in the recovery and return of ~~State financial assistance~~ grant funds if legal action is required.
(c) Any apparent violations of a criminal law or malfeasance, misfeasance, or nonfeasance in connection with the use of ~~State financial assistance~~ grant funds shall be reported by the agency to the Office of State Budget and Management, the Attorney General, and the State Bureau of Investigation.

Authority G.S. 143C-6-22; 143C-6-23.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend the rule cited as 10A NCAC 06T .0201.*

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

Proposed Effective Date: *February 1, 2024*

Public Hearing:
Date: *November 7, 2023*
Time: *10:00 a.m.*
Location: *Microsoft Teams: https://teams.microsoft.com/l/meetup-join/19%3ameeting_NTc5ZjU3ZGItMjQxYy00OTI0LThkMWMtM2Q4Y2NiYWUyMDA5%40thread.v2/0?context=%7b%22Tid%22%3a%227a7681dc-b9d0-449a-85c3-ecc26cd7ed19%22%2c%22Oid%22%3a%22f6e9d6a9-b412-4149-840e-e5ad82f2315f%22%7d*
Microsoft Teams Call In Option +1 984-204-1487,,414453526# United States, Raleigh

Reason for Proposed Action: *Session Law 2021-180 removed the authority for rate setting for adult day services (adult day care and adult day health and respective transportation costs to the facilities) from the Social Services Commission and granted the authority to local entities and county lead agencies. Session Law 2023-65, section 7.5, clarified that a local entity under the State Adult Day Care fund is either a county Department of Social Services or their designee.*

Comments may be submitted to: *Misty L. Piekaar-McWilliams, 693 Palmer Drive, Raleigh, NC 27603; email misty.piekaar@dhhs.nc.gov*

Comment period ends: *December 15, 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 a written objection to the Rules Review Commission. 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 letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.
☐ **State funds affected**
☐ **Local funds affected**
☐ **Substantial economic impact (>= $1,000,000)**
☐ **Approved by OSBM**
☒ **No fiscal note required**

CHAPTER 06 - AGING - PROGRAMS OPERATIONS

SUBCHAPTER 06T – STATE ADULT DAY CARE FUNDING

SECTION .0200 - STATE ADULT DAY CARE FUND

10A NCAC 06T .0201 NATURE AND PURPOSE OF STATE ADULT DAY CARE FUND
(a) The State adult day care fund shall be used for adult day care and adult day health services provided through county

departments of social services for the purpose of enabling people to remain in or return to their own homes.
(b) The fund shall be used to increase ~~state~~ State financial participation in the costs of this service.
(c) ~~The maximum rate for the purchase of adult day care services under contract not exceed thirty three dollars and seven cents ($33.07) per day, per client. The maximum rate for the purchase of adult day health services under contract shall not exceed forty dollars ($40.00) per day, per client.~~ Adult day care services may be purchased for an individual following a preadmission assessment as specified in 10A NCAC 06R .0501. Adult day health services may ~~only~~ be purchased for an individual following a preadmission health assessment as specified in 10A NCAC 06S .0204(c)(2)(A) and a determination that the individual needs one or more services as set forth in 10A NCAC 06S .0402(a).
(d) ~~The maximum reimbursement rate for transporting an adult day care client to an adult day care program not exceed one dollar and fifty cents ($1.50) for a one-way trip.~~ If an adult day care or adult day health provider elects to provide or arrange for transportation services for the individual who attends the program, the county department of social services may reimburse the adult day care or adult day health provider for transporting the individual to the adult day care or adult day health program.

Authority G.S. 143B-153(2a); 143B-153(6); S.L. 1981, c. 1048; S.L. 2021-180; S.L. 2023-65.

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***Notice** is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Radiation Protection Commission intends to readopt with substantive changes the rules cited as 10A NCAC 15 .0301, .0302, .0304, .0305, .0307-.0310 and repeal through readoption the rules cited as 10A NCAC 15 .0303, .0312, .0314, .0315, .0317-.0322, .0324, .0327-.0335, .0337-.0344, .0348, .0351-.0365, .0701, and .0702.*

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

Link to agency website pursuant to G.S. 150B-19.1(c): *https://info.ncdhhs.gov/dhsr/ruleactions.html*

Proposed Effective Date: *May 1, 2024*

Public Hearing:
Date: *December 6, 2023*
Time: *10:00 a.m.*
Location: *Dorothea Dix Park, Edgerton Building, Room 026, 809 Ruggles Drive, Raleigh, NC 27603*

Reason for Proposed Action: *Pursuant to G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years, or they shall expire. As a result of the periodic review of the rules in Chapter 10A NCAC 15, Radiation Protection, these 54 rules were part of the 257 rules from the N.C. Radiation Protection Commission determined as "Necessary With Substantive Public Interest," requiring readoption. With input from advisory committees, working groups of the N.C. Radiation Protection Commission and stake holders, substantive changes are proposed for eight rules for readoption, and 46 rules are proposed for repeal through readoption.*

The eight rules proposed for readoption with substantive changes have been reorganized to incorporate by reference Title 10 of the federal Code of Federal Regulations (10 CFR) for Parts 30 through 33, 35, 36, 40 and 70, including subsequent amendments and editions, instead of repeating the contents of those regulations. General changes to these rules include administrative additions to describe the contents of an application form and to specify that communications be sent to the agency, and minor additions to clarify existing requirements. There are two rule changes of note. One is an addition to 10A NCAC 15 .0301 that defines the term "temporary jobsite" and requires licensees to list temporary jobsites on their licenses if the duration of work at those locations exceeds 180 days over a calendar year. The second is to 10A NCAC 15 .0307 that changes the training requirements for Nuclear Medicine Technologists.

Forty-six rules are proposed for repeal through readoption due to rule requirement redundancy. The requirements from the CFRs in these rules were incorporated by reference into the substantive changes in the proposed rules for readoption therefore these 46 rules are not necessary.

Comments may be submitted to: *Nadine Pfeiffer, 809 Ruggles Drive, 2701 Mail Service Center, Raleigh, NC 27699-2701; email DHSR.RulesCoordinator@dhhs.nc.gov*

Comment period ends: *December 15, 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 a written objection to the Rules Review Commission. 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 letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

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

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

CHAPTER 15 - RADIATION PROTECTION

SECTION .0300 - LICENSING OF RADIOACTIVE MATERIAL

10A NCAC 15 .0301 ~~PURPOSE AND SCOPE~~ GENERAL RULES APPLICABLE TO THE SPECIFIC LICENSING OF BYPRODUCT MATERIAL

~~(a) This Section provides for the licensing of radioactive material. No person shall receive, possess, use, transfer, own, transport, manufacture and produce, or acquire radioactive material except as authorized in a specific or general license issued pursuant to, or as otherwise provided in, this Section.~~

~~(b) In addition to the requirements of this Section:~~

~~(1) All licensees are subject to the requirements of Sections .1000, .1100 and .1600 of this Chapter, except as otherwise provided in the rules of this Section;~~

~~(2) Licensees engaged in industrial radiographic operations are subject to the requirements of Section .0500 of this Chapter;~~

~~(3) Licensees using sealed sources in the healing arts are subject to the requirements of Section .0700 of this Chapter;~~

~~(4) Licensees engaged in the operation of radioactive waste disposal facilities are subject to the requirements of Section .1200 of this Chapter; and~~

~~(5) Licensees engaged in well logging operations are subject to the requirements of Section .1300 of this Chapter.~~

~~(c) The rules in this Section do not apply to persons licensed pursuant to the rules in Section .1200 of this Chapter except as specifically provided otherwise in Section .1200.~~

(a) All persons using byproduct material shall comply with the provisions of 10 CFR 30, which are hereby incorporated by reference including subsequent amendments and editions, as follows:

(1) 10 CFR 30.1, "Scope;"

(2) 10 CFR 30.2, "Resolution of conflict;"

(3) 10 CFR 30.3, "Activities requiring license;"

(4) 10 CFR 30.4, "Definitions," except that references in the definitions to common defense and security shall not apply. The term "temporary jobsite" shall mean a location where byproduct materials are used and stored other than those location(s) of use authorized on the license;

(5) 10 CFR 30.6, "Communications," except that notices and reports required by this Rule shall be made to the agency at the address shown in Rule .0111 of this Chapter in lieu of the NRC;

(6) 10 CFR 30.9, "Completeness and accuracy of information;"

(7) 10 CFR 30.10, "Deliberate misconduct;"

(8) 10 CFR 30.11, "Specific exemptions;"

(9) 10 CFR 30.12, "Persons using byproduct material under certain Department of Energy and Nuclear Regulatory Commission contracts;"

(10) 10 CFR 30.13, "Carriers;"

(11) 10 CFR 30.14, "Exempt concentration;"

(12) 10 CFR 30.15, "Certain items containing byproduct material;"

(13) 10 CFR 30.18, "Exempt quantities;"

(14) 10 CFR 30.19, "Self-luminous products containing tritium, krypton-85, or promethium-147;"

(15) 10 CFR 30.20, "Gas and aerosol detectors containing byproduct material;"

(16) 10 CFR 30.21(a), (b), and (d), "Radioactive drug: Capsules containing carbon-14 urea for "in vivo" diagnostic use for humans;"

(17) 10 CFR 30.22, "Certain industrial devices;"

(18) 10 CFR 30.31, "Types of licenses;"

(19) 10 CFR 30.32(a) – (d) and (f) – (j), "Application for specific licenses," except that the requirements of Paragraph (b) of this Rule shall be met;

(20) 10 CFR 30.33, "General requirements for issuance of specific licenses," except the agency may base the issuance of a specific license on information and evaluations made pursuant to the requirements of the N.C. Department of Environmental Quality in lieu of Subpart A to 10 CFR 51, and the agency shall issue a "Radioactive Materials License" in lieu of Form NRC 374;

(21) 10 CFR 30.34(a) – (c), (e)(2), (e)(4), (f) – (k), "Terms and conditions of licenses;"

(22) 10 CFR 30.35, "Financial assurance and recordkeeping for decommissioning," the initials "DCE" shall mean "detailed cost estimate;"

(23) 10 CFR 30.36, "Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas;"

(24) 10 CFR 30.37, "Application for renewal of licenses;"

(25) 10 CFR 30.38, "Application for amendment of licenses and registration certificates." Licensees shall submit an application for amendment to the agency to add temporary jobsites to the license as authorized places of use if the duration of use or storage at the temporary jobsite exceeds 180 days in any calendar year;

(26) 10 CFR 30.39, "Commission action on applications to renew or amend;"

(27) 10 CFR 30.41(a), (b)(1) – (b)(5), (b)(7), (c), (d), "Transfer of byproduct material;"

(28) 10 CFR 30.50, "Reporting requirements;"

(29) 10 CFR 30.51, "Records;"

(30) 10 CFR 30.52, "Inspections;"

(31) 10 CFR 30.53, "Tests;"

(32) 10 CFR 30.61, "Modification and revocation of licenses and registration certificates;"

(33) 10 CFR 30.62, "Right to cause the withholding or recall of byproduct material;"

(34) 10 CFR 30.70, "Schedule A – Exempt concentrations;"

(35) 10 CFR 30.71, "Schedule B." This schedule shall also be known as the "exempt quantity table;"

(36) 10 CFR 30.72, "Schedule C – Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release;"

(37) Appendix A to Part 30, "Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning;"

(38) Appendix B to Part 30, "Quantities of Licensed Material Requiring Labeling;"

(39) Appendix C to Part 30, "Criteria Relating to Use of Financial Tests and Self Guarantees for Providing Reasonable Assurance of Funds for Decommissioning;"

(40) Appendix D to Part 30 "Criteria Relating To Use of Financial Tests and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Commercial Companies That Have no Outstanding Rated Bonds;" and

(41) Appendix E to Part 30, "Criteria Relating to Use of Financial Tests and Self-Guarantee For Providing Reasonable Assurance of Funds For Decommissioning by Nonprofit Colleges, Universities, and Hospitals."

(b) Applications shall be made on forms provided by the agency. One copy of the application and supporting material shall be submitted to the agency by e-mail at Licensing.RAM@dhhs.nc.gov, or at the address shown in Rule .0111 of this Chapter in lieu of the NRC:

(1) Persons applying for new radioactive materials licenses, or for the renewal of existing radioactive materials licenses, shall submit an Application for Radioactive Materials License. The following information shall appear on the application:

(A) legal business name and mailing address;

(B) physical address(es) where radioactive material shall be used or possessed. The application shall indicate if radioactive materials shall be used at temporary jobsites;

(C) the name, telephone number, and e-mail address of the Radiation Safety Officer;

(D) the name, telephone number, and e-mail address of the individual to be contacted about the application. If this individual is same as the Radiation Safety Officer, the application may so state;

(E) the application shall indicate if the application is for a new license, or for the renewal of an existing license, by marking the corresponding check box;

(F) if the application is for the renewal of an existing license, the license number shall be provided on the application;

(G) applicants shall indicate the type and category of license as shown on the form by marking the corresponding check box; and

(H) the printed name, title, and signature of the certifying official. The certifying official shall be an individual employed by the business or licensee, who is authorized by the licensee to sign license applications on behalf of the business or licensee.

(2) Persons applying for an amendment to an existing license shall submit an Application for Amendment of Radioactive Materials and Accelerator Licenses. The following information shall appear on the application:

(A) the license number;

(B) amendment number of the current license;

(C) expiration date of the license;

(D) licensee name as it currently appears on the license;

(E) the name, telephone number, and e-mail address of the Radiation Safety Officer;

(F) the name, telephone number, and e-mail address of the individual to be contacted about the application. If this individual is same as the Radiation Safety Officer, item 5b on the application may be left blank;

(G) applicants shall provide a description of the action requested by marking the corresponding checkbox in item 6a. If the check box next to "Other" is marked in item 6a, provide a brief description of the action requested in the space provided in item 6b;

(H) explanation of the action requested; and

(I) the printed name, title, and signature of the certifying official. The certifying official shall be an individual employed by the business or licensee who is authorized by the licensee to sign license applications on behalf of the business or licensee.

(3) Applications specified in this Rule are available at: https://radiation.ncdhhs.gov/rms/rmsforms2.htm(Rev01).htm.

(c) Copies of the regulations incorporated by this Rule are available free of charge at https://www.nrc.gov/reading-rm/doc-collections/cfr/part030/.

Authority G.S. 104E-7; 104E-9(8); 104E-10(b).

10A NCAC 15 .0302 ~~EXEMPTIONS FOR SOURCE MATERIAL~~ GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

~~(a) Any person possessing source material, or devices containing source material, in quantities not exceeding the limits of 10 CFR 40.13(a) through (c)(8) shall be exempt from the requirement for a radioactive materials license and shall comply with the provisions of 10 CFR 40.13.~~

~~(b) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beeece594411a03e50b2468ae31f89b&pitd=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.~~

(a) Persons possessing generally licensed items manufactured or initially transferred pursuant to Subpart B of 10 CFR 32 shall comply with the provisions of 10 CFR 31, which are hereby incorporated by reference including subsequent amendments and editions, as follows:

(1) Reports, notifications, and responses to agency requests for information required by this Rule shall be made to the agency at the address shown in Rule .0111 of this Chapter unless directed otherwise by the agency;
(2) 10 CFR 31.1, "Purpose and scope;"
(3) 10 CFR 31.2, "Terms and conditions;"
(4) 10 CFR 31.5, "Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere," except that the fee required by 10 CFR 170.31 shall not apply. Persons using devices described in 31.5(a) shall be registered with the agency. Device registration shall be made in accordance with Paragraph (b) of this Rule and shall contain the information required by 31.5(c)(13)(iii);
(5) 10 CFR 31.6, "General license to install devices generally licensed in 10 CFR 31.5;"
(6) 10 CFR 31.7, "Luminous safety devices in aircraft;"
(7) 10 CFR 31.8, "Americium-241 and radium-226 in the form of calibration or reference sources;"
(8) 10 CFR 31.9, "General license to own byproduct material;"
(9) 10 CFR 31.10, "General license for strontium 90 in ice detection devices;"
(10) 10 CFR 31.11, "General license for use of byproduct material for certain in vitro clinical or laboratory testing," except that persons required by 31.11(b) to register devices with the agency shall comply with the provisions of Paragraph (b) of this Rule;
(11) 10 CFR 31.12, "General license for certain items and self-luminous products containing radium-226;" and
(12) 10 CFR 31.21, "Maintenance of records;"

(b) Persons registering devices shall use General License Application for Registration forms provided by the agency. These forms are available free of charge at: https://radiation.ncdhhs.gov/rms/rmsgenlicforms.htm. Applications and supporting material shall be submitted to the agency by e-mail at Licensing.ram@dhhs.nc.gov, or at the address shown in Rule .0111 of this Chapter in lieu of the NRC. The following information shall appear on the application:

(1) facility name, mailing address, physical address if different from the mailing address, and the name of the county where the facility is located;
(2) type of device;
(3) device manufacturer;
(4) device model numbers and serial numbers;
(5) number of devices being registered, isotopes, and activity;
(6) indicate if the devices have been leak tested by checking the corresponding check box;
(7) if the devices have been leak tested, write down the frequency that leak tests are required;
(8) the name of the person or company performing the leak test;
(9) describe the method of device disposal; and
(10) the signature, printed name, title, date the form is signed and telephone number of the contact person.

(c) Copies of the regulations incorporated by this Rule are available free of charge at https://www.nrc.gov/reading-rm/doc-collections/cfr/part031/.

Authority G.S. 104E-7; 104E-10(b).

10A NCAC 15 .0303 EXEMPT CONCENTRATIONS: OTHER THAN SOURCE MATERIAL

Authority G.S. 104E-7; 104E-10; 104E-20; 10 CFR 30.70.

10A NCAC 15 .0304 ~~EXEMPT QUANTITIES: OTHER THAN SOURCE MATERIAL~~ SPECIFIC LICENSES: MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

~~(a) Any person possessing radioactive material in individual quantities specified in 10 CFR 30.18(a) or (b) shall be exempt from the requirements for a radioactive materials license and shall comply with the provisions of 10 CFR 30.18(c) through (e).~~

~~(b) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beeece594411a03e50b2468ae31f89b&pitd=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.~~

(a) All persons manufacturing or initially transferring items or devices containing exempt quantities or exempt concentrations of byproduct material, generally licensed and specifically licensed

items or devices containing byproduct material, items or devices containing byproduct material for medical use in humans, and persons requesting safety evaluations of sealed sources or devices for registration with the national Sealed Source and Device Registry shall comply with the following requirements of 10 CFR 32:

(1) 10 CFR 32.1(a), (b), and (c)(2), "Purpose and scope;"

(2) 10 CFR 32.2, "Definitions," the term "initially transfer" shall mean the "initial commercial transfer of items and devices to an end user or a commercial or retail reseller;"

(3) 10 CFR 32.3, "Maintenance of records."

(b) All Persons manufacturing or initially transferring items or devices containing exempt quantities of byproduct material shall comply with the following requirements of Subpart A – Exempt Concentrations and Items:

(1) 10 CFR 32.13, "Same: Prohibition of introduction;"

(2) 10 CFR 32.24, "Same: Table of organ doses;" and

(3) applications to manufacture, process, produce, prepare, package, re-package, or initially transfer items or devices for commercial distribution containing exempt concentrations or exempt quantities of byproduct material shall be made to the NRC in lieu of the agency.

(c) All persons manufacturing or initially transferring generally licensed devices containing byproduct material shall comply with Paragraph (g) of this Rule and the following requirements of Subpart B – Generally Licensed Items:

(1) 10 CFR 32.51, "Byproduct material contained in devices for use under 10 CFR 31.5; requirements for license to manufacture, or initially transfer;"

(2) 10 CFR 32.51a, "Same: Conditions of licenses;"

(3) 10 CFR 32.52, "Same: Material transfer reports and records;"

(4) 10 CFR 32.53, "Luminous safety devices for use in aircraft: Requirements for license to manufacture, assemble, repair or initially transfer;"

(5) 10 CFR 32.54, "Same: Labeling of devices;"

(6) 10 CFR 32.55, "Same: Quality assurance; prohibition of transfer;"

(7) 10 CFR 32.56, "Same: Material transfer reports;"

(8) 10 CFR 32.57, "Calibration or reference sources containing americium-241 or radium-226: Requirements for license to manufacture or initially transfer;"

(9) 10 CFR 32.58, "Same: Labeling of devices;"

(10) 10 CFR 32.59, "Same: Leak testing of each source;"

(11) 10 CFR 32.61, "Ice detection devices containing strontium-90; requirements for license to manufacture or initially transfer;"

(12) 10 CFR 32.62, "Same: Quality assurance; prohibition of transfer;" and

(13) 10 CFR 32.71, "Manufacture and distribution of byproduct material in certain in vitro clinical or laboratory testing under general license."

(d) All persons manufacturing or initially transferring items or devices containing byproduct material for medical use in humans shall comply with Paragraph (g) of this Rule and the following requirements of Subpart C – Specifically Licensed Items:

(1) 10 CFR 32.72, "Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing byproduct material for medical use under part 35;" and

(2) 10 CFR 32.74, "Manufacture and distribution of sources or devices containing byproduct material for medical use."

(e) All persons manufacturing sealed sources containing byproduct material in quantities equal to or greater than the quantities listed in Appendix E of 10 CFR 20 shall comply with Paragraph (g) of this Rule and the requirements of 10 CFR 32.201.

(f) All persons manufacturing or initially transferring sealed sources or devices containing byproduct material under this Rule for commercial distribution and persons requesting safety evaluations of sealed sources or devices for registration with the national Sealed Source and Device Registry shall comply with the following requirements of Subpart D – Sealed Source and Device Registration:

(1) 10 CFR 32.210, "Registration of product information;"

(2) 10 CFR 32.211, "Inactivation of certificates of registration of sealed sources and devices;" and

(3) requests for safety evaluations and registration of product information under this Paragraph and inactivation of certificates of registration of sealed sources and devices issued by the agency shall be submitted to the agency by e-mail at Licensing.RAM@dhhs.nc.gov, or at the address shown in Rule .0111 of this Chapter in lieu of the NRC.

(g) Applications shall be made on forms provided by the agency. One copy of the application and supporting material shall be submitted to the agency by e-mail at Licensing.RAM@dhhs.nc.gov, or at the address shown in Rule .0111 of this Chapter in lieu of the NRC:

(1) Persons applying for new radioactive materials licenses, or for the renewal of existing radioactive materials licenses, shall submit an Application for Radioactive Materials License. The following information shall appear on the application:

(A) legal business name and mailing address;

(B) physical address(es) where radioactive material shall be used or possessed. The application shall indicate if radioactive materials shall be used at temporary jobsites;

(C) the name, telephone number, and e-mail address of the Radiation Safety Officer;

(D) the name, telephone number, and e-mail address of the individual to be contacted about the application. If this individual is same as the Radiation Safety Officer, the application may so state;

(E) the application shall indicate if the application is for a new license, or for the renewal of an existing license, by marking the corresponding check box;

(F) if the application is for the renewal of an existing license, the license number shall be provided on the application;

(G) applicants shall indicate the type and category of license as shown on the form by marking the corresponding check box; and

(H) the printed name, title, and signature of the certifying official. The certifying official shall be an individual employed by the business or licensee, who is authorized by the licensee to sign license applications on behalf of the business or licensee.

(2) Persons applying for an amendment to an existing license shall submit an Application for Amendment of Radioactive Materials and Accelerator Licenses. The following information shall appear on the application:

(A) the license number;

(B) amendment number of the current license;

(C) expiration date of the license;

(D) licensee name as it currently appears on the license;

(E) the name, telephone number, and e-mail address of the Radiation Safety Officer;

(F) the name, telephone number, and e-mail address of the individual to be contacted about the application. If this individual is same as the Radiation Safety Officer, item 5b on the application may be left blank;

(G) applicants shall provide a description of the action requested by marking the corresponding checkbox in item 6a. If the check box next to "Other" is marked in item 6a, provide a brief description of the action requested in the space provided in item 6b;

(H) explanation of the action requested; and

(I) the printed name, title, and signature of the certifying official. The certifying official shall be an individual employed by the business or licensee who is authorized by the licensee to sign license applications on behalf of the business or licensee.

(3) Applications specified in this Rule are available at: https://radiation.ncdhhs.gov/rms/rmsforms2.htm(Rev01).htm.

(h) The regulations cited in this Rule from 10 CFR Part 32 are hereby incorporated by reference, including subsequent amendments and editions. Copies of these regulations are available free of charge at https://www.nrc.gov/reading-rm/doc-collections/cfr/part032/.

Authority G.S. 104E-7; 104E-10(b); 104E-20; 10 CFR 30.71.

10A NCAC 15 .0305 ~~EXEMPT ITEM CONTAINING OTHER THAN SOURCE MATERIAL~~ SPECIFIC DOMESTIC LICENSES OF BROAD SCOPE FOR BYPRODUCT MATERIAL

~~(a) Any person possessing items containing radioactive material listed in 10 CFR 30.15(a)(1) through (9) shall be exempt from the requirements for a radioactive materials license and shall comply with the provisions of 10 CFR 30.15.~~

~~(b) Any person possessing self luminous products listed in 10 CFR 30.19(a) shall be exempt from the requirements for a radioactive materials license and shall comply with the provisions of 10 CFR 30.19.~~

~~(c) Any person possessing gas and aerosol detectors listed in 10 CFR 30.20(a) shall be exempt from the requirements for a radioactive materials license and shall comply with the provisions of 10 CFR 30.20.~~

~~(d) Any person possessing radioactive drugs containing carbon-14 urea for diagnostic use in humans listed in 10 CFR 30.21(a) shall be exempt from the requirements for a radioactive materials license and shall comply with the provisions of 10 CFR 30.21.~~

~~(e) Any person possessing industrial devices listed in 10 CFR 30.22(a) shall be exempt from the requirements for a radioactive materials license and shall comply with the provisions of 10 CFR 30.22.~~

~~(f) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beeece594411a03e50b2468ae31f89b&pitd=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.~~

(a) Persons engaging in activities involving the use of more than one type of radioactive material and who have established administrative controls and provisions relating to organization and management, procedures, record keeping, material control and accounting, and management review that are necessary to assure safe operations in compliance with the Rules of this Chapter shall comply with the provisions of 10 CFR 33, which are hereby incorporated by reference including subsequent amendments and editions, as follows:

(1) 10 CFR 33.1, "Purpose and scope;"

(2) 10 CFR 33.11(a), "Types of specific licenses of broad scope;"

(3) 10 CFR 33.12, "Applications for specific licenses of broad scope," except that the requirements of Paragraph (b) of this Rule shall be met;

(4) 10 CFR 33.13, "Requirements for the issuance of a Type A specific license of broad scope;"

(5) 10 CFR 33.16, "Application for other specific licenses;" and

(6) 10 CFR 33.17(a), (b), "Conditions of specific licenses of broad scope."

(b) Applications shall be made on forms provided by the agency. One copy of the application and supporting material shall be submitted to the agency by e-mail at Licensing.RAM@dhhs.nc.gov, or at the address shown in Rule .0111 of this Chapter in lieu of the NRC:

(1) Persons applying for new radioactive materials licenses, or for the renewal of existing radioactive materials licenses, shall submit an Application for Radioactive Materials License. The instructions for completing the application printed on the application form shall be followed. The following information shall appear on the application:

(A) legal business name and mailing address;

(B) physical address(es) where radioactive material shall be used or possessed. The application shall indicate if radioactive materials shall be used at temporary jobsites;

(C) the name, telephone number, and e-mail address of the +Radiation Safety Officer;

(D) the name, telephone number, and e-mail address of the individual to be contacted about the application. If this individual is same as the Radiation Safety Officer, the application may so state;

(E) the application shall indicate if the application is for a new license, or for the renewal of an existing license, by marking the corresponding check box;

(F) if the application is for the renewal of an existing license, the license number shall be provided on the application;

(G) applicants shall indicate the type and category of license as shown on the form by marking the corresponding check box; and

(H) the printed name, title, and signature of the certifying official. The certifying official shall be an individual employed by the business or licensee, who is authorized by the licensee to sign license applications on behalf of the business or licensee.

(2) Persons applying for an amendment to an existing license shall submit an Application for Amendment of Radioactive Materials and Accelerator Licenses. The instructions for completing the application printed on the application form shall be followed. The following information shall appear on the application:

(A) the license number;

(B) amendment number of the current license;

(C) expiration date of the license;

(D) licensee name as it currently appears on the license;

(E) the name, telephone number, and e-mail address of the Radiation Safety Officer;

(F) the name, telephone number, and e-mail address of the individual to be contacted about the application. If this individual is same as the Radiation Safety Officer, item 5b on the application may be left blank;

(G) applicants shall provide a description of the action requested by marking the corresponding checkbox in item 6a. If the check box next to "Other" is marked in item 6a, provide a brief description of the action requested in the space provided in item 6b;

(H) explanation of the action requested; and

(I) the printed name, title, and signature of the certifying official. The certifying official shall be an individual employed by the business or licensee who is authorized by the licensee to sign license applications on behalf of the business or licensee.

(3) Applications specified in this Rule are available at: https://radiation.ncdhhs.gov/rms/rmsforms2.htm(Rev01).htm.

(c) Copies of the regulations incorporated by this Rule are available free of charge at https://www.nrc.gov/reading-rm/doc-collections/cfr/part033/.

Authority G.S. 104E-7; 104E-10(b); 104E-20.

10A NCAC 15 .0307 ~~GENERAL LICENSES: SOURCE MATERIAL~~ MEDICAL USE OF BYPRODUCT MATERIAL IN HUMANS

~~(a) Any person possessing source material in quantities equal to or less than the quantities shown in 10 CFR 40.22(a) shall be issued a general license in accordance with Rule .0306(a) of this Section, and shall comply with the provisions of 10 CFR 40.22(b) through (e).~~

~~(b) Any person possessing depleted uranium for the purpose authorized in 10 CFR 40.25(a) shall be issued a general license in accordance with Rule .0306(a) of this Section, and shall comply with the provisions of 10 CFR 40.25(b) through (e).~~

~~(c) Reports required by 10 CFR 40.22(b)(4) or 40.25(c) shall be sent to the agency at the address shown in Rule .0111 of this Chapter.~~

~~(d) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beeece594411a03e50b2468ae31f89b&pitd=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl~~.

(a) All persons using radioactive materials for medical use in humans shall comply with the general information requirements of Subpart A to 10 CFR 35, as follows:

(1) 10 CFR 35.1, "Purpose and scope;"
(2) 10 CFR 35.2, "Definitions;"
(3) 10 CFR 35.5, "Maintenance of records;"
(4) 10 CFR 35.6, "Provisions for the protection of human research subjects;"
(5) 10 CFR 35.7, "FDA, other Federal, and State requirements;"
(6) 10 CFR 35.10, "Implementation;"
(7) 10 CFR 35.11, "License required," except that 35.11(c)(1) shall not apply;
(8) 10 CFR 35.12, "Application for license, amendment, or renewal," except that the requirements in Paragraph (m) of this Rule shall be met;
(9) 10 CFR 35.13, "License amendments," except that 35.13(a)(1) shall not apply;
(10) 10 CFR 35.14, "Notifications," except that notifications required by this rule shall be submitted to the agency at the address shown in Rule .0111 of this Chapter unless directed otherwise by the agency;
(11) 10 CFR 35.15, "Exemptions regarding Type A specific licenses of broad scope;"
(12) 10 CFR 35.18, "License issuance," except 35.18(a)(2) shall not apply; and
(13) 10 CFR 35.19, "Specific exemptions."

(b) All persons using radioactive materials for medical use in humans shall comply with the general administrative requirements of Subpart B to 10 CFR 35, as follows:

(1) 10 CFR 35.24, "Authority and responsibilities for the radiation safety program;"
(2) 10 CFR 35.26, "Radiation protection program changes;"
(3) 10 CFR 35.27, "Supervision." Persons using instrumentation for the collection of data to be used by a physician shall hold active nuclear medicine technology (N) certification issued by the American Registry of Radiographic Technologists (ARRT) or hold active certification issued by the Nuclear Medicine Technologist Certification Board (NMTCB) within three (3) years of the effective date of this readopted Rule, or shall be in training and under the supervision of an individual holding active ARRT(N) or NMTCB certification or an authorized user;
(4) 10 CFR 35.40, "Written Directives;"
(5) 10 CFR 35.41, "Procedures for administrations requiring a written directive;"
(6) 10 CFR 35.49, "Suppliers for sealed source and devices for medical use;"
(7) 10 CFR 35.50, "Training for Radiation Safety Officer and Associate Radiation Safety Officer;"
(8) 10 CFR 35.51, "Training for an authorized medical physicist;"
(9) 10 CFR 35.55, "Training for an authorized nuclear pharmacist;"
(10) 10 CFR 35.57, "Training for experienced Radiation Safety Officer, teletherapy or medical physicist, authorized medical physicist, authorized user, nuclear pharmacist, and authorized nuclear pharmacist;"
(11) 10 CFR 35.59, "Recentness of training;" and
(12) licensees administering radioactive materials to patients shall have a physician, a nurse practitioner, or a physicians' assistant available to provide emergency life-saving assistance in the event of a medical emergency. These individuals are not required to be users of radioactive materials.

(c) All persons administering radioactive materials to humans not requiring a written directive shall develop, document, maintain, and require the use of, a clinical procedures manual. This manual shall be approved in writing by an authorized user, and shall include, for each nuclear medicine procedure not requiring a written directive performed at the facility:

(1) the range of radiopharmaceutical dosages;
(2) the method used to determine the dosage;
(3) the route of administration;
(4) provision of job-specific training and assistance to medical personnel in the administration of radioactive material for purposes including, but not limited to, the evaluation of cardiac ischemia in the emergent setting and localization of seizure foci as an adjunct to epilepsy monitoring; and
(5) any other information the licensee determines to be useful for patient care, and to prevent the occurrence of medical events.

(d) All persons using radioactive materials for medical use in humans shall comply with the general technical requirements of Subpart C to 10 CFR 35, as follows:

(1) 10 CFR 35.60, "Possession, use, and calibration of instruments used to measure the activity of byproduct material;"
(2) 10 CFR 35.61, "Calibration of survey instruments;"
(3) 10 CFR 35.63, "Determination of dosages of unsealed byproduct material for medical use," except that the determination of dosages of unsealed photon emitting byproduct material shall be made only by direct measurement of radioactivity. If direct measurement of the dosage is not feasible because of the nature of

the radiopharmaceutical, the manufacturer's recommendations for determining the dosage shall be used;

(4) 10 CFR 35.65, "Authorization for calibration, transmission, and reference sources;"

(5) 10 CFR 35.67, "Requirements for possession of sealed sources and brachytherapy sources," except that sealed sources and brachytherapy sources placed in storage may be decayed-in-storage as permitted by Subparagraph (d)(10) of this Paragraph. Brachytherapy sources placed into decay-in-storage shall be exempt from leak testing and the semi-annual inventory requirements of this Subparagraph;

(6) 10 CFR 35.69, "Labeling of vials and syringes," except that syringe shields and dose carriers used to shield or transport syringes labeled in accordance with this Rule shall not be required to be labeled when under the continuous direct control of the individual measuring the dose in accordance with Subparagraph (d)(3) of this Rule and administering the dose to the patient;

(7) 10 CFR 35.70, "Surveys of ambient radiation exposure rate;"

(8) 10 CFR 35.75, "Release of individuals containing unsealed byproduct material or implants containing byproduct material;"

(9) 10 CFR 35.80, "Provision of mobile medical service;" and

(10) 10 CFR 35.92, "Decay-in-storage," except that licensees may hold byproduct material with a half-life of less than or equal to 275 days for decay-in-storage.

(e) Persons using unsealed radioactive material for medical use not requiring a written directive shall comply with the requirements of Subpart D to 10 CFR 35, as follows:

(1) 10 CFR 35.100, "Use of unsealed byproduct material for uptake, dilution, and excretion studies for which a written directive is not required;"

(2) 10 CFR 35.190, "Training for uptake, dilution, and excretion studies;"

(3) 10 CFR 35.200, "Use of unsealed byproduct material for imaging and localization studies for which a written directive is not required;"

(4) 10 CFR 35.204, "Permissible molybdenum-99, strontium-82, and strontium-85 concentrations;" and

(5) 10 CFR 35.290, "Training for imaging and localization studies."

(f) Persons using unsealed radioactive material for medical use requiring a written directive shall comply with the requirements of Subpart E to 10 CFR 35, as follows:

(1) 10 CFR 35.300, "Use of unsealed byproduct material for which a written directive is required;"

(2) 10 CFR 35.310, "Safety instruction;"

(3) 10 CFR 35.315, "Safety precautions;" except that patient's or human research subject's personal items that cannot be effectively decontaminated to a level indistinguishable from the natural background may be released to them upon discharge, provided that the patient or human research subject is instructed not to share such items with others;

(4) 10 CFR 35.390, "Training for use of unsealed byproduct material for which a written directive is required;"

(5) 10 CFR 35.392, "Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries);"

(6) 10 CFR 35.394, "Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 millicuries);" and

(7) 10 CFR 35.396, "Training for the parenteral administration of unsealed byproduct material requiring a written directive."

(g) Persons using sealed source radioactive material for medical use in manual brachytherapy shall comply with the requirements of Subpart F to 10 CFR 35, as follows:

(1) 10 CFR 35.400, "Use of sources for manual brachytherapy;"

(2) 10 CFR 35.404, "Surveys after source implant and removal;"

(3) 10 CFR 35.406, "Brachytherapy sources accountability;"

(4) 10 CFR 35.410, "Safety instructions;"

(5) 10 CFR 35.415, "Safety precautions;"

(6) 10 CFR 35.432, "Calibration measurements of brachytherapy sources;"

(7) 10 CFR 35.433, "Strontium-90 sources for ophthalmic treatments;"

(8) 10 CFR 35.457, "Therapy-related computer systems;"

(9) 10 CFR 35.490, "Training for use of manual brachytherapy sources;"

(10) 10 CFR 35.491, "Training for ophthalmic use of strontium-90;" and

(11) activities listed in Subparagraphs (g)(6) and (g)(7) of this Rule shall be approved by an Authorized Medical Physicist.

(h) Persons using sealed source radioactive material for medical diagnosis shall comply with the requirements of Subpart G to 10 CFR 35, as follows:

(1) 10 CFR 35.500, "Use of sealed sources and medical devices for diagnosis;" and

(2) 10 CFR 35.590, "Training for use of sealed sources and medical devices for diagnosis."

(i) Persons using sealed source radioactive material for medical use in remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units shall comply with the requirements of Subpart H to 10 CFR 35, as follows:

(1) 10 CFR 35.600, "Use of a sealed source in a remote afterloading unit, teletherapy unit, or gamma stereotactic radiosurgery unit;"

(2) 10 CFR 35.604, "Surveys of patients and human research subjects treated with a remote afterloader unit;"
(3) 10 CFR 35. 605, "Installation, maintenance, and repair;"
(4) 10 CFR 35.610, "Safety procedures and instructions for remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units;"
(5) 10 CFR 35.615, "Safety precautions for remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units;"
(6) 10 CFR 35.630, "Dosimetry equipment;"
(7) 10 CFR 35.632, "Full calibration measurements on teletherapy units;"
(8) 10 CFR 35.633, "Full calibration measurements on remote afterloader units;"
(9) 10 CFR 35.635, "Full calibration measurements on stereotactic radiosurgery units;"
(10) 10 CFR 35.642, "Periodic spot-checks for teletherapy units;"
(11) 10 CFR 35.643, "Periodic spot-checks for remote afterloader units;"
(12) 10 CFR 35.645, "Periodic spot-checks for on stereotactic radiosurgery units;"
(13) 10 CFR 35.647, "Additional technical requirements for mobile remote afterloader units;"
(14) 10 CFR 35.652, "Radiation surveys;"
(15) 10 CFR 35.655, "Full-inspection servicing for teletherapy and gamma stereotactic radiosurgery units;"
(16) 10 CFR 35.657, "Therapy-related computer systems;" and
(17) 10 CFR 35.690, "Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units."

(j) Persons using radioactive material for medical use, or radiation from radioactive material for medical use, that are not specifically addressed in Paragraphs (e) through (i) of this Rule shall comply with requirements of Subpart K to 10 CFR 35.

(k) All persons licensed by the agency for the medical use of radioactive material shall maintain records required by Subpart L to 10 CFR 35, as follows:

(1) 10 CFR 35.2024, "Records of authority and responsibilities for radiation protection programs;"
(2) 10 CFR 35.2026, "Records of radiation protection program changes;"
(3) 10 CFR 35.2040, "Records of written directives;"
(4) 10 CFR 35.2041, "Records of procedures for administrations requiring a written directive;"
(5) 10 CFR 35.2060, "Records of calibrations of instruments used to measure the activity of unsealed byproduct materials;"
(6) 10 CFR 35.2061, "Records of radiation survey instrument calibrations;"
(7) 10 CFR 35.2063, "Records of dosages of unsealed byproduct material for medical use;"
(8) 10 CFR 35.2067, "Records of leak tests of sealed sources and brachytherapy sources;"
(9) 10 CFR 35.2070, "Records of surveys for ambient radiation exposure rate;"
(10) 10 CFR 35.2075, "Records of the release of individuals containing unsealed byproduct material or implants containing byproduct material;"
(11) 10 CFR 35.2080, "Records of mobile medical services;"
(12) 10 CFR 35.2092, "Records of decay-in-storage;"
(13) 10 CFR 35.2203, "Records of molybdemum-99, strontium-82, and strontium-85 concentrations;"
(14) 10 CFR 35.2310, "Records of safety instruction;"
(15) 10 CFR 35.2404, "Records of surveys after source implant and removal;"
(16) 10 CFR 35.2406, "Records of brachytherapy source accountability;"
(17) 10 CFR 35.2432, "Records of calibration measurements of brachytherapy sources;"
(18) 10 CFR 35.2433, "Records of decay of strontium-90 sources for ophthalmic treatments;"
(19) 10 CFR 35.2605, "Records of installation, maintenance, adjustment, and repair of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units;"
(20) 10 CFR 35.2610, "Records of safety procedures;"
(21) 10 CFR 35.2630, "Records of dosimetry equipment used with remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units;"
(22) 10 CFR 35.2632, "Records of teletherapy, remote afterloader, and gamma stereotactic radiosurgery full calibrations;"
(23) 10 CFR 35.2642, "Records of periodic spot-checks for teletherapy units;"
(24) 10 CFR 35.2643, "Records of periodic spot-checks for remote afterloader units;"
(25) 10 CFR 35.2645, "Records of periodic spot-checks for gamma stereotactic radiosurgery units;"
(26) 10 CFR 35.2647, "Records of additional technical requirements for mobile remote afterloader units;"
(27) 10 CFR 35.2652, "Records of surveys of therapeutic treatment units;" and
(28) 10 CFR 35.2655, "Records of full-inspection servicing for teletherapy and gamma stereotactic radiosurgery units."

(l) All persons licensed by the agency for the medical use of radioactive material shall make, or cause to be made, the reports required by Subpart M to 10 CFR Part 35. Notifications made by

telephone shall be made to the agency in lieu of the NRC Operations Center. Written reports and correspondence required by this Rule shall be submitted to the agency at the address shown in Rule .0111 of this Chapter unless otherwise directed by the agency, in lieu of the NRC Regional Office:

(1) 10 CFR 35.3045, "Report and notification of a medical event;"

(2) 10 CFR 35.3047, "Report and notification of a dose to an embryo/fetus or a nursing child;"

(3) 10 CFR 35.3067, "Report of a leaking source;" and

(4) 10 CFR 35.3204, "Report and notification for an eluate exceeding permissible molybdenum-99, strontium-82, and strontium-85 concentrations."

(m) Applications shall be made on forms provided by the agency. One copy of the application and supporting material shall be submitted to the agency by e-mail at Licensing.RAM@dhhs.nc.gov, or at the address shown in Rule .0111 of this Chapter in lieu of the NRC:

(1) Persons applying for new radioactive materials licenses, or for the renewal of existing radioactive materials licenses, shall submit an Application for Radioactive Materials License. The following information shall appear on the application:

(A) legal business name and mailing address;

(B) physical address(es) where radioactive material shall be used or possessed. The application shall indicate if radioactive materials shall be used at temporary jobsites;

(C) the name, telephone number, and e-mail address of the Radiation Safety Officer;

(D) the name, telephone number, and e-mail address of the individual to be contacted about the application. If this individual is same as the Radiation Safety Officer, the application may so state;

(E) the application shall indicate if the application is for a new license or for the renewal of an existing license by marking the corresponding check box;

(F) if the application is for the renewal of an existing license, the license number shall be provided on the application;

(G) applicants shall indicate the type and category of license as shown on the form by marking the corresponding check box; and

(H) the printed name, title, and signature of the certifying official. The certifying official shall be an individual employed by the business or licensee, who is authorized by the licensee to sign license applications on behalf of the business or licensee.

(2) Persons applying for an amendment to an existing license shall submit an Application for Amendment of Radioactive Materials and Accelerator Licenses. The following information shall appear on the application:

(A) the license number;

(B) amendment number of the current license;

(C) expiration date of the license;

(D) licensee name as it currently appears on the license;

(E) the name, telephone number, and e-mail address of the Radiation Safety Officer;

(F) the name, telephone number, and e-mail address of the individual to be contacted about the application. If this individual is same as the Radiation Safety Officer, item 5b on the application may be left blank;

(G) applicants shall provide a description of the action requested by marking the corresponding checkbox in item 6a. If the check box next to "Other" is marked in item 6a, provide a brief description of the action requested in the space provided in item 6b;

(H) explanation of the action requested; and

(I) the printed name, title, and signature of the certifying official. The certifying official shall be an individual employed by the business or licensee who is authorized by the licensee to sign license applications on behalf of the business or licensee.

(3) Applications specified in this Rule are available free of charge at: https://radiation.ncdhhs.gov/rms/rmsforms2.htm(Rev01).htm.

(n) The regulations cited in this Rule from 10 CFR 35 are hereby incorporated by reference, including subsequent amendments and editions. Copies of these regulations are available free of charge at https://www.nrc.gov/reading-rm/doc-collections/cfr/part035/.

Authority G.S. 104E-7; 104E-10(b).

10A NCAC 15 .0308 ~~GENERAL LICENSES: OTHER THAN SOURCE MATERIAL~~ LICENSES AND RADIATION SAFETY REQUIREMENTS FOR IRRADIATORS

~~Any person possessing static elimination devices, or ion generating tubes containing 500 microcuries or less of Polonium-210, or ion generating tubes containing 50 millicuries or less of tritium, shall comply with Rule .0305(a) of this Section.~~

(a) Persons irradiating objects or materials using sealed sources containing radioactive materials shall comply with the provisions

of 10 CFR 36, which are hereby incorporated by reference including subsequent amendments and editions, except that the requirements of 10 CFR 170 shall not apply, as follows:

(1) 10 CFR 36.1, "Purpose and scope;"
(2) 10 CFR 36.2, "Definitions," except that references to common defense and security shall not apply;
(3) 10 CFR 36.11, "Application for a specific license," except that the requirements of Paragraph (b) of this Rule shall be met;
(4) 10 CFR 36.13, "Specific licenses for irradiators;"
(5) 10 CFR 36.15, "Commencement of construction;"
(6) 10 CFR 36.17, "Applications for exemptions;"
(7) 10 CFR 36.19, "Requests for written statements;"
(8) 10 CFR 36.21, "Performance criteria for sealed sources;"
(9) 10 CFR 36.23, "Access control;"
(10) 10 CFR 36.25, "Shielding;"
(11) 10 CFR 36.27, "Fire protection;"
(12) 10 CFR 36.29, "Radiation monitors;"
(13) 10 CGR 36.31, "Control of source movement;"
(14) 10 CFR 36.33, "Irradiator pools;"
(15) 10 CFR 36.35, "Source rack protection;"
(16) 10 CFR 36.37, "Power failures;"
(17) 10 CFR 36.39, "Design requirements;"
(18) 10 CFR 36.41, "Construction monitoring and acceptance testing;"
(19) 10 CFR 36.51, "Training;"
(20) 10 CFR 36.53, "Operating and emergency procedures;"
(21) 10 CFR 36.55, "Personnel monitoring;"
(22) 10 CFR 36.57, "Radiation surveys;"
(23) 10 CFR 36.59, "Detection of leaking sources;"
(24) 10 CFR 36.61, "Inspection and maintenance;"
(25) 10 CFR 36.63, "Pool water quality;"
(26) 10 CFR 36.65, "Attendance during operations;"
(27) 10 CFR 36.67, "Entering and leaving the radiation room;"
(28) 10 CFR 36.69, "Irradiation of explosive or flammable materials;"
(29) 10 CFR 36.81, "Records and retention periods;" and
(30) 10 CFR 36.83, "Reports," except that reports required by this Rule shall be made to the agency at the address shown in Rule .0111 of this Chapter unless directed otherwise by the agency, in lieu of the NRC.

(b) Applications shall be made on forms provided by the agency. One copy of the application and supporting material shall be submitted to the agency by e-mail at Licensing.RAM@dhhs.nc.gov, or at the address shown in Rule .0111 of this Chapter in lieu of the NRC:

(1) Persons applying for new radioactive materials licenses, or for the renewal of existing radioactive materials licenses, shall submit an Application for Radioactive Materials License. The following information shall appear on the application:
(A) legal business name and mailing address;
(B) physical address(es) where radioactive material shall be used or possessed. The application shall indicate if radioactive materials shall be used at temporary jobsites;
(C) the name, telephone number, and e-mail address of the Radiation Safety Officer;
(D) the name, telephone number, and e-mail address of the individual to be contacted about the application. If this individual is same as the Radiation Safety Officer, the application may so state;
(E) the application shall indicate if the application is for a new license, or for the renewal of an existing license, by marking the corresponding check box;
(F) if the application is for the renewal of an existing license, the license number shall be provided on the application;
(G) applicants shall indicate the type and category of license as shown on the form by marking the corresponding check box; and
(H) the printed name, title, and signature of the certifying official. The certifying official shall be an individual employed by the business or licensee, who is authorized by the licensee to sign license applications on behalf of the business or licensee.

(2) Persons applying for an amendment to an existing license shall submit an Application for Amendment of Radioactive Materials and Accelerator Licenses. The following information shall appear on the application:
(A) the license number;
(B) amendment number of the current license;
(C) expiration date of the license;
(D) licensee name as it currently appears on the license;
(E) the name, telephone number, and e-mail address of the Radiation Safety Officer;
(F) the name, telephone number, and e-mail address of the individual to be contacted about the application. If this individual is same as the Radiation Safety Officer, item 5b on the application may be left blank;
(G) applicants shall provide a description of the action requested by marking the corresponding checkbox in item 6a. If

the check box next to "Other" is marked in item 6a, provide a brief description of the action requested in the space provided in item 6b;

(H) explanation of the action requested; and

(I) the printed name, title, and signature of the certifying official. The certifying official shall be an individual employed by the business or licensee who is authorized by the licensee to sign license applications on behalf of the business or licensee.

(3) Applications specified in this Rule are available at: https://radiation.ncdhhs.gov/rms/rmsforms2.htm(Rev01).htm.

(c) Copies of the regulations incorporated by this Rule are available free of charge at https://www.nrc.gov/reading-rm/doc-collections/cfr/part036/.

Authority G.S. 104E-7; 104E-10(b).

10A NCAC 15 .0309 ~~GENERAL LICENSES: MEASURING GAUGING: CONTROLLING DEVICES~~ DOMESTIC LICENSING OF SOURCE MATERIAL

~~(a) Any person possessing devices listed in 10 CFR 31.5(a) meeting the requirements of 10 CFR 31.5(b) shall be issued a general license in accordance with Rule .0306(a) of this Section, and shall comply with the provisions of 10 CFR 31.5(c) and (d), except that the fees specified in 10 CFR 31.5(c)(13)(ii) shall not apply to persons issued a general license under this Rule.~~

~~(b) Reports, requests for prior approval to transfer devices authorized under this Rule, and any other correspondence required by 10 CFR 31.5 shall be sent to the agency at the address listed in Rule .0111 of this Chapter.~~

~~(c) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beeece594411a03e50b2468ae31f89b&pitd=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.~~

(a) Persons using source material and byproduct material as defined in this Rule shall comply with the provisions of 10 CFR 40, which are hereby incorporated by reference including subsequent amendments and editions, except that references to importation and exportation of radioactive material and references to and requirements of 10 CFR 70.22(b), (c), (f) – (n), and 10 CFR 110 shall not apply, as follows:

(1) 10 CFR 40.1, "Purpose;"

(2) 10 CFR 40.2, "Scope;"

(3) 10 CFR 40.2a, "Coverage of inactive tailings sites;"

(4) 10 CFR 40.3, "Licensing requirements;"

(5) 10 CFR 40.4, "Definitions," except that the definition of "foreign obligations," "reconciliation," and references in the definitions to common defense and security shall not apply;

(6) 10 CFR 40.5, "Communications," except that notices and reports shall be made to the agency at the address shown in Rule .0111 of this Chapter unless directed otherwise by the agency or specified otherwise in this Rule, in lieu of the NRC;

(7) 10 CFR 40.9, "Completeness and accuracy of information;"

(8) 10 CFR 40.10, "Deliberate misconduct;"

(9) 10 CFR 40.11, "Persons using source material under certain Department of Energy and Nuclear Regulatory Commission contracts;"

(10) 10 CFR 40.12(a), "Carriers;"

(11) 10 CFR 40.13, "Unimportant quantities of source material," except 10 CFR 40.13(c)(5)(iv);

(12) 10 CFR 40.14, "Specific Exemptions;"

(13) 10 CFR 40.20, "Types of licenses;"

(14) 10 CFR 40.21, "General license to receive title to source or byproduct material;"

(15) 10 CFR 40.22, "Small quantities of source material;"

(16) 10 CFR 40.25, "General license for use of certain industrial products or devices;"

(17) 10 CFR 40.26, "General license for possession and storage of byproduct material as defined in this part;"

(18) 10 CFR 40.31(a), (b), (d), (f) – (i), "Application for specific licenses," except that the requirements of Paragraph (b) of this Rule shall be met, the agency may require information and evaluations made pursuant to the requirements of the N.C. Department of Environmental Quality in lieu of Subpart A to 10 CFR 51, and reports required by 10 CFR 40.31(g) shall be submitted to the NRC in lieu of the agency;

(19) 10 CFR 40.32, "General requirements for issuance of specific licenses," except that the agency may base the issuance of a specific license on information and evaluations made pursuant to the requirements of the N.C. Department of Environmental Quality in lieu of Subpart A to 10 CFR 51, and 10 CFR 40.32(d), (g), and references to and requirements for uranium enrichment and uranium hexafluoride facilities shall not apply;

(20) 10 CFR 40.34, "Special requirements for issuance of specific licenses;"

(21) 10 CFR 40.35, "Conditions of specific licenses issued pursuant to 10 CFR 40.34;"

(22) 10 CFR 40.36, "Financial assurance and recordkeeping for decommissioning," the initials "DCE" shall mean "detailed cost estimate;"

(23) 10 CFR 40.41(a) – (c), (e)(2), (e)(4), (f), "Terms and conditions of licenses;"

(24) 10 CFR 40.42, "Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas;"
(25) 10 CFR 40.43, "Renewal of licenses;"
(26) 10 CFR 40.44, "Amendment of licenses at request of licensee;"
(27) 10 CFR 40.45, "Commission action on application to renew or amend;"
(28) 10 CFR 40.46, "Inalienability of licenses;"
(29) 10 CFR 40.51(a), (b)(1) – (b)(5), (b)(7), (c), (d), "Transfer of source or byproduct material;"
(30) 10 CFR 40.54, "Requirements for license to initially transfer source material for use under the 'small quantities of source material' general license;"
(31) 10 CFR 40.55, "Conditions of licenses to initially transfer source material for use under the 'small quantities of source material' general license: Quality control, labeling, safety instructions, and records and reports;"
(32) 10 CFR 40.60, "Reporting requirements;"
(33) 10 CFR 40.61, "Records;"
(34) 10 CFR 40.62, "Inspections;"
(35) 10 CFR 40.63, "Tests;"
(36) 10 CFR 40.65, "Effluent monitoring reporting requirements;"
(37) 10 CFR 40.71, "Modification and revocation of licenses," and
(38) Appendix A to Part 40, "Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material From Ores Processed Primarily for Their Source Material Content," except Criterion 11A - F and 12 shall not apply.

(b) Applications shall be made on forms provided by the agency. One copy of the application and supporting material shall be submitted to the agency by e-mail at Licensing.RAM@dhhs.nc.gov, or at the address shown in Rule .0111 of this Chapter in lieu of the NRC:

(1) Persons applying for new radioactive materials licenses, or for the renewal of existing radioactive materials licenses, shall submit an Application for Radioactive Materials License. The following information shall appear on the application:
  (A) legal business name and mailing address;
  (B) physical address(es) where radioactive material shall be used or possessed. The application shall indicate if radioactive materials shall be used at temporary jobsites;
  (C) the name, telephone number, and e-mail address of the Radiation Safety Officer;
  (D) the name, telephone number, and e-mail address of the individual to be contacted about the application. If this individual is same as the Radiation Safety Officer, the application may so state;
  (E) the application shall indicate if the application is for a new license, or for the renewal of an existing license, by marking the corresponding check box;
  (F) if the application is for the renewal of an existing license, the license number shall be provided on the application;
  (G) applicants shall indicate the type and category of license as shown on the form by marking the corresponding check box; and
  (H) the printed name, title, and signature of the certifying official. The certifying official shall be an individual employed by the business or licensee, who is authorized by the licensee to sign license applications on behalf of the business or licensee.
(2) Persons applying for an amendment to an existing license shall submit an Application for Amendment of Radioactive Materials and Accelerator Licenses. The following information shall appear on the application:
  (A) the license number;
  (B) amendment number of the current license;
  (C) expiration date of the license;
  (D) licensee name as it currently appears on the license;
  (E) the name, telephone number, and e-mail address of the Radiation Safety Officer;
  (F) the name, telephone number, and e-mail address of the individual to be contacted about the application. If this individual is same as the Radiation Safety Officer, item 5b on the application may be left blank;
  (G) applicants shall provide a description of the action requested by marking the corresponding checkbox in item 6a. If the check box next to "Other" is marked in item 6a, provide a brief description of the action requested in the space provided in item 6b;
  (H) explanation of the action requested; and
  (I) the printed name, title, and signature of the certifying official. The certifying official shall be an individual employed by the business or licensee who is authorized by the licensee to sign license applications on behalf of the business or licensee.
(3) Applications specified in this Rule are available at:

https://radiation.ncdhhs.gov/rms/rmsforms2.htm(Rev01).htm.

(c) Copies of the regulations incorporated by this Rule are available free of charge at https://www.nrc.gov/reading-rm/doc-collections/cfr/part040/.

Authority G.S. 104E-7; 104E-10(b).

10A NCAC 15 .0310 ~~GENERAL LICENSES: MANUFACTURE, TRANSFER, INSTALL GENERALLY LICENSED DEVICES~~ DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

~~(a) Any person possessing a specific license issued by the agency, the U.S. Nuclear Regulatory Commission, or another Agreement State authorizing the manufacture, installation, or servicing of a device described in Rule .0309 of this Section shall be authorized to install, service, and uninstall these devices in accordance with the provisions of 10 CFR 31.6.~~

~~(b) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beeece594411a03e50b2468ae31f89b&pitd=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.~~

(a) Persons using special nuclear material as defined in this Rule shall comply with the provisions of 10 CFR 70, which are hereby incorporated by reference including subsequent amendments and editions, as follows:

(1) 10 CFR 70.1(a) and (b), "Purpose;"
(2) 10 CFR 70.2, "Scope;"
(3) 10 CFR 70.3, "License requirements;"
(4) 10 CFR 70.4, "Definitions," except that references in the definitions to common defense and security shall not apply;
(5) 10 CFR 70.5, "Communications," except that notices and reports shall be made to the agency at the address shown in Rule .0111 of this Chapter in lieu of the NRC unless otherwise specified by the agency;
(6) 10 CFR 70.9, "Completeness and accuracy of information;"
(7) 10 CFR 70.10, "Deliberate misconduct;"
(8) 10 CFR 70.11, "Persons using special nuclear material under certain DOE and NRC contracts;"
(9) 10 CFR 70.12, "Carriers;"
(10) 10 CFR 70.17, "Specific exemption;"
(11) 10 CFR 70.18, "Types of licenses;"
(12) 10 CFR 70.19, "General license for calibration and reference sources;"
(13) 10 CFR 70.20, "General license to own special nuclear material;"
(14) 10 CFR 70.21(a)(2), (a)(3), (b), "Filing," except that the requirements of Paragraph (b) of this Rule shall be met;
(15) 10 CFR 70.22(a), (d), and (e), "Contents of application;"
(16) 10 CFR 70.23(a)(1) – (5), "Requirements for the approval of applications;"
(17) 10 CFR 70.25(a)(2), (b) – (h), "Financial assurance and recordkeeping for decommissioning," the initials "DCE" shall mean "detailed cost estimate;"
(18) 10 CFR 70.31(a) and (b), "Issuance of license;"
(19) 10 CFR 70.32(a)(2), (a)(3), (a)(8), (a)(9), (b)(2), and (b)(5), "Conditions of licenses;"
(20) 10 CFR 70.33, "Applications for renewal of licenses;"
(21) 10 CFR 70.34, "Amendment of licenses;"
(22) 10 CFR 70.35, "Commission action on applications to renew or amend;"
(23) 10 CFR 70.36, "Inalienability of licenses;"
(24) 10 CFR 70.38, "Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor structures;"
(25) 10 CFR 70.39, "Specific licenses for the manufacture or initial transfer of calibration sources;"
(26) 10 CFR 70.41, "Authorized use of special nuclear material;"
(27) 10 CFR 70.42(a), (b)(1) – (b)(5), (b)(7), (c), (d), "Transfer of special nuclear material;"
(28) 10 CFR 70.50, "Reporting requirements;"
(29) 10 CFR 70.51, "Records requirements;"
(30) 10 CFR 70.55(a) and (b), "Inspections;"
(31) 10 CFR 70.56, "Tests;" and
(32) 10 CFR 70.81, "Modification and revocation of licenses."

(b) Applications shall be made on forms provided by the agency. One copy of the application and supporting material shall be submitted to the agency by e-mail at Licensing.RAM@dhhs.nc.gov, or at the address shown in Rule .0111 of this Chapter in lieu of the NRC:

(1) Persons applying for new radioactive materials licenses, or for the renewal of existing radioactive materials licenses, shall submit an Application for Radioactive Materials License. The following information shall appear on the application:
  (A) legal business name and mailing address;
  (B) physical address(es) where radioactive material shall be used or possessed. The application shall indicate if radioactive materials shall be used at temporary jobsites;
  (C) the name, telephone number, and e-mail address of the Radiation Safety Officer;
  (D) the name, telephone number, and e-mail address of the individual to be contacted about the application. If this individual is same as the Radiation Safety Officer, the application may so state;

(E) the application shall indicate if the application is for a new license, or for the renewal of an existing license, by marking the corresponding check box;

(F) if the application is for the renewal of an existing license, the license number shall be provided on the application;

(G) applicants shall indicate the type and category of license as shown on the form by marking the corresponding check box; and

(H) the printed name, title, and signature of the certifying official. The certifying official shall be an individual employed by the business or licensee, who is authorized by the licensee to sign license applications on behalf of the business or licensee.

(2) Persons applying for an amendment to an existing license shall submit an Application for Amendment of Radioactive Materials and Accelerator Licenses. The following information shall appear on the application:

(A) the license number;

(B) amendment number of the current license;

(C) expiration date of the license;

(D) licensee name as it currently appears on the license;

(E) the name, telephone number, and e-mail address of the Radiation Safety Officer;

(F) the name, telephone number, and e-mail address of the individual to be contacted about the application. If this individual is same as the Radiation Safety Officer, item 5b on the application may be left blank;

(G) applicants shall provide a description of the action requested by marking the corresponding checkbox in item 6a. If the check box next to "Other" is marked in item 6a, provide a brief description of the action requested in the space provided in item 6b;

(H) explanation of the action requested; and

(I) the printed name, title, and signature of the certifying official. The certifying official shall be an individual employed by the business or licensee who is authorized by the licensee to sign license applications on behalf of the business or licensee.

(3) Applications specified in this Rule are available at: https://radiation.ncdhhs.gov/rms/rmsforms2.htm(Rev01).htm.

(c) Copies of the regulations incorporated by this Rule are available free of charge at https://www.nrc.gov/reading-rm/doc-collections/cfr/part070/.

Authority G.S. 104E-7; 104E-10(b).

10A NCAC 15 .0312 GENERAL LICENSES: CALIBRATION AND REFERENCE

Authority G.S. 104E-7; 104E-10(b).

10A NCAC 15 .0314 GENERAL LICENSES: IN VITRO CLINICAL OR LABORATORY TESTING
10A NCAC 15 .0315 GENERAL LICENSES: ICE DETECTION DEVICES

Authority G.S. 104E-7; 104E-10(b).

10A NCAC 15 .0317 SPECIFIC LICENSES: FILING APPLICATION AND GENERAL REQUIREMENT
10A NCAC 15 .0318 SPECIFIC LICENSES: GENERAL REQUIREMENTS FOR HUMAN USE
10A NCAC 15 .0319 SPECIFIC LICENSES: HUMAN USE IN HOSPITALS
10A NCAC 15 .0320 SPECIFIC LICENSES: HUMAN USE BY INDIVIDUAL PHYSICIANS
10A NCAC 15 .0321 SPECIFIC LICENSES: GENERAL REQUIREMENTS FOR HUMAN USE OF UNSEALED RADIOACTIVE MATERIALS
10A NCAC 15 .0322 SPECIFIC LICENSES: HUMAN USE OF SEALED SOURCES

Authority G.S. 104E-7; 104E-7(2); 104E-10(b); 10 CFR 35.2.

10A NCAC 15 .0324 SPECIFIC LICENSES: BROAD SCOPE

Authority G.S. 104E-7; 104E-10(b).

10A NCAC 15 .0327 SPECIFIC LICENSES: EXEMPT GAS AND AEROSOL DETECTORS
10A NCAC 15 .0328 SPECIFIC LICENSES: MANUFACTURE DEVICES TO PERSONS LICENSED
10A NCAC 15 .0329 SPECIFIC LICENSES: LUMINOUS SAFETY DEVICES IN AIRCRAFT
10A NCAC 15 .0330 SPECIFIC LICENSES: MANUFACTURE OF CALIBRATION SOURCES
10A NCAC 15 .0331 SPECIFIC LICENSES-MANUFACTURE OF IN VITRO TEST KITS
10A NCAC 15 .0332 SPECIFIC LICENSES: MANUFACTURE OF ICE DETECTION DEVICES
10A NCAC 15 .0333 SPECIFIC LICENSES: MANUFACTURE OF RADIOPHARMACEUTICALS
10A NCAC 15 .0334 SPECIFIC LICENSES: GENERATORS AND REAGENT KITS
10A NCAC 15 .0335 SPECIFIC LICENSES: PRODUCTS CONTAINING DEPLETED URANIUM

Authority G.S. 104E-7; 104E-10(b).

10A NCAC 15 .0337 ISSUANCE OF SPECIFIC LICENSES AND SEALED SOURCE AND DEVICE REGISTRATION CERTIFICATES
10A NCAC 15 .0338 SPECIFIC TERMS AND CONDITIONS OF LICENSES
10A NCAC 15 .0339 EXPIRATION AND TERMINATION OF LICENSES AND DECOMMISSIONING
10A NCAC 15 .0340 RENEWAL OF LICENSES
10A NCAC 15 .0341 AMENDMENT OF LICENSES AT REQUEST OF LICENSEE
10A NCAC 15 .0342 AGENCY ACTION ON APPLICATIONS TO RENEW OR AMEND
10A NCAC 15 .0343 TRANSFER OF MATERIAL
10A NCAC 15 .0344 MODIFICATION: REVOCATION: AND TERMINATION OF LICENSES AND SEALED SOURCE AND DEVICE REGISTRATION CERTIFICATES

Authority G.S. 104E-7; 104E-10(b); 104E-13; 104E-18.

10A NCAC 15 .0348 SPECIFIC LICENSES: CERTAIN INCINERATOR FACILITIES

Authority G.S. 104E-7(2); 104E-7(a)(8); 104E-10(b).

10A NCAC 15 .0351 SPECIFIC LICENSES: MOBILE NUCLEAR MEDICINE SERVICES

Authority G.S. 104E-7(a)(2); 104E-10(b).

10A NCAC 15 .0352 EMERGENCY PLANS
10A NCAC 15 .0353 FINANCIAL ASSURANCE AND RECORD-KEEPING FOR DECOMMISSIONING
10A NCAC 15 .0354 METHODS OF FINANCIAL ASSURANCE FOR DECOMMISSIONING
10A NCAC 15 .0355 FINANCIAL TESTS: SELF- AND PARENT CO. GUARANTEES: DECOMMISSIONING FUNDING

Authority G.S. 104E-7; 104E-18; 10 CFR 30.72.

10A NCAC 15 .0356 PROCEDURES FOR ADMINISTRATIONS REQUIRING A WRITTEN DIRECTIVE
10A NCAC 15 .0357 REPORTING REQUIREMENTS

Authority G.S. 104E-7; 104E-7(a)(2); 104E-10(b).

10A NCAC 15 .0358 RELEASE OF PATIENTS CONTAINING RADIOPHARMACEUTICALS OR PERMANENT IMPLANTS

Authority G.S. 104E-7(a)(8); 104E-12.

10A NCAC 15 .0359 MEASUREMENTS/DOSAGES OF UNSEALED RADIOACTIVE MATERIAL FOR MEDICAL USE
10A NCAC 15 .0360 SURVEYS OF RADIOPHARMACEUTICAL AREAS FOR RADIATION EXPOSURE RATE
10A NCAC 15 .0361 MEDICAL USE OF UNSEALED RADIOACTIVE MATERIAL
10A NCAC 15 .0362 DECAY-IN-STORAGE

Authority G.S. 104E-7; 104E-7(a)(2); 104E-10(b); 104E-12.

10A NCAC 15 .0363 PROVISIONS FOR THE PROTECTION OF HUMAN RESEARCH SUBJECTS
10A NCAC 15 .0364 MEDICAL EVENTS
10A NCAC 15 .0365 REPORT AND NOTIFICATION OF A DOSE TO AN EMBRYO/FETUS OR A NURSING CHILD

Authority G.S. 104E-7; 104E-7(a)(2); 104E-10(b); 104E-12.

SECTION .0700 - USE OF SEALED RADIOACTIVE SOURCES IN THE HEALING ARTS

10A NCAC 15 .0701 SCOPE
10A NCAC 15 .0702 MANUAL BRACHYTHERAPY

Authority G.S. 104E-7; 104E-12(a).

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 56 – BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Board of Examiners for Engineers and Surveyors intends to amend the rules cited as 21 NCAC 56 .0502 and .0701.*

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

Proposed Effective Date: *February 1, 2024*

Public Hearing:
Date: *November 15, 2023*
Time: *9:00 a.m.*
Location: *By conference call: (919) 791-2000, Extension 500*

Reason for Proposed Action:
***21 NCAC 56 .0502** – Reflects changes to G.S. 89C-3 [S.L. 2013-98 s. 1] from "Engineering Intern" to "Engineer Intern." Reflects changes to G.S. 89C-13 and 15(b) [S.L. 2013-98] for computer-based testing. Applicants no longer apply to the Board to take the Fundamentals Exam, but can apply to be certified as an Intern after passing the exam. 21 NCAC 56 .0502, .0602 – Changes, for the principles and practices exam, from two to three references who must be licensed.*

21 NCAC 56 .0701 *– The rules of professional conduct need to be revised to reflect the current practice in the profession and the amendment narrows the scope of activities governed by the Rule to focus on core requirements of responsible charge and not ancillary activities. In addition, the revised rule change will be consistent with the model rules of the National Council of Examiners for Engineers and Surveying.*

Comments may be submitted to: *Anna Baird Choi, Rule-making Coordinator, Hedrick Gardner Kincheloe & Garofalo, LLP, 4131 Parklake Ave., Suite 300, Raleigh, NC 27612, Raleigh, NC 27612; phone (919) 341-2658; email NCBELSRulesComments@ncbels.org*

Comment period ends: *December 15, 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 a written objection to the Rules Review Commission. 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 letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

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

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

SECTION .0500 - PROFESSIONAL ENGINEER

21 NCAC 56 .0502 APPLICATION PROCEDURE: INDIVIDUAL

(a) General. A person desiring to become licensed as a Professional Engineer must make application to the Board on a form prescribed and furnished by the Board.

(b) Request. A request for an appropriate application form may be made to the Board office or obtained from the website.

(c) Applicable Forms:

(1) Engineer Intern Certification Form. After passing the fundamentals of engineering examination an applicant may make application to the Board to become certified as an "Engineer Intern." This form requires the applicant to set forth personal history, educational background, engineering experience, and character references. A passport-type photographic quality portrait that is adequate for current identification purposes is also required.

(2) Professional Engineer Form:

(A) All persons, including comity applicants and certified Engineer Interns, shall apply for licensure using the Professional Engineer form. The submission of this form shall signify that the applicant has passed the Fundamentals of engineering examination, and seeks licensure as a Professional Engineer, ~~seeks licensure, and shall result in seating for the principles and practice of engineering examination,~~ when the applicant has met the requirements as set out in Rule .0501 of this Section. This form requires the applicant to set forth personal and educational background, engineering experience and character references. A passport-type photographic quality portrait that is adequate for current identification purposes is required.

(B) Persons who previously completed the fundamentals examination by use of the Engineering Intern Certification Form shall submit the Professional Engineer ~~Certification~~ Application Form to request licensure when ~~qualified to take the examination.~~ as a Professional Engineer, when the applicant has met the requirements as set out in Rule .0501 of this Section.

(3) Supplemental Form. Persons who initially applied for the fundamentals of engineering exam using the Professional Engineer form shall supplement the initial application with this form upon applying for the principles and practice examination. The supplemental form requires that engineering experience from the date of the initial application until the date of the supplemental application be listed. Five references shall be submitted that are current to within one year of the examination date.

(4) Reference Forms:

(A) Persons applying for certification as an Engineer Intern shall submit to the Board names of three individuals who are familiar with the applicant's work, character and reputation, one of whom is a professional engineer. Persons applying to take the examination for principles and practice of engineering shall submit to the Board names of five individuals who are familiar with the applicant's work, character and

reputation. Three of these individuals shall be Professional Engineers.

(B) In addition to the applicant submitting names to the Board of individuals familiar with the applicant's work, character and reputation, those individuals listed shall submit to the Board their evaluations of the applicant on forms supplied to them by the applicant.

(C) The reference form requires the individual evaluating the applicant to state the evaluating individual's profession, knowledge of the applicant and information concerning the applicant's engineering experience, character and reputation.

(D) The Board shall provide the reference forms to the applicant with the application. The reference forms shall then be distributed by the applicant to the persons listed on the application as references. The applicant shall ensure that the individuals listed as references return the reference forms to the Board prior to the filing deadline for the examination.

(d) Fees:

(1) Engineer Intern Certification Form. Once the applicant passes the examination on the fundamentals of engineering and makes application to the Board to become certified as an "Engineer Intern". ~~Intern." the application fee of one hundred dollars ($100.00) is payable.~~

(2) Professional Engineer Form. The application fee of one hundred dollars ($100.00) is payable with the filing of the application.

(3) Comity. The licensure fee of one hundred dollars ($100.00) is payable with the filing of the application.

(4) Examination. The examination fee for any applicant is payable to the National Council of Examiners for Engineering and Surveying (NCEES) at the time of registering to take the exam in accordance with G.S. 89C-14.

(e) The Board shall accept the records maintained by the National Council of Examiners for Engineering and Surveying (NCEES) as evidence of licensure in another state. For comity licensure, the NCEES record shall be accepted in lieu of completing the experience, education and references sections of the application. A comity application, with or without a NCEES record, shall be administratively approved by the Executive Director based upon evidence of current licensure in another jurisdiction based on comparable qualifications, required references and no record of disciplinary action, without waiting for the next regular meeting of the Board at which time the action shall be reported to the Board for final approval.

(f) Model Law Engineer. The term "Model Law Engineer" refers to a person who meets the requirements of this Section by meeting the requirements of NCEES and has a current NCEES record on file and is designated as a "Model Law Engineer." A "Model Law Engineer" application shall be administratively approved by the Executive Director based upon the designation, without waiting for the next regular meeting of the Board at which time the action shall be reported to the Board for final approval.

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

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

SECTION .0700 – RULES OF PROFESSIONAL CONDUCT

21 NCAC 56 .0701 RULES OF PROFESSIONAL CONDUCT

(a) In order to safeguard the life, health, property and welfare of the public and to establish and maintain a high standard of integrity, skills, and practice in the professions of engineering and land surveying, the Rules of Professional Conduct in this Rule are adopted in accordance with G.S. 89C-20 and are binding upon every person holding a certificate of licensure as a Professional Engineer or Professional Land Surveyor (licensee), and on all business entities authorized to offer or perform engineering or land surveying services in this state. All persons licensed under the provisions of Chapter 89C of the General Statutes are charged with having knowledge of the Board Rules, including the Rules of Professional Conduct, and are deemed to be familiar with their provisions and to understand them.

(b) A licensee shall conduct the practice in order to protect the public health, safety and welfare. The licensee shall at all times recognize the primary obligation to protect the public in the performance of the professional duties. If the licensee's engineering or land surveying judgment is overruled under circumstances where the safety, health and welfare of the public are endangered, the licensee shall inform the employer, the client, the contractor, other affected parties and any appropriate regulatory agency of the possible consequences of the situation.

(c) A licensee shall perform services only in areas of the licensee's competence and:

(1) Shall undertake to perform engineering and land surveying assignments only when qualified by education or experience in the specific technical field of professional engineering or land surveying involved;

(2) May accept an assignment or project requiring education or experience outside of the licensee's own ~~field~~ areas of competence, but only to the extent that the services are restricted to those portions or disciplines of the ~~project~~ assignment in which the licensee is qualified. All other portions or disciplines of such ~~project~~ assignment shall be performed by associates, consultants, or employees who are licensed and competent in those portions or ~~disciplines;~~ disciplines.

~~(3) Shall not affix the signature or seal to any engineering or land surveying plan or document dealing with subject matter for which the licensee lacks competence by virtue of education or experience, nor to any such plan or document not prepared under the licensee's direct supervisory control. Direct supervisory control (responsible charge) requires a licensee or employee to carry out all client contacts, provide internal and external financial control, oversee employee training, and exercise control and supervision over all job requirements to include research, planning, design, field supervision and work product review. Direct supervisory control may be accomplished face to face or by other means of communication. A licensee shall not contract with a non-licensed individual to provide these professional services. Research, such as title searches and soil testing, may be contracted to a non-licensed individual, provided that individual is qualified or licensed to provide such service and provided the licensee reviews the work. The licensee may affix the seal and signature to drawings and documents depicting the work of two or more professionals provided it is designated by a note under the seal the specific subject matter for which each is responsible; and~~

~~(4) In circumstances where a licensee in responsible charge of the work is unavailable to complete the work, or the work is a design plan signed and sealed by an out-of-jurisdiction licensee (not a site adaptation of a standard design plan under Rule 21 NCAC 56 .1106) a successor licensee may take responsible charge by performing and documenting all professional services to include developing a design file including work or design criteria, calculations, code research, and any necessary and appropriate changes to the work. The non-professional services, such as drafting, need not be redone by the successor licensee but must distinguish in a clean and obvious manner and accurately reflect the successor licensee's work. The burden is on the successor licensee to show such compliance. The successor licensee shall have control of and responsibility for the work product and the signed and sealed originals of all documents.~~

(d) A licensee shall not affix his or her signature or seal to any engineering or land surveying plan or document for which the licensee was not in responsible charge of the work through direct control and personal supervision. In order to exercise responsible charge of engineering or surveying work, either (a) when delegating tasks to others, (b) in circumstances where a licensee in responsible charge of the work is unavailable to completed the work, or (c) the work is a design plan signed and sealed by an out-of-jurisdiction licensee (not a site adaptation of a standard design plan under Rule 21 NCAC 56 .1106), the licensee must possess full professional knowledge of and control over the work and shall:

(1) Have and exercise the authority to review and to change, reject or approve both the work in progress and the final work product, through examination, evaluation, communication and direction throughout the development of the work;

(2) Be personally aware of the scope of the work, its needs, parameters, limitations and special requirements;

(3) Be capable of answering questions relevant to the surveying or engineering decisions made as part of the services provided, in sufficient detail to demonstrate knowledge of the proficiency in the work; and

(4) Accept full responsibility for the work.

(A) The Burden for demonstrating responsible charge lies with the licensee, including maintaining records, calculations, drawings, surveys, specifications, and other documents associated with the work.

(B) A licensee may affix his or her seal and signature to drawings and documents depicting the work of two or more professionals, provided it is designated by a note under the seal the specific subject matter for which each is responsible.

~~(d)~~(e) A licensee shall issue public statements only in an objective and truthful manner and:

(1) Shall be objective and truthful in all professional reports, statements or testimony. The licensee shall include all relevant and pertinent information in such reports, statements or testimony;

(2) When serving as an expert or technical witness before any court, commission, or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of the licensee's testimony;

(3) Shall issue no statements, criticisms, or arguments on engineering or land surveying matters connected with public policy which are inspired or paid for by an interested party, or parties, unless the licensee has prefaced the comment by explicitly identifying the licensee's name, by disclosing the identities of the party or parties on whose behalf the licensee is speaking, and by revealing the existence of any pecuniary interest the licensee may have in the matters; and

(4) Shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional

reputation, prospects, practice or employment of another engineer or land surveyor, nor indiscriminately criticize another engineer or land surveyor's work in public. Indiscriminate criticism includes statements without valid basis or cause or that are not objective and truthful or that fail to include all relevant and pertinent information. If the licensee believes that another engineer or land surveyor is guilty of misconduct or illegal practice, such information shall be presented to the North Carolina Board of Examiners in the form of a complaint.

~~(e)~~(f) A licensee shall avoid conflicts of interest and:

(1) Shall inform the employer or client, and any reviewing agency, of any business association, interests, or circumstances which could influence judgment or the quality of services;

(2) Shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are disclosed to, and agreed to, in writing, by all interested parties;

(3) Shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products;

(4) Shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with the client or employer in connection with work for which the licensee is responsible;

(5) When in public service as a member, advisor, or employee of a governmental body or department, shall not participate in considerations or actions with respect to services provided by the licensee or the licensee's firm in private engineering and land surveying practices;

(6) Shall not solicit or accept an engineering or land surveying contract from a governmental body on which a principal or officer of the licensee's firm serves as a member; and

(7) Shall not attempt to supplant another engineer or land surveyor in a particular employment after becoming aware that the other has been selected for the employment.

~~(f)~~(g) A licensee shall solicit or accept work only on the basis of qualifications and:

(1) Shall not offer to pay, either directly or indirectly, any commission, political contribution, gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies;

(2) Shall compete for employment on the basis of professional qualification and competence to perform the work. The licensee shall not solicit or submit proposals for professional services containing a false, fraudulent, misleading, deceptive or unfair statement or claim regarding the cost, quality or extent of services to be rendered;

(3) Shall, with regard to fee bidding on public projects, comply with the provisions of G.S. 143-64.31 et seq., (or for federal projects, the Brooks Act, 40 U.S. Code 541 et seq.) and shall not knowingly cooperate in a violation of any provision of G.S. 143-64.31 et seq. (or of 40 U.S. Code 541 et seq.); and

(4) Shall not falsify or permit misrepresentation of academic or professional qualifications and shall only report educational qualifications when a degree or certificate was awarded, unless it is stated that no degree or certificate was awarded. The licensee shall not misrepresent degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments with the intent and purpose of enhancing qualifications and work.

~~(g)~~(h) A licensee shall perform services in an ethical manner, as required by the Rules of Professional Conduct (21 NCAC 56 .0701), and in a lawful manner and:

(1) Shall not knowingly associate with or permit the use of the licensee's name or firm name in a business venture by any person or firm which the licensee knows, or has reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature or is not properly licensed; and

(2) If the licensee has knowledge or reason to believe that another person or firm may be in violation of the Board Rules (21 NCAC 56) or of the North Carolina Engineering and Land Surveying Act (G.S. 89C), shall present such information to the Board in writing in the form of a complaint and shall cooperate with the Board in furnishing such further information or assistance as may be required by the Board. The licensee shall timely respond to all inquiries and correspondence from the Board and shall timely claim correspondence from the U. S. Postal Service, or other delivery service, sent to the licensee from the Board. Timely is defined as within the time specified in the correspondence, or if no time is specified, within 30 days of receipt. Certified mail is timely claimed if prior to being returned by the Post Office to the Board office.

~~(h)~~(i) A Professional Engineer or Professional Land Surveyor who has received a reprimand or civil penalty or whose professional license is revoked, suspended, denied, refused

renewal, refused reinstatement, put on probation, restricted, or surrendered as a result of disciplinary action by another jurisdiction is subject to discipline by the Board if the licensee's action constitutes a violation of G.S. 89C or the rules adopted by the Board.

Authority G.S. 89C-17; 89C-20.

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

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 33 - MIDWIFERY JOINT COMMITTEE

Rule-making Agency: *Midwifery Joint Committee*

Rule Citation: *21 NCAC 33 .0101, .0103 - .0105, .0111, .0112, .0114 - .0118*

Effective Date: *October 1, 2023*

Date Approved by the Rules Review Commission: *September 21, 2023*

Reason for Action: *A serious and unforeseen threat to the public health, safety or welfare. The effective date of a recent act of the General Assembly or of the U.S. Congress, cite: Senate Bill 20/Session Law 2023-14, effective date: May 16, 2023. In accordance with G.S. 150B-21.1(a)(2), the Midwifery Joint Committee (MJC) submits proposed Chapter 33 temporary rules addressing "the effective date of a recent act of the General Assembly or the United States Congress". On May 16, 2023, Senate Bill 20/Session Law 2023-14 Care for Women, Children and Families Act was enacted. Subsequently, Senate Bill 389 Technical Changes to the Midwifery Statues was enacted, granting authority to the MJC to adopt, amend, and repeal rules necessary to administer the provisions of the Article. Legislation directed the MJC to adopt rules to address the Certified Nurse Midwife (CNM) approval to practice independently and in transition to independent practice. These rules include working under a collaborative provider agreement, prescribing authority, and rules governing planned births outside of hospital settings attended by CNMs. Portions of this law become effective October 1, 2023. The adoption of these temporary rules protects the health and safety of the public, clarifies the MJC's requirements for midwifery practice and meets the legislature's charge to promulgate rules to carry out this Law until such time as permanent rules can be adopted.*

SECTION .0100 – MIDWIFERY JOINT COMMITTEE

21 NCAC 33 .0101 ADMINISTRATIVE BODY AND DEFINITIONS

(a) The responsibility for administering the provisions of G.S. 90, Article 10A, shall be assumed by an administrative body, the Midwifery Joint Committee, hereinafter referred to as the "Committee." The certified nurse midwife shall hereinafter be referred to as ~~"midwife."~~ "CNM."

(b) In addition to the definitions set forth in G.S. 90-178.2, the following shall apply to the Rules in this Chapter:

~~(1) "Primary Supervising Physician" means a physician with an active unencumbered license with the North Carolina Medical Board who, by signing the midwife application, shall be held accountable for the on-going supervision, consultation, collaboration, and evaluation of the medical acts performed by the midwife, as defined in the site specific written clinical practice guidelines. A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a primary supervising physician. A physician in a graduate medical education program who is also practicing in a non training situation may supervise a midwife in the non training situation if he or she is fully licensed.~~

~~(2) "Back up Primary Supervising Physician" means a physician licensed by the North Carolina Medical Board who, by signing an agreement with the midwife and the primary supervising physician or physicians shall be held accountable for the supervision, consultation, collaboration, and evaluation of medical acts by the midwife in accordance with the site specific written clinical practice guidelines when the primary supervising physician is not available. The signed and dated agreements for each back up primary supervising physician or physicians shall be maintained at each practice site. A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a back-up primary supervising physician. A physician in a graduate medical education program who is also practicing in a non training situation may be a back up primary supervising physician to a midwife in the non training situation if he or she is fully licensed and has signed an agreement with the midwife and the primary supervising physician.~~

(1) "American Midwifery Certification Board (AMCB)" means the national certifying body for candidates in nurse-midwifery and midwifery who have received their graduate level education in programs accredited by the Accreditation Commission for Midwifery Education.

(2) "Accreditation Commission for Midwifery Education (ACME)" means an accreditation

agency established to advance and promote midwifery education.

(3) "American College of Nurse-Midwives (ACNM)" means the professional association that represents ~~certified nurse-midwives (CNMs)~~ CNMs and certified midwives (CMs) in the United States. ACNM sets the standard for midwifery education and practice in the United States.

(4) "American College of Obstetricians and Gynecologists (ACOG)" means the professional membership organization for ~~obstetrician-gynecologist which~~ obstetrician-gynecologists that produces practice guidelines for health care professionals and educational materials for patients, provides practice management and career support, facilitates program and initiatives to improve women's health, and advocates for members and patients.

~~(5) "Certified Nurse Midwife (CNM)" means a nurse licensed and registered under Article 9A of this Chapter who has completed a midwifery education program accredited by the Accreditation Commission for Midwifery Education, or its successor, passed a national certification examination administered by the American Midwifery Certification Board, or is successor, and has received the professional designation of "Certified Nurse Midwife" (CNM). Certified Nurse Midwives practice in accordance with the Core Competencies for Basic Midwifery Practice, the Standards for the Practice of Midwifery, the Philosophy of the American College of Nurse Midwives (ACNM), and the Code of Ethics promulgated by the ACNM.~~

~~(6) "Collaborating provider" means a physician licensed to practice medicine under Article 1 of this Chapter for a minimum of four years and has a minimum of 8,000 hours of practice and who is or has engaged in the practice of obstetrics or a Certified Nurse Midwife who has been approved to practice midwifery under this Article for a minimum of four years and 8,000 hours.~~

~~(7) "Collaborative provider agreement" means a formal, written agreement between a collaborating provider and a Certified Nurse Midwife with less than 24 months and 4,000 hours of practice as a Certified Nurse Midwife to provide consultation and collaborative assistance or guidance.~~

~~(8) "Interconceptional care" includes, but is not limited to, the following:~~

~~(a) Gynecological care, family planning, perimenopause care, and postmenopause care;~~

~~(b) Screening for cancer of the breast and reproductive tract; and~~

~~(c) Screening for and management of minor infections of the reproductive organs.~~

~~(9) "Intrapartum care" means care that focuses on the facilitation of the physiologic birth process and includes, but is not limited to, the following:~~

~~(a) Confirmation and assessment of labor and its progress;~~

~~(b) Identification of normal and deviations from normal and appropriate interventions, including management of complications, abnormal intrapartum events, and emergencies;~~

~~(c) Management of spontaneous vaginal birth and appropriate third stage management, including the use of uterotonics;~~

~~(d) Performing amniotomy;~~

~~(e) Administering local anesthesia;~~

~~(f) Performing episiotomy and repair; and~~

~~(g) Repairing laceration associated with childbirth.~~

~~(10) "Midwifery" means the act of providing prenatal, intrapartum, postpartum, newborn, and interconceptional care. The term does not include the practice of medicine by a physician licensed to practice medicine when engaged in the practice of medicine as defined by law, the performance of medical acts by a physician assistant or nurse practitioner when performed in accordance with the Rules of the North Carolina Medical Board, the practice of nursing by a RN engaged in the practice of nursing as defined by law, or the performance of abortion, as defined in G.S. 90-21.81.~~

~~(11) "Newborn care" means care that focuses on the newborn and includes, but is not limited to, the following:~~

~~(a) Routine assistance to the newborn to establish respiration and maintain thermal stability;~~

~~(b) Routine physical assessment including APGAR scoring;~~

~~(c) Vitamin K administration;~~

~~(d) Eye prophylaxis for opthalmia neonatorum; and~~

~~(e) Methods to facilitate newborn adaptation to extrauterine life, including stabilization, resuscitation, and emergency management as indicated.~~

~~(12)~~(5) "Obstetrics" means a branch of medical science that deals with ~~birth and with~~ birth, its ~~antecedents~~ antecedents, and sequels, including prenatal, intrapartum, postpartum, newborn or gynecology, and otherwise unspecified primary health services for women.

~~(13) "Postpartum care" means care that focuses on management strategies and therapeutics to facilitate a health puerperium and includes, but is not limited to, the following:~~

~~(a) Management of the normal third stage of labor;~~

(b) Administration of uterotonics after delivery of the infant when indicated;

~~(c) Six weeks postpartum evaluation exam and initiation of family planning; and~~

~~(d) Management of deviations from normal and appropriate interventions, including management of complications and emergencies.~~

~~(14)~~ "Prenatal care" means care that focuses on promotion of a healthy pregnancy using management strategies and therapeutics as indicated and includes, but is not limited to, the following:

~~(a) Obtaining history with ongoing physical assessment of mother and fetus;~~

~~(b) Obtaining and assessing the results of routine laboratory tests;~~

~~(c) Confirmation and dating of pregnancy; and~~

~~(d) Supervising the use of prescription and nonprescription medications, such as prenatalvitamins, folic acid, and iron.~~

History Note: Authority G.S. 90-178.4;
Eff. February 1, 1984;
Amended Eff. July 1, 2000; October 1, 1988;
Readopted Eff. November 1, 2018;
Amended Eff. April 1, 2020;
Temporary Amendment Eff. October 1, 2023.

21 NCAC 33 .0103 ELIGIBILITY AND APPLICATION ~~AND ANNUAL RENEWAL~~

(a) To be eligible for an approval to practice independently as a ~~midwife,~~ CNM, an applicant shall:

(1) submit a completed application for an approval to practice, attesting under oath or affirmation that the information on the application is true and complete, and authorizing the release to the Committee of all information pertaining to the application. ~~The application is posted on the Board of Nursing's website at www.ncbon.com;~~

~~(3)~~(2) submit the approval to practice application fee as established in ~~90-178.4(b)(1);~~ 90-178.4(b)(1) and Rule .0102 of this Section;

(3) have an unencumbered RN license or privilege to practice in all jurisdictions in which a license is or has ever been held.

(4) hold an active, unencumbered North Carolina RN license or privilege to practice;

~~(4)~~(5) ~~have~~ hold an ~~active,~~ unencumbered ~~registered nurse license and midwifery~~ CNM license or an approval to practice in all jurisdictions in which a ~~license/approval~~ license or an approval to practice is or has ever been held;

~~(2)~~(6) ~~submit information on the applicant's education, evidence of the applicant's certification by the American College of Nurse Midwives, Midwifery Certification Board or its successor, identification of the physician or physicians who will supervise the applicant, and the sites where the applicant intends to practice midwifery;~~ provide an official copy of the educational transcript and certificate from American Midwifery Certification Board and the full address of the practice location where the applicant intends to practice midwifery;

~~(6)~~(7) ~~submit a written explanation and all related documents if the midwife has ever been listed as a nurse aide and if there have ever been any substantiated findings pursuant to G.S. 131E-255. The Committee may take these findings into consideration when determining if an approval to practice should be denied pursuant to G.S. 90-178.6. In the event findings are pending, the Committee may withhold taking any action until the investigation is completed; and~~ submit an attestation of completion of at least 24 months experience and 4,000 practice hours as a CNM. ~~The clinical experience shall be in collaboration with a collaborating provider.~~ Documentation of successful completion of this requirement shall be provided to the Committee upon ~~request;~~ request; and

~~(7)~~ ~~complete a criminal background check in accordance with G.S. 90-171.48. G.S. 90-171.48; and~~

~~(5)~~(8) have no pending court conditions as a result of any misdemeanor or felony conviction(s). Applicant shall provide a written explanation and any investigative report or court documents evidencing the circumstances of the crime(s) if requested by the Committee. The Committee may use these documents when determining if an approval to practice should be denied pursuant to ~~G.S. 90-178.6~~ G.S. 90-178.6. ~~and 90-171.37; 90-171.37.~~

~~In the event that any of the information required in accordance with this Paragraph should indicate a concern about the applicant's qualifications, an applicant may be required to appear in person for an interview with the Committee if the Committee determines in its discretion that more information is needed to evaluate the application.~~

~~(b) Each midwife shall annually renew their approval to practice with the Committee no later than the last day of the midwife's birth month by:~~

~~(1) submitting a completed application for renewal, attesting under oath or affirmation that the information on the application is true and complete, and authorizing the release to the Committee of all information pertaining to the application. Applications are located on the Board of Nursing's website at www.ncbon.com;~~

~~(2) attest to having completed the requirements of the Certificate Maintenance Program of the American College of Nurse Midwives, including continuing education requirements, and submit evidence of completion if requested by the Committee as specified in Rule .0111 of this Section;~~

~~(3) submitting the approval to practice renewal fee as established in G.S. 90-178.4(b)(2).~~

(b) An applicant seeking an approval to practice with less than 24 months experience and 4,000 hours of practice as a CNM shall:

(1) submit an application for an approval to practice, attesting under oath or affirmation that the information on the application is true and complete, and authorizing the release to the Committee of all information pertaining to the application. ~~The application can be found on the Board of Nursing's website at www.ncbon.com;~~

(2) submit the approval to practice application fee as established in 90-178.4(b) and Rule .0102 of this Chapter;

(3) hold an ~~active,~~ unencumbered ~~North Carolina RN~~ license or privilege to ~~practice;~~ practice in all jurisdictions in which a license is or has ever been held;

(4) hold an active, unencumbered ~~CNM~~ North Carolina RN license or ~~an approval to practice in all jurisdictions in which a license or an approval to practice is or has ever been held;~~ privilege to practice;

(5) hold an unencumbered CNM license or an approval to practice in all jurisdictions in which a license or an approval to practice is or has ever been held;

~~(5)~~(6) ~~submit information on the applicant's education, evidence of the applicant's maintained certification by the American Midwifery Certification Board or its successor and the sites where the applicant intends to practice midwifery;~~ provide an official copy of the educational transcript and certificate from American Midwifery Certification Board and the full address of the practice location where the applicant intends to practice midwifery;

~~(6)~~(7) submit information identifying the collaborating provider with whom the applicant will collaborate;

~~(7) complete a criminal background check in accordance with G.S. 90-171.48;~~

(8) have no pending court conditions as a result of any misdemeanor or felony conviction(s). Applicant shall provide a written explanation and any investigative report or court documents evidencing the circumstances of the crime(s) if requested by the Committee. The Committee may use these documents when determining if an approval to practice should be denied pursuant to ~~G.S. 90-178.6 and 90-171.37.~~ G.S. 90-178.6.

(c) ~~In the event~~When a CNM seeks independent practice, the CNM shall submit a new application for an approval to practice independently, attesting under oath or affirmation that the information on the application is true and complete, and authorizing the release to the Committee of all information pertaining to the application and required fee.

(d) Applications are posted on the Board of Nursing's website at www.ncbon.com. The following information shall appear on the application:

(1) the applicant's name, telephone number and email address;

(2) the applicant's primary address of residence;

(3) the educational degrees obtained by the applicant with the program name and completion date;

(4) the number and expiration date of the applicant's national certification from the AMCB;

(5) other professional or occupational licenses with the license number and jurisdiction in which the license was issued, if applicable;

(6) the name, license number, telephone number, email address, and practice location of the collaborating provider, if applicable; and

(7) the approval to practice number shall be provided on the application if the application is for the renewal or reinstatement of an existing approval to practice.

(e) All educational transcripts and certification ~~must~~ shall be submitted directly to the Board from the primary source.

(f) In the event that any information required in accordance with this Rule should indicate a ~~concern about the applicant's qualifications,~~ discrepancy in the application, an applicant may be required to appear in person for an interview with the Committee if the Committee determines in its discretion that more information is needed to evaluate the application.

History Note: Authority G.S. ~~90-171.37;~~ 90-171.48; 90-178.4(b); 90-178.5;
Eff. February 1, 1984;
Amended Eff. March 1, 2017; January 1, 1989;
Readopted Eff. November 1, 2018;
Amended Eff. April 1, 2020;
Temporary Amendment Eff. October 1, 2023.

21 NCAC 33 .0104 ~~PHYSICIAN SUPERVISION~~ PROVIDER COLLABORATION REQUIRED

~~The applicant shall furnish the committee evidence that the applicant will perform the acts authorized by the Midwifery Practice Act under the supervision of a physician who is actively engaged in the practice of obstetrics in North Carolina. Such evidence shall include a description of the nature and extent of~~

~~such supervision and a delineation of the procedures to be adopted and followed by each applicant and the supervising physician responsible for the acts of said applicant for rendering health care services at the sites at which such services will be provided. Such evidence shall include:~~

~~(1) mutually agreed upon written clinical practice guidelines that define the individual and shared responsibilities of the midwife and the supervising physician or physicians in the delivery of health care services;~~

~~(2) mutually agreed upon written clinical practice guidelines for ongoing communication that provide for and define appropriate consultation between the supervising physician or physicians and the midwife;~~

~~(3) periodic and joint evaluation of services rendered, such as chart review, case review, patient evaluation, and review of outcome statistics; and~~

~~(4) periodic and joint review and updating of the written medical clinical practice guidelines.~~

(a) A CNM who has practiced fewer than 24 months and 4,000 hours of practice as a CNM shall practice in consultation with a collaborating provider in accordance with a collaborative provider agreement in compliance with Rule .0116 of this Chapter.

(b) The approval to practice of the CNM practicing under the supervision of a collaborative provider agreement is terminated when the CNM discontinues working within the approved collaborative provider agreement or experiences an interruption in their RN licensure status. The CNM shall notify the Committee in writing within five days of the termination of the collaborative provider agreement.

(c) The CNM shall have 90 days to submit a newly-executed collaborative provider agreement with a collaborative provider to the Committee. During this 90-day period, the CNM may continue to practice midwifery in accordance with the Midwifery Practice Act and this Chapter. Should the 90-day period expire without a newly-executed collaborative provider agreement being submitted to the Committee, the approval to practice is rendered inactive and the CNM shall be required to submit an application for reinstatement of the approval to practice consistent with Rule .0103 and Rule .0115 of this Chapter. The Committee will notify the CNM when the application has been approved and the approval to practice is reinstated.

(d) To be eligible a collaborative provider shall:

(1) hold an active, unencumbered approval to practice as a CNM and have a minimum of four years and 8,000 hours of practice as a CNM; or

(2) hold an active, unencumbered license to practice medicine in North Carolina and be actively engaged in the practice of obstetrics.

(e) A CNM who has practiced over 24 months and has 4,000 hours of practice as a CNM may be issued an approval to practice midwifery independently and shall consult and collaborate with and refer patients to such other health care providers as may be appropriate for the care of the patient.

History Note: Authority G.S. 90-178.3; 90-178.4(b);
Eff. February 1, 1984;
Amended Eff. July 1, 2000; October 1, 1988; April 1, 1985;
Readopted Eff. November 1, 2018;
Temporary Amendment Eff. October 1, 2023.

21 NCAC 33 .0105 DISCIPLINARY ACTION

(a) The ~~midwife~~ CNM is subject to G.S. 90-171.37; 90-171.48 and 21 NCAC 36 .0217 by virtue of the license to practice as a ~~registered nurse.~~ RN.

(b) After notice and hearing in accordance with provisions of G.S. 150B, Article 3A, the Committee may take disciplinary action ~~may be taken by the Committee~~ if it finds one or more of the ~~following is found:~~ following:

(1) practicing without a valid approval to practice as a CNM;

~~(2) immoral or dishonorable conduct pursuant to and consistent with G.S. 90-178.6;~~

~~(3)~~(2) presenting false information to the Committee in procuring or attempting to procure an approval to practice as a CNM;

~~(4)~~(3) the CNM is adjudicated mentally incompetent by a court of competent jurisdiction or the CNM's mental or physical condition renders the CNM unable to safely function as a CNM;

~~(5)~~(4) unprofessional conduct by reason of deliberate or negligent acts or omissions and contrary to the prevailing standards for ~~CNMs;~~ CNMs as set forth by ACNM;

~~(6)~~(5) conviction of a criminal offense ~~which bears on the CNM's ability to practice or that the CNM~~ where the CNM has deceived or defrauded the public;

~~(7)~~(6) soliciting or attempting to solicit payments for the CNM practice with false representations;

~~(8)~~(7) ~~lack of professional competence as a CNM;~~ failure to maintain professional competence as a CNM such that the CNM would no longer be eligible for certification by the ACMB or the ACNM;

~~(9)~~(8) exploiting the patient, including the promotion of the sale of services, appliances, or drugs, for the financial gain of the CNM or of a third party;

~~(10)~~(9) failure to respond to inquiries of the Committee for investigation and discipline;

~~(11)~~(10) the CNM has engaged or attempted to engage in the performance of midwifery acts other than according to the collaborative provider agreement or without being approved by the Committee to practice independently;

~~(12) failure to maintain competence as a CNM;~~

(11) failure to obtain a written, informed consent agreement from a patient;

(12) practiced or offered to practice beyond the scope of CNM practice as defined in Rule .0112 of this Chapter;

(13) failure to comply with any order of the Committee;

(14) violating any term of probation, condition, or limitation imposed on the CNM by the Committee; or

(15) any violation within this Chapter.

~~(b)~~(c) After an investigation is completed, the Committee may recommend one of the following:

(1) dismiss the case;

(2) issue a private letter of concern;

(3) enter into negotiation for a Consent Order; or

(4) a disciplinary hearing in accordance with G.S. 150B, Article 3A.

(d) Upon a finding of a violation of Chapter 90, Article 10A of the North Carolina General Statutes and the rules of this Subchapter, the Committee may utilize the range of disciplinary options as enumerated in G.S. 90-178.6 and 90-178.7.

History Note: Authority G.S. ~~90-171.37; 90-171.43; 90-171.44; 90-171.48;~~ 90-178.6; 90-178.7;
Eff. February 1, 1985;
Amended Eff. August 1, 2002; October 1, 1988;
Readopted Eff. November 1, 2018;
Amended Eff. April 1, 2020;
Temporary Amendment Eff. October 1, 2023.

21 NCAC 33 .0111 CONTINUING EDUCATION (CE)

(a) In order to maintain an approval to practice midwifery, a ~~midwife~~ CNM shall meet the requirements of the Certificate Maintenance Program of the American ~~College of Nurse-Midwives,~~ Midwifery Certifying Board, including continuing education requirements. These requirements are hereby incorporated by reference, including subsequent amendments or editions, and may be accessed at no cost at: https://www.amcbmidwife.org/certificate-maintenance-program/purpose-objectives. ~~Every midwife who prescribes controlled substances shall complete at least one hour of continuing education (CE) hours annually consisting of CE designated specifically to address controlled substances prescribing practices, signs of the abuse or misuse of controlled substances, and controlled substance prescribing for chronic pain management. Documentation of continuing education shall be maintained by the midwife for the previous five calendar years and made available upon request to the Committee.~~

(b) Prior to prescribing ~~controlled substances as the same are defined in 21 NCAC 33 .0117,~~ Controlled Substances (Schedules II, IIN, III, IIIN, IV, V) defined by the State and Federal Controlled Substances Act, CNMs shall have completed a minimum of one CE hour within the preceding 12 months on one or more of the following topics:

(1) Controlled substances prescription practices;

(2) Prescribing controlled substances for chronic pain management;

(3) Recognizing signs of controlled substance abuse or misuse; or

(4) Non-opioid treatment options as an alternative to controlled substances.

(c) The CNM shall maintain documentation ~~Documentation~~ of all CE completed within the previous five years ~~shall be maintained by the CNM~~ and ~~made~~ make available ~~upon request~~ to the ~~Committee.~~ Committee upon request.

History Note: Authority ~~G.S. 90-5.1; 90-14(a)(15); 90-178.5(2);~~ G.S. 90-178.3; 90-178.5(a)(2); S.L. 2015-241, s. 12F .16(b);
Eff. March 1, 2017;
Readopted Eff. November 1, 2018;
Temporary Amendment Eff. October 1, 2023.

21 NCAC 33 .0112 SCOPE OF PRACTICE

The CNM's scope of practice is defined by academic educational preparation and national certification and maintained competence. ~~A CNM shall be held accountable by the Committee for a broad range of personal health services or which the CNM is educationally prepared and for which competency has been maintained once the CNM has been authorized to practice midwifery. These services include:~~ Scope of practice is set by the ACNM at https://www.midwife.org/acnm/files/acnmlibrarydata/uploadfilename/000000000266/Definition%20Midwifery%20Scope%20of%20Practice_2021.pdf, is available at no cost, and is hereby incorporated by reference, including subsequent amendments and editions. Scope of practice includes:

(1) diagnosing, treating, and managing a full range of primary health care services to the patient throughout the lifespan, including gynecologic care, family planning services, preconception care, prenatal and postpartum care, childbirth, and care of the newborn;

~~(2) promotion and maintenance of health care services for the patient throughout their lifespan;~~

~~(3)~~(2) treating ~~patient~~ patients and their partners for sexually transmitted ~~disease~~ diseases and reproductive health;

~~(4)~~(3) providing care in diverse ~~settings, which may include~~ settings such as home, hospital, birth center, and a variety of ambulatory care settings including private offices and community and public health clinics;

~~(5)~~(4) prescribing, administering, and dispensing therapeutic measures, tests, procedures, and drugs;

~~(6)~~(5) planning for situations beyond the ~~CNM~~ CNM's scope of practice and expertise by collaborating, consulting with, and referring to other health care providers as appropriate; and

~~(7)~~(6) evaluating health outcomes.

History Note: Authority G.S. 90-18.8; 90-178.3;
Temporary Adoption Eff. October 1, 2023.

21 NCAC 33 .0114 ANNUAL RENEWAL

(a) The CNM shall renew the approval to practice ~~shall be renewed~~ annually no later than the last day of the applicant's birth month by:

(1) maintaining an active, unencumbered North Carolina RN license or privilege to practice;

(2) submitting a completed application as outlined in Rule .0103 of this Chapter for renewal, attesting under oath or affirmation that the

information on the application is true and complete, and authorizing the release to the Committee of all information pertaining to the application; ~~as outlined in Rule .0103 of this Chapter. Applications are located on the Board of Nursing's website at www.ncbon.com;~~

(3) ~~attest~~ attesting to having completed the requirements of the Certificate Maintenance Program of the American Midwifery Certification Board or its successor, including continuing education requirements, and submit evidence of completion if requested by the Committee as specified in Rule .0111 of this Chapter; and

(4) submitting the approval to practice renewal fee as established in G.S. 90-178.4(b)(2) and this Chapter.

(b) It shall be the duty of the CNM to keep the Committee informed of a current mailing address, telephone number, and email address.

(c) If the CNM has not renewed by end of ~~their~~ his or her birth month and submitted the annual fee, the approval to practice shall expire.

History Note: Authority G.S. 90-178.4(b); 90-178.5; Temporary Adoption Eff. October 1, 2023.

21 NCAC 33 .0115 INACTIVE STATUS

(a) Any CNM who wishes to place their approval to practice on an inactive status shall notify the Committee in writing.

(b) A CNM with an inactive approval to practice status shall not practice as a CNM.

(c) A CNM with an inactive approval to practice status who reapplies for an approval to practice shall meet the qualifications for an approval to practice in ~~Rule. 0103~~ Rule .0103 of this Chapter and shall not resume practicing until ~~receive~~ notification is received ~~from~~ that the Committee has granted the ~~of approval prior to beginning practice after the application is approved.~~ application.

(d) A CNM who has not practiced as a CNM in more than two years shall complete a midwifery refresher course approved by the ~~Commission~~ Commission. The refresher course shall be based on the American College of Nurse-Midwives' reentry to midwifery practice ~~guidelines~~ guidelines, which are hereby incorporated by reference, including subsequent amendments or editions and are available at no cost at: http://www.midwife.org/Re-entry-Guidelines-for-CNMs/CMs. The refresher course shall be directly related to the CNM's area of academic education and national certification. A midwifery refresher course participant shall be granted an approval to practice that is limited to clinical activities required by the refresher course.

History Note: Authority G.S. 90-178.3; 90-178.5; Temporary Adoption Eff. October 1, 2023.

21 NCAC 33 .0116 COLLABORATIVE PROVIDER AGREEMENT

(a) A CNM with less than 24 months and 4,000 hours of practice as a CNM is required to have a written collaborative provider agreement to practice midwifery. The collaborative provider agreement shall:

(1) be agreed upon, signed, and dated by both the collaborating provider and the CNM, and maintained in each provider site;

(2) be reviewed at least ~~annually~~ annually, to ensure that the CNM and collaborating provider continue to practice under the terms of the agreement, and determine whether any changes to the agreement are necessary. This review shall be acknowledged by a dated signature sheet, signed by both the collaborating provider and the CNM, appended to the collaborative provider agreement, and available for inspection by the Committee;

(3) include mutually agreed upon written clinical practice guidelines for the drugs, devices, medical treatments, tests, and procedures that may be prescribed, ordered, and performed by the CNM; and

(4) include a pre-determined plan for emergency services.

(b) The collaborating provider and the CNM shall be available to each other for consultation by ~~direct~~ in-person communication or telecommunication.

(c) ~~A~~ The CNM shall maintain a copy of the collaborative provider agreement executed within the previous five years ~~shall be maintained by the CNM~~ and ~~made~~ make available ~~upon request of the Committee.~~ to the Committee upon request.

History Note: Authority G.S. 90-18.8; 90-178.3; 90-178.4; 90-178.5; Temporary Adoption Eff. October 1, 2023.

21 NCAC 33 .0117 PRESCRIBING AUTHORITY

(a) The prescribing stipulations contained in this rule apply to writing prescriptions and ordering the administration of medications by a CNM.

(b) A CNM must possess a valid United States Drug Enforcement Administration ("DEA") registration in order ~~for~~ to prescribe controlled substances.

(c) ~~the CNM to~~ To act as a collaborating provider for ~~another CNM. The~~ a CNM, the DEA registration of the collaborating provider shall include the same ~~schedule(s)~~ schedule or schedules of controlled substances as the CNM practicing under a collaborative provider agreement.

~~(c)~~(d) Prescribing and dispensing stipulations for the CNM authorized to practice under a collaborative provider agreement are as follows:

~~(1) Drugs and devices that may be prescribed by the CNM shall be included in the collaborative provider agreement as outlined in Rule .0116 of this Chapter.~~

~~(2)~~(1) The collaborative provider agreement outlined in Rule .0116 of this Chapter shall include the ~~Drugs~~ drugs and devices that ~~may be prescribed by~~ the CNM ~~shall be included in the collaborative provider agreement as outlined in Rule .0116 of this Chapter.~~ may prescribe.

~~(A)~~(2) The CNM has an assigned DEA number that is entered on each prescription for a controlled ~~substance;~~ substance.

~~(B)~~(3) Refills may be issued consistent with Controlled ~~Substance laws and regulations;~~ Substances (Schedules II, IIN, III, IIIN, IV, V) defined by the State and Federal Controlled Substances ~~Act;~~ Act. ~~and~~

~~(C)~~(4) The collaborative provider shall possess a schedule(s) of controlled substances equal to or greater than the CNM's DEA registration.

(5) The CNM may prescribe a drug or device not included in the collaborative provider agreement only as follows:

(A) Upon a specific written or verbal order obtained from the collaborating provider before the prescription or order is issued by the CNM; and

(B) The written or verbal order as described in Part (c)(3)(A) of this rule shall be entered into the patient record with a notation that it is issued on the specific order of a collaborating provider and signed by the CNM and the collaborating provider.

~~(d)~~(e) All prescribing ~~stipulations~~ requirements shall be written in the patient's chart and shall include the medication and dosage, the amount prescribed, the directions for use, the number of refills, and the signature of the CNM.

~~(e)~~(f) The prescriptions issued by the CNM shall contain:

(1) the name of the patient;

(2) the CNM's ~~name~~ name, approval to practice number issued by the Committee, and telephone number; and

(3) the CNM's assigned DEA number shall be written on the prescription form when a controlled substance is prescribed.

~~(f)~~(g) A CNM shall not prescribe controlled substances for the CNM's own use, the use of the CNM's collaborating provider, the use of the CNM's immediate family, the use of any other person living in the same residence as the CNM, or the use of any person with whom the CNM is having a sexual relationship. As used in this Paragraph, "immediate family" means a spouse, parent, child, sibling, parent-in-law, son-in-law or daughter-in-law, brother-in-law or sister-in-law, step-parent, step-child, or step-sibling.

History Note: Authority G.S. 90-18.8; 90-178.3; Temporary Adoption Eff. October 1, 2023.

21 NCAC 33 .0118 BIRTH OUTSIDE HOSPITAL SETTING

(a) ~~A CNM approved to practice may attend and provide midwifery services for a planned birth outside of a hospital setting for a pregnancy deemed low-risk by the American College of Obstetricians and Gynecologists (ACOG).~~ Prior to initiating care for a patient planning a ~~home~~ birth outside of a hospital setting, the CNM shall be required to:

(1) obtain a signed, written informed consent agreement with the patient that ~~includes:~~ details:

(A) identifying information of the patient to include name, date of birth, address, phone number, and email address if available;

(B) identifying information of the CNM to include the name, RN license number, approval to practice number, practice name, if applicable, and email address;

(C) information about the procedures, benefits, and risks of planned births outside of hospital settings;

(D) an acknowledgment and understanding of the clear assumption of these risks by the patient;

(E) when and if deemed necessary by the CNM, an acknowledgment by the patient to consent to transfer to a health care facility ~~when and if deemed necessary by the CNM;~~ licensed under Chapter 122C or Chapter 131E of the General Statutes that has at least one operating room; and

(F) a disclosure that the CNM is not covered under a policy of liability insurance, if applicable.

(2) ~~Provide the patient with~~ The CNM shall provide a detailed, written plan ~~for transfer~~ of care ~~to a health care facility under emergent and non-emergent transfer. Such plan shall be signed and dated by both the patient and the CNM and shall include:~~

~~(A) the name of and distance to the nearest health care facility licensed under Chapter 122C or Chapter 131E of the General Statutes that has at least one operating room;~~

~~(B) the procedures for transfer, including modes of transportation and methods for notifying the relevant health care facility of impending transfer; and~~

~~(C) an affirmation that the relevant health care facility has been notified of the plan for emergent and non-emergent transfer by the CNM.~~ consistent with G.S. 90-178.4(a2).

(3) After a decision ~~to~~ of non-emergent transfer care has been made, the CNM shall:

(A) call the relevant receiving health care facility to notify them of transfer;

(B) provide a copy of the patient's medical record to the receiving health care facility; and

(C) provide a verbal summary of the care provided by the CNM to the patient

and newborn, if applicable, to the receiving health care facility.

(4) In an emergent situation, the CNM shall initiate emergency care as indicated by the situation and ~~immediate~~ immediately transfer ~~of~~ care by making a reasonable ~~effort~~ effort, dependent upon the circumstances and nature of the emergency, to contact the health care professional or facility to whom the ~~patient(s)~~ patient or patients will be transferred and to follow the health care professional's instructions; remain with the patient(s) until transfer of care is completed; and continue emergency care as needed while:

(A) transporting the patient(s) by private vehicle; or

(B) calling 911 and reporting the need for immediate transfer.

(b) Copies of the informed consent agreement and emergent and non-emergent transfer of care plans shall be maintained in the patient's record and provided to the Committee upon request.

(c) A CNM approved to practice may attend and provide midwifery services for a planned home birth outside of a hospital setting for a pregnancy deemed low-risk by the American College of Obstetricians and Gynecologists (ACOG). No CNM shall attend or provide midwifery services to a patient for a planned home birth outside of a hospital setting for known situations contraindicated by ACOG ~~including~~ specifically fetal malpresentation, multiple gestation, and prior cesarean.

History Note: Authority G.S. 90-18.8; 90-178.3; 90-178.4; Temporary Adoption Eff. October 1, 2023.

This Section contains information for the meeting of the Rules Review Commission September 21, 2023 and October 5, 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	**Appointed by House**
Jeanette Doran (Chair)	Barbara A. Jackson (1st Vice Chair)
Jay R. Hemphill	Randy Overton (2nd Vice Chair)
Jeff Hyde	Wayne R. Boyles, III
Brandon Leebrick	Jake Parker
Bill Nelson	Paul Powell

COMMISSION COUNSEL

Brian Liebman	984-236-1948
William W. Peaslee	984-236-1939
Seth M. Ascher	984-236-1934

RULES REVIEW COMMISSION MEETING DATES

October 19, 2023	December 14, 2023
November 16, 2023	January 18, 2024

RULES REVIEW COMMISSION MEETING
MINUTES
September 21, 2023

The Rules Review Commission met on Thursday, September 21, 2023, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx.

Commissioners Wayne R. Boyles III, Jeanette Doran, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell were present in the Commission Room. Commissioner Jay Hemphill was present via WebEx.

Staff member Alexander Burgos, Commission Counsel Seth Ascher, Brian Liebman, and Bill Peaslee were present in the room.

The meeting was called to order at 9:01 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.

The Chair read into the record the Evaluation of Statement of Economic Interest for Bill Nelson, which states the NC Ethics Commission did not find an actual conflict of interest but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

The Chair read into the record the Evaluation of Statement of Economic Interest for Jake Parker, which states the NC Ethics Commission did not find an actual conflict of interest but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

Chair Doran introduced Administrative Law Judge Linda F. Nelson, to the Commission.

Administrative Law Judge Linda F. Nelson administered the Oath of Office to newly appointed Commissioners Bill Nelson, Jake Parker, and reappointed Commissioners Wayne R. Boyles III and Barbara Jackson.

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 matter Tab B for the Private Protective Services Board and permanent rules for the Department of Revenue 17 NCAC 07B .0100 - .4100 and 17 NCAC 07B .4200 - .5000.

APPROVAL OF MINUTES

The Chair asked for any discussion, comments, or corrections concerning the minutes of the August 17, 2023, meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the minutes were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

FOLLOW UP MATTERS

Sheriffs' Education and Training Standards Commission

Upon the call of the Chair, 12 NCAC 10B .0402, .0403, .0404, and .0503 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

12 NCAC 10B .0604, .0605, .0606, .0607, .0704, .0714, .1302 – These Rules have staff opinions recommending objection and the Commission extended the period of review for these Rules at the August meeting. No action was required by the Commission.

12 NCAC 10B .1302 was withdrawn at the request of the agency. No further action was required by the Commission.

Private Protective Services Board

14B NCAC 16 .1503, .1504, .1702, .1703, .1704, .1705, and .1708 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Upon the call of the Chair, the Commission voted to adopt staff's recommendation to object to 14B NCAC 16 .0201, .0205, .0403, .0807, .1101, .1501, .1502, .1601, .1701, .1706, and .1707 for lack of clarity pursuant to G.S. 150B-21.9(a)(2) and to 14B NCAC 16 .0201, .0403, and .1501 for failure to comply with the APA pursuant to G.S. 150B-21.9(a)(4) by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

14B NCAC 16 .1709 was withdrawn at the request of the agency. No further action was required by the Commission.

Environmental Management Commission

15A NCAC 02D .0503, .0506, .0532, .0614, .0918, .0926, .0927, .0928, .0932, .0960, .0961, .0964, .1403, and .1708; 15A NCAC 02Q .0102, and .0706 - The Commission extended the period of review for these Rules at the August meeting. No action was required by the Commission.

Environmental Management Commission

Prior to the review of rules from the Environmental Management Commission, Commissioner Parker recused himself and did not participate in any discussion or vote concerning these Rules because of a conflict of interest.

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.

Marine Fisheries Commission

15A NCAC 03M .0101 - The Commission objected to this Rule at the June meeting. The agency has not responded to the Commission's continued objection. No action was required by the Commission.

Coastal Resources Commission

Prior to the review of rules from the Coastal Resources Commission, Commissioner Parker recused himself and did not participate in any discussion or vote concerning these Rules because of a conflict of interest.

15A NCAC 07H .0208, .0308; and 07M .0603 - The Commission objected to these Rules at the August meeting. The agency has not responded to the Commission's objection. 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, .0702; 07J .0203, .0204, .0206, .0207, .0208, and .0312 – At the February 2023 meeting, the Commission continued its objection to these Rules from the September 2022 meeting pursuant to G.S. 150B-21.12(c). The agency has not responded to the Commission's continued objection. No action was required by the Commission.

Coastal Resources Commission
15A NCAC 07H .2305 – At the February 2023 meeting, the Commission continued its objection to this Rule from the September 2022 meeting pursuant to G.S. 150B-21.12(c). The agency has not responded to the Commission's continued objection. No action was required by the Commission.

Coastal Resources Commission
15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0701, .0703, .0704, .1001, .1002, and .1101 – At the February 2023 meeting, the Commission continued its objection to these Rules from the September 2022 meeting pursuant to G.S. 150B-21.12(c). The agency has not responded to the Commission's continued objection. No action was required by the Commission.

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: Permanent rules for the Department of Revenue 17 NCAC 07B .0100 - .4100 and Department of Revenue 17 NCAC 07B .4200 - .5000.

LOG OF FILINGS (PERMANENT RULES)

Board of Agriculture
Upon the call of the Chair, the Commission voted to extend the period of review for 02 NCAC 52B .0214; 52J .0901, .0902, .0903, and .0904 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Child Care Commission
Upon the call of the Chair, 10A NCAC 09 .2703 was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Medical Care Commission
Upon the call of the Chair, 10A NCAC 13A .0201 and 13G .0504 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Upon the call of the Chair, the Commission voted to extend the period of review for 10A NCAC 13F .0702, .1307; 13G .0705 and .1301 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

RADIATION PROTECTION COMMISSION
Upon the call of the Chair, 10A NCAC 15 .1001, .1002, .1003, .1004, .1005, .1006, .1007, .1008, .1601, .1602, .1603, .1604, .1605, .1606, .1607, .1608, .1609, .1610, .1611, .1612, .1613, .1614, .1615, .1616, .1617, .1618, .1619, .1620, .1621, .1622, .1623, .1624, .1625, .1626, .1627, .1628, .1629, .1630, .1631, .1632, .1633, .1634, .1635, .1636, .1637, .1638, .1639, .1640, .1641, .1642, .1643, .1644, .1645, .1646, .1647, .1648, .1649, and .1653 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Commission for Public Health
Upon the call of the Chair, 10A NCAC 41A .0107 was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Department of Justice
Upon the call of the Chair, the Commission voted to extend the period of review for 12 NCAC 02J .0201 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Criminal Justice Education and Training Standards Commission
Upon the call of the Chair, the Commission voted to extend the period of review for 12 NCAC 09B .0209, .0403, .0501, .0502; 09C .0306; 09G .0405 and .0406 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Commission for Public Health
Upon the call of the Chair, 15A NCAC 18A .1511 was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Department of Revenue 17 NCAC 07B .0100 - .4100
Upon the call of the Chair, the Commission voted to adopt staff's recommendation to object to 17 NCAC 07B .0115, .3101, and .3107 by adopting the opinions incorporated in counsel's staff opinion finding that the rules are unnecessary pursuant to G.S. 150B-21.9(a)(3) and the rules are unclear and ambiguous pursuant to G.S. 150B-21.9(a)(2) by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Upon the call of the Chair, the Commission voted to extend the period of review for 17 NCAC 07B .0104, .0106, .0108, .0112, .0117, .0121, .0801, .0901, .0902, .0904, .1101, .1123, .1202, .1301, .1302, .1303, .1305, .1404, .1601, .1602, .1605, .1701, .1702, .1704, .1705, .1801, .1905, .1907, .2001, .2002, .2101, .2102, .2105, .2201, .2204, .2205, .2209, .2210, .2212, .2213, .2301, .2401, .2603, .2604, .2605, .2701, .2702, .2801, .2802, .2901, .3004, .3009, .3106, .3301, .3302, .3801, .3804, .3907, .3910, .4102, .4105, .4106 and .4109 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Department of Revenue 17 NCAC 07B .4200 - .5000
Upon the call of the Chair, the Commission voted to adopt staff's recommendation to object to 17 NCAC 07B .4206, .4415, and .5002 by adopting the opinions incorporated in counsel's staff opinion finding that the rules are unclear and ambiguous pursuant to G.S. 150B-21.9(a)(2) and lack of authority pursuant to G.S. 150B-21.9(a)(1). The Commission objected to 17 NCAC 07B .4206 and .4415 pursuant to G.S.150B-21.9(a)(3) for lack of necessity. The roll-call vote was ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Upon the call of the Chair, the Commission voted to extend the period of review for 17 NCAC 07B .4201, .4202, .4203, .4204, .4205, .4210, .4301, .4302, .4401, .4403, .4404, .4406, .4411, .4413, .4503, .4510, .4609, .4614, .4701, .4707, .4708, .4716, .4801, .4802, .4803, .5001, and .5004 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Local Governmental Employees' Retirement System Board of Trustees
Upon the call of the Chair, 20 NCAC 02C .0210 and .0211 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

LOG OF FILINGS (TEMPORARY RULES)
Midwifery Joint Committee
Upon the call of the Chair, 21 NCAC 33 .0101, .0103, .0104, .0105, .0111, .0112, .0114, .0115, .0116, .0117, .0118 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

COMMISSION BUSINESS
The Commission's Bylaws require that elections be held at the September meeting. Upon the call of the Chair, the Commission voted to waive Article 5, paragraph (c) of its bylaws by roll-call vote, ayes 8, noes 0 as follows: Voting in the

affirmative: Wayne R. Boyles, III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: none.

Upon the call of the Chair, Jeanette Doran was re-elected as Chair by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Upon the call of the Chair, Barbara Jackson and Randy Overton were elected as 1st and 2nd Vice-Chair, respectively, by roll call vote, ayes 8, noes 0 as follows. Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

The Commission voted to approve the request from the State Treasurer to remove the Supplemental Retirement Plan rules 20 NCAC 11 .0101 and 20 NCAC 11 .0102 from the 2024 – 2027 periodic review schedule by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

The meeting was adjourned at 10:12 a.m.

The next regularly scheduled meeting of the Commission is Thursday, October 19, 2023, at 9:00 a.m.

_____
Alexander Burgos, Paralegal

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

September 21, 2023

Rules Review Commission
Meeting
Please **Print** Legibly

Name	Agency
Nadine Pfeiffer	DHHS - DHSR
Taylor Carpenino	DHHS - DHSR
Angela Ellis	~~NC Board of Nursing~~ Midwifery Joint Comm
TIMOTHY MELTON	DST
Paride Kinlaw	DST
Melissa Brownlee	DOT
Anna Choi	BON
Andrew Forseth	NCDOR
Tm Mc CL	SOS
Amber Davis	DCDEE
Julie Peck	DCDEE
Terry McCawley	DCDEE
Stephanie Boyles	Visitor
Laura Lansford	NCDOR

Rules Review Commission Meeting September 21, 2023
Via WebEx

Name	Agency
Ann Elmore	Secretary of State
Reid Chisholm	Treasurer
Julie Ventaloro	OSBM
Jennifer Everett	DEQ
Virginia Niehaus	DHHS
Colin Dolan	reedsmith.com
Ren Larson	theassemblync.com
John Barkley	DOJ
Meredith Parris	mparris@ncbon.com
Meghan Cook	meghan.cook@ncfb.org
Anna Hayworth	Agriculture
Emery Milliken	DHHS
Executive Director	director@ncbdn.org
Helen Landi	HNTB.com
Erica Wilson	erica.wilson@dhhs.nc.gov
Lindsay Gomes	UNC
Larry Ascher	
Phillip Reynolds	DOJ
Anne Coan	NCFB
Violet Noe	Nursing
James Albright	DHHS
Megan Lamphere	DHHS
Carl Williams	DHHS
Emily Wiley	DOT
Ross Smith	MYNCMA.ORG
Hope Ascher	
Zack Moore	DHHS
Leo John	SOSNC
John H Schaeffer	DOJ
Hyrum Hemingway	DOJ
Donna Powell	DOR
Libby Kinsey	DHHS
Shane Smith	DHHS
Kimberly Luisana	NCBON
Shalisa Jones	DHHS
Larry Michael	DHHS

STATE ETHICS COMMISSION
POST OFFICE BOX 27685
RALEIGH, NC 27611
PHONE: 919-814-3600

Via Email

September 13, 2023

The Honorable Tim Moore
Speaker of the House of Representatives
16 West Jones Street, Room 2304
Raleigh, North Carolina 27601-1096

Re: Evaluation of Statement of Economic Interest Filed by Mr. Phillip Jacob Parker Jr.
Appointee to the Rules Review Commission

Dear Speaker Moore:

Our office has received **Mr. Phillip Jacob Parker Jr.'s** 2023 Statement of Economic Interest as an appointee to the **Rules Review Commission (the "Commission")**. We have reviewed it for actual and potential conflicts of interest pursuant to Chapter 138A of the North Carolina General Statutes ("N.C.G.S."), also known as the State Government Ethics Act (the "Act").

Compliance with the Act and avoidance of conflicts of interest in the performance of public duties are the responsibilities of every covered person, regardless of this letter's contents. This letter, meanwhile, is not meant to impugn the integrity of the covered person in any way. This letter is required by N.C.G.S. § 138A-28(a) and is designed to educate the covered person as to potential issues that could merit particular attention. Advice on compliance with the Act is available to certain public servants and legislative employees under N.C.G.S. § 138A-13.

We did not find an actual conflict of interest but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

The Rules Review Commission has authority to review all temporary and permanent rules proposed by North Carolina government agencies, including the authority to veto rules that fail to satisfy specific statutory criteria. Generally speaking, those rules are intended to implement or interpret laws adopted by the General Assembly or Congress or certain federal regulations. Temporary or permanent rules approved by the Commission are filed with the Office of Administrative Hearings to be included in the North Carolina Administrative Code.

The Act establishes ethical standards for certain public servants and prohibits public servants from: (1) using their positions for their financial benefit or for the benefit of their extended family or business, N.C.G.S. § 138A-31; and (2) participating in official actions from which they or certain associated persons might receive a reasonably foreseeable financial benefit, N.C.G.S. § 138A-36(a). The Act also requires public servants to take appropriate steps to remove themselves from proceedings in which their impartiality might reasonably be questioned due to a familial, personal, or financial relationship with a participant in those proceedings. N.C.G.S. § 138A-36(c).

Mr. Parker is the Secretary and General Counsel for the North Carolina Farm Bureau Federation, Inc. In addition, he is a governing board member for the Farm Bureau Insurance of N.C. and the North Carolina Farm Bureau Mutual Insurance Co, Inc. which are regulated by the North Carolina Department of Insurance (DOI). Because DOI could present rules for approval by the Commission, Mr. Parker has the potential for a conflict of interest. Therefore, he should exercise appropriate caution in the performance of his public duties should issues involving DOI or issues relevant to his industry come before the Commission for official action.

In addition to the conflicts standards noted above, the Act prohibits public servants from accepting gifts from (1) a lobbyist or lobbyist principal, (2) a person or entity that is seeking to do business with the public servant's agency, is regulated or controlled by that agency, or has financial interests that might be affected by their official actions, or (3) anyone in return for being influenced in the discharge of their official responsibilities. N.C.G.S. § 138A-32. Exceptions to the gifts restrictions are set out in N.C.G.S. § 138A-32(e).

When this letter cites an actual or potential conflict of interest under N.C.G.S. § 138A-24(e), the conflict must be recorded in the minutes of the applicable board and brought to the membership's attention by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with the Act. N.C.G.S. § 138A-15(c).

Finally, the Act mandates that all public servants attend an ethics and lobbying education presentation. N.C.G.S. § 138A-14. Please review the attached document for additional information concerning this requirement.

Please contact our office if you have any questions concerning our evaluation or the ethical standards governing public servants under the Act.

Sincerely,

Mary Roerden

Mary Roerden, SEI Unit
State Ethics Commission

cc: Phillip Jacob Parker Jr.
Alexander Burgos, Ethics Liaison

Attachment: Ethics Education Guide

STATE ETHICS COMMISSION
POST OFFICE BOX 27685
RALEIGH, NC 27611
PHONE: 919-814-3600

Via Email

September 11, 2023

The Honorable Phil Berger
President Pro Tempore of the Senate
16 West Jones Street, Room 2008
Raleigh, North Carolina 27601

Re: Evaluation of Statement of Economic Interest Filed by Mr. William W. Nelson
Appointee to the Rules Review Commission

Dear Senator Berger:

Our office has received **Mr. William W. Nelson's** 2023 Statement of Economic Interest as an appointee to the **Rules Review Commission (the "Commission")**. We have reviewed it for actual and potential conflicts of interest pursuant to Chapter 138A of the North Carolina General Statutes ("N.C.G.S."), also known as the State Government Ethics Act (the "Act").

Compliance with the Act and avoidance of conflicts of interest in the performance of public duties are the responsibilities of every covered person, regardless of this letter's contents. This letter, meanwhile, is not meant to impugn the integrity of the covered person in any way. This letter is required by N.C.G.S. § 138A-28(a) and is designed to educate the covered person as to potential issues that could merit particular attention. Advice on compliance with the Act is available to certain public servants and legislative employees under N.C.G.S. § 138A-13.

We did not find an actual conflict of interest but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

The Rules Review Commission has authority to review all temporary and permanent rules proposed by North Carolina government agencies, including the authority to veto rules that fail to satisfy specific statutory criteria. Generally speaking, those rules are intended to implement or interpret laws adopted by the General Assembly or Congress or certain federal regulations. Temporary or permanent rules approved by the Commission are filed with the Office of Administrative Hearings to be included in the North Carolina Administrative Code.

The Act establishes ethical standards for certain public servants and prohibits public servants from: (1) using their positions for their financial benefit or for the benefit of their extended family or business, N.C.G.S. § 138A-31; and (2) participating in official actions from which they or certain associated persons might receive a reasonably foreseeable financial benefit, N.C.G.S. § 138A-36(a). The Act also requires public servants to take appropriate steps to remove themselves from proceedings in which their impartiality might reasonably be questioned due to a familial, personal, or financial relationship with a participant in those proceedings. N.C.G.S. § 138A-36(c).

Mr. Nelson is a partner with the law firm of Smith Anderson and his spouse is an Administrative Law Judge at the N.C. Office of Administrative Hearings. Because the law firm of Smith Anderson could represent clients that come before the commission during the rulemaking process, he has the potential for a conflict of interest. In addition, he is a registered lobbyist. As such, Mr. Nelson should exercise appropriate caution in the performance of his public duties should the business of the law firm of Smith Anderson, their clients or issues involving any entity he represents as a lobbyist come before the Commission for official action.

In addition to the conflicts standards noted above, the Act prohibits public servants from accepting gifts from (1) a lobbyist or lobbyist principal, (2) a person or entity that is seeking to do business with the public servant's agency, is regulated or controlled by that agency, or has financial interests that might be affected by their official actions, or (3) anyone in return for being influenced in the discharge of their official responsibilities. N.C.G.S. § 138A-32. Exceptions to the gifts restrictions are set out in N.C.G.S. § 138A-32(e).

When this letter cites an actual or potential conflict of interest under N.C.G.S. § 138A-24(e), the conflict must be recorded in the minutes of the applicable board and brought to the membership's attention by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with the Act. N.C.G.S. § 138A-15(c).

Finally, the Act mandates that all public servants attend an ethics and lobbying education presentation. N.C.G.S. § 138A-14. Please review the attached document for additional information concerning this requirement.

Please contact our office if you have any questions concerning our evaluation or the ethical standards governing public servants under the Act.

Sincerely,

Mary Roerden

Mary Roerden, SEI Unit
State Ethics Commission

cc: William W. Nelson
Alexander Burgos, Ethics Liaison

Attachment: Ethics Education Guide

MEMORANDUM OF ABSTENTION FROM

PARTICIPATION IN OFFICIAL ACTION

RULES REVIEW COMMISSION

In accordance with N.C. General Statute G.S. 138A-15(e), I have abstained from taking any verbal or written action, including voting, on the agenda item regarding

EMC Tab D and ~~E~~ C.R.C Tab F.

I have abstained because of a potential conflict of interest.

This the 21st **day of** September, 202~~3~~

Signature of Commission Member

No public servant authorized to perform an official action requiring the exercise of discretion shall knowingly participate in an official action by the board if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated has an economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could be reasonably inferred that the interest or benefit would influence the public servant's participation. A potential benefit includes a detriment to a business competitor or (1) the public servant; (2) a member or the public servant's extended family, or (3) a business with which the public servant is associated. The public servant shall abstain from taking any verbal or written action and shall submit in writing to the board the reasons for the abstention.

LIST OF APPROVED PERMANENT RULES
September 21, 2023 Meeting

CHILD CARE COMMISSION

Criminal History Record Check Requirements for Child Care...	10A NCAC 09 .2703

MEDICAL CARE COMMISSION

Petitions	10A NCAC 13A .0201
Competency Evaluation and Validation for Licensed Health ...	10A NCAC 13G .0504

RADIATION PROTECTION COMMISSION

Notices, Instructions, and Reports to Employees	10A NCAC 15 .1001
Posting of Notices to Workers	10A NCAC 15 .1002
Instructions to Workers	10A NCAC 15 .1003
Notifications and Reports to Individuals	10A NCAC 15 .1004
Presence of Representatives During Inspections	10A NCAC 15 .1005
Consultation with Workers	10A NCAC 15 .1006
Requests for Inspections	10A NCAC 15 .1007
Inspections Not Warranted	10A NCAC 15 .1008
Standards for Protection Against Radiation	10A NCAC 15 .1601
Implementation	10A NCAC 15 .1602
Radiation Protection Programs	10A NCAC 15 .1603
Occupational Dose Limits for Adults	10A NCAC 15 .1604
Requirements for Summation of External, Internal Doses	10A NCAC 15 .1605
External Dose from Airborne Radioactive Material	10A NCAC 15 .1606
Determination of Internal Exposure	10A NCAC 15 .1607
Planned Special Exposures	10A NCAC 15 .1608
Occupational Dose Limits for Minors	10A NCAC 15 .1609
Dose Equivalent to an Embryo/Fetus	10A NCAC 15 .1610
Dose Limits for Individual Members of the Public	10A NCAC 15 .1611
Compliance with Dose Limits for Members of the Public	10A NCAC 15 .1612
Surveys	10A NCAC 15 .1613
Monitoring of External and Internal Occupational Dose	10A NCAC 15 .1614
Control of Access to High Radiation Areas	10A NCAC 15 .1615
Control of Access to Very High Radiation Areas	10A NCAC 15 .1616
Access to Very High Radiation Areas: Irradiators	10A NCAC 15 .1617
Use of Process or Other Engineering Controls	10A NCAC 15 .1618
Use of Other Controls to Restrict Internal Exposure	10A NCAC 15 .1619
Use of Individual Respiratory Protection Equipment	10A NCAC 15 .1620
Restrictions on the Use of Respiratory Protection Equipment	10A NCAC 15 .1621
Security of Sources of Radiation	10A NCAC 15 .1622
Caution Signs	10A NCAC 15 .1623
Posting Requirements	10A NCAC 15 .1624
Exceptions to Posting Requirement	10A NCAC 15 .1625
Labeling Requirements and Exemptions	10A NCAC 15 .1626
Procedures for Receiving and Opening Packages	10A NCAC 15 .1627
General Requirements for Waste Disposal	10A NCAC 15 .1628
Method for Obtaining Approval of Disposal Procedures	10A NCAC 15 .1629

Disposal by Release into Sanitary Sewerage	10A NCAC 15	.1630
Treatment or Disposal by Incineration	10A NCAC 15	.1631
Disposal of Specific Wastes	10A NCAC 15	.1632
Transfer for Disposal and Manifests	10A NCAC 15	.1633
Compliance with Env. and Health Protection Regulations	10A NCAC 15	.1634
General Provisions for Records	10A NCAC 15	.1635
Records of Radiation Protection Programs	10A NCAC 15	.1636
Records of Surveys	10A NCAC 15	.1637
Determination of Prior Occupational Dose	10A NCAC 15	.1638
Records of Planned Exposures	10A NCAC 15	.1639
Records of Individual Monitoring Results	10A NCAC 15	.1640
Records of Dose to Individual Members of the Public	10A NCAC 15	.1641
Records of Waste Disposal	10A NCAC 15	.1642
Records of Testing Entry Control Devices	10A NCAC 15	.1643
Form of Records	10A NCAC 15	.1644
Reports of Theft or Loss of Licensed Radioactive Material	10A NCAC 15	.1645
Notification of Incidents	10A NCAC 15	.1646
Reports of Radiation Exceeding the Limits	10A NCAC 15	.1647
Reports of Planned Special Exposures	10A NCAC 15	.1648
Reports of Individual Monitoring	10A NCAC 15	.1649
Radiological Requirements for License Termination	10A NCAC 15	.1653

PUBLIC HEALTH, COMMISSION FOR

Reporting of COVID-19 Diagnostic Test Results	10A NCAC 41A	.0107

SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

Probationary Certification	12 NCAC 10B	.0402
Probationary Certification Requirement	12 NCAC 10B	.0403
General Certification	12 NCAC 10B	.0404
Time Req/Completion/Basic Law Enforcement Training Course	12 NCAC 10B	.0503

PRIVATE PROTECTIVE SERVICES BOARD

Investigations Directly Related to Provision of Services	14B NCAC 16	.1503
Distinguishing Security Services	14B NCAC 16	.1504
Training and Supervision Required in Level One	14B NCAC 16	.1702
Training and Supervision Required in Level Two	14B NCAC 16	.1703
Training and Supervision Required in Level Three	14B NCAC 16	.1704
Educational Degrees and Non-degreed Training	14B NCAC 16	.1705
Transferability of Training Hours	14B NCAC 16	.1708

PUBLIC HEALTH, COMMISSION FOR

Water Supply	15A NCAC 18A	.1511

LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM BOARD OF TRUSTEES

Definitions	20 NCAC 02C	.0210
Surety for Non-Taxing Authority Participation	20 NCAC 02C	.0211

LIST OF APPROVED TEMPORARY RULES
September 21, 2023 Meeting

MIDWIFERY JOINT COMMITTEE	
Administrative Body and Definitions	21 NCAC 33 .0101
Application	21 NCAC 33 .0103
Provider Collaboration Required	21 NCAC 33 .0104
Disciplinary Action	21 NCAC 33 .0105
Continuing Education (CE)	21 NCAC 33 .0111
Scope of Practice	21 NCAC 33 .0112
Annual Renewal	21 NCAC 33 .0114
Inactive Status	21 NCAC 33 .0115
Collaborative Provider Agreement	21 NCAC 33 .0116
Prescribing Authority	21 NCAC 33 .0117
Birth Outside Hospital Setting	21 NCAC 33 .0118

RULES REVIEW COMMISSION SPECIAL MEETING
MINUTES
October 5, 2023

The Rules Review Commission met for a Special Meeting on Thursday, October 5, 2023, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx. A special meeting was called to review follow-up matters on the agenda pursuant to Section 21.2.(m) of S.L. 2023-134.

Commissioners Jeanette Doran, Bill Nelson, and Jake Parker were present in the Commission Room. Commissioners Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, and Randy Overton were present via WebEx.

Staff members present were Alexander Burgos, Commission Counsel Seth Ascher, Brian Liebman, and Bill Peaslee.

The meeting was called to order at 10:00 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.

Review of follow-up matters
Board of Agriculture
02 NCAC 52B .0214; 52J .0901, .0902, .0903, and .0904 - These Rules do not meet the eligibility requirements to be returned to the agency under Section 21.2.(m) of S.L. 2023-134; therefore, no action was taken by the Commission.

Medical Care Commission
10A NCAC 13F .0702, .1307; 13G .0705, and .1301 - These Rules do not meet the eligibility requirements to be returned to the agency under Section 21.2.(m) of S.L. 2023-134; therefore, no action was taken by the Commission.

Department of Justice
12 NCAC 02J .0201 – These Rules do not meet the eligibility requirements to be returned to the agency under Section 21.2.(m) of S.L. 2023-134; therefore, no action was taken by the Commission.

Criminal Justice Education and Training Standards Commission
12 NCAC 09B .0209, .0403, .0501, .0502; 09C .0306; 09G .0405, and .0406 - These Rules do not meet the eligibility requirements to be returned to the agency under Section 21.2.(m) of S.L. 2023-134; therefore, no action was taken by the Commission.

Sheriffs' Education and Training Standards Commission
12 NCAC 10B .0604, .0605, .0606, .0607, .0704, and .0714 - These Rules do not meet the eligibility requirements to be returned to the agency under Section 21.2.(m) of S.L. 2023-134; therefore, no action was taken by the Commission.

Private Protective Services Board
14B NCAC 16 .0201, .0205, .0403, .0807, .1101, .1501, .1502, .1601, .1701, .1706, and .1707 - These Rules do not meet the eligibility requirements to be returned to the agency under Section 21.2.(m) of S.L. 2023-134; therefore, no action was taken by the Commission.

Environmental Management Commission
15A NCAC 02D .0503, .0506, .0532, .0614, .0918, .0926, .0927, .0928, .0932, .0960, .0961, .0964, .1403, .1708; 02Q .0102, and .0706 - These Rules do not meet the eligibility requirements to be returned to the agency under Section 21.2.(m) of S.L. 2023-134; therefore, no action was taken by the Commission.

Environmental Management Commission
Prior to the review of rules from the Environmental Management Commission, Commissioner Parker recused himself and did not participate in any discussion or vote concerning these Rules because of the potential for a conflict of interest.

Upon the call of the Chair, 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, and .1405 were returned to the agency pursuant to Section 21.2.(m) of S.L. 2023-134 by roll-call vote, ayes 5, noes 0 as follows: Voting in the affirmative: Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, and Randy Overton – 5. Voting in the negative: None.

Marine Fisheries Commission
Upon the call of the Chair, 15A NCAC 03M .0101 was returned to the agency pursuant to Section 21.2.(m) of S.L. 2023-134 by roll-call vote, ayes 6, noes 0 as follows: Voting in the affirmative: Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, and Jake Parker – 6. Voting in the negative: None.

Commissioner Boyles joined the meeting via WebEx.

Coastal Resources Commission
Prior to the review of rules from the Coastal Resources Commission, Commissioner Parker recused himself and did not participate in any discussion or vote concerning these Rules because of the potential for a conflict of interest.

15A NCAC 07H .0208, .0308; and 07M .0603 – These Rules do not meet the eligibility requirements to be returned to the agency under Section 21.2.(m) of S.L. 2023-134; therefore, no action was taken by the Commission.

Coastal Resources Commission
Upon the call of the Chair, 15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510; 07I .0406, .0506, .0702; 07J .0203, .0204, .0206, .0207, .0208, and .0312 were returned to the agency pursuant to Section 21.2.(m) of S.L. 2023-134 by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles, III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, and Jake Parker – 7. Voting in the negative: None.

Coastal Resources Commission
Upon the call of the Chair, 15A NCAC 07H .2305 was returned to the agency pursuant to Section 21.2.(m) of S.L. 2023-134 by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles, III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, and Jake Parker – 7. Voting in the negative: None.

Coastal Resources Commission
Upon the call of the Chair, 15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0701, .0703, .0704, .1001, .1002, and .1101 were returned to the agency pursuant to Section 21.2.(m) of S.L. 2023-134 by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles, III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, and Jake Parker – 7. Voting in the negative: None.

Department of Revenue
17 NCAC 07B .0104, .0106, .0108, .0112, .0115, .0117, .0121, .0801, .0901, .0902, .0904, .1101, .1123, .1202, .1301, .1302, .1303, .1305, .1404, .1601, .1602, .1605, .1701, .1702, .1704, .1705, .1801, .1905, .1907, .2001, .2002, .2101, .2102, .2105, .2201, .2204, .2205, .2209, .2210, .2212, .2213, .2301, .2401, .2603, .2604, .2605, .2701, .2702, .2801, .2802, .2901, .3004, .3009, .3101, .3106, .3107, .3301, .3302, .3801, .3804, .3907, .3910, .4102, .4105, .4106 and .4109 - These Rules do not

meet the eligibility requirements to be returned to the agency under Section 21.2.(m) of S.L. 2023-134; therefore, no action was taken by the Commission.

Department of Revenue
17 NCAC 07B .4201, .4202, .4203, .4204, .4205, .4206, .4210, .4301, .4302, .4401, .4403, .4404, .4406, .4411, .4413, .4415, .4503, .4510, .4609, .4614, .4701, .4707, .4708, .4716, .4801, .4802, .4803, .5001, .5002, and .5004 - These Rules do not meet the eligibility requirements to be returned to the agency under Section 21.2.(m) of S.L. 2023-134; therefore, no action was taken by the Commission.

COMMISSION BUSINESS
The meeting adjourned at 10:40 a.m.

The next regularly scheduled meeting of the Commission is Thursday, October 19, 2023, at 9:00 a.m.

_____
Alexander Burgos, Paralegal

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

October 5, 2023

Rules Review Commission
Special Meeting
Please **Print** Legibly

Name	Agency
Mary Lucas	NCDOS
	SOS

Name	Agency
Melissa Harrison	SELNC
Phillip Reynolds	DOJ
Melva Bonner	WRC
Jennifer Everett	DEQ
Angela Willis	DEQ
Anna Hayworth	AGR
Ashley Snyder	OAH
Catherine Blum	DEQ
Melissa Bowman	DOJ
Carla Rose	DOL
Virginia Niehaus	DHHS
Julie Eddins	OAH
Julie Cronin	DHHS
Hannah Nelson	SELNC
Sharon Martin	Commerce
Hannah Jernigan	DOT
Dana McGhee	OAH
Laura Lansford	DOR
Amanda Reeder	DOJ
Emily Wiley	DOT
Sara Fathi-Nejad	Commerce
Julie Ventaloro	OSBM
Neal McHenry	ncauditor.net
Michelle Schilling	DOJ
Brooks Pearson	SELNC
Helen Landi	HNTB.com
Anne Coan	NCFB
Serena Jones	DOJ
Sue Homewood	DEQ
Laura Rowe	Treasurer
Julie	SELNC
Ellie Davis	DEQ
Meghan Cook	NCFB

MEMORANDUM OF ABSTENTION FROM

PARTICIPATION IN OFFICIAL ACTION

RULES REVIEW COMMISSION

In accordance with N.C. General Statute G.S. 138A-15(e), I have abstained from taking any verbal or written action, including voting, on the agenda item regarding Items H and J.

I have abstained because of the potential conflict of interest on both Items listed above.

This the 4th **day of** October, **202**3.

Signature of Commission Member

No public servant authorized to perform an official action requiring the exercise of discretion shall knowingly participate in an official action by the board if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated has an economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could be reasonably inferred that the interest or benefit would influence the public servant's participation. A potential benefit includes a detriment to a business competitor or (1) the public servant; (2) a member or the public servant's extended family, or (3) a business with which the public servant is associated. The public servant shall abstain from taking any verbal or written action and shall submit in writing to the board the reasons for the abstention.